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IV. Public Law 753-77th Congress-*October 21, 1942*

Note: House Report No. 2333 (to accompany H.R. *7378)-]uly 14, 1942*
(Report not included—social security tax freeze amendment added to the House-passed bill by the Senate'Committee on Finance.)

IV. War Shipping Crews Coverage

I. Reported to and Passed House

A. Committee on the Merchant Marine and Fisheries Report
House Report No. 107 (to accompany H.R. 133)—
February 8, 1943

B. Committee Bill Reported to the House
H.R. 133 (reported with amendment)—
February 8, 1943 (See text, Congressional Record pp. 963-65.)

C. House Debate—Congressional Record—
February 15, 1943
(House passed Committee-reported bill.)

Note: In 1942, H.R. 7424, a similar bill was passed by the House and died on the floor of the Senate. For House and Senate debate see Congressional Record following blue divider in this section.

II. Reported to and Passed Senate

A. Committee on Commerce Report
Senate Report No. 62 (to accompany H.R. 133)—*February 22, 1943*

B. Committee Bill Reported to the Senate
H.R. 133 (reported with amendments)—*February 22, 1943*
(See committee amendments, Congressional Record pp. 1466-69.)

C. Senate Debate—Congressional Record—*March 2, 1943*
(See floor amendments, Congressional Record pp. 1466-69.)

D. House and Senate Conferees—Congressional Record—*March 3, 8-10, 1943*

III. Conference Report (reconciling differences in the disagreeing votes of the two Houses)

A. House Report No. 248 (to accompany H.R. *133)-March 12, 1943*

B. Senate Debate—Congressional Record— *March 12, 1943*

C. House Debate—Congressional Record—*March 15-16, 1943*

IV.Public Law 17-78th Congress -*March 24, 1943*

V. 2 Month FICA Rate Freeze

I. Reported to and Passed Senate

A. Committee on Finance Report
Senate Report No. 607 (to accompany H.J.Res. 171)— *December 17, 1943*

B. Committee Bill Reported to the Senate
H.J.Res. 171 (reported with amendments)—*December 11, 1943*

C. Senate Debate—Congressional Record—
December 17, 1943
(Senate passed Committee-reported bill.)

II. House Concurred in Senate Amendments—Congressional Record—*December 17-18, 1943*

III. Public Law 211-78th Congress-December *22, 1943*

Note: House Report No. 921 (to accompany H.J.Res. 171)—*December 2, 1943* (Report not included—social security tax freeze amendment added to the House-passed bill by the Senate Committee on Finance.)

VI. 1944 FICA Rate Freeze

I. Reported to and Passed Senate

A. Committee on Finance Report
Senate Report No. 627 (to accompany H.R. 3687)—December *22, 1943*

B. Committee Bill Reported to the Senate

H.R. 3687 (reported with amendments)—*December 21, 1943*

C. Senate Debate—Congressional Record—*January 10-11, 19, 21, 1944*

D. Senate-Passed Bill with Numbered Amendments— *January 21, 1944*

II. House Conferees—Congressional Record—*January 24, 1944*

III. Conference Report (reconciling differences in the disagreeing votes of the two Houses)

A. House Report No. 1079 (to accompany H.R. 3687)—*February 4, 1944*

B. House Debate—Congressional Record— *February* 7, *1944*

C. Senate Debate—Congressional Record— *February* 7, *1944*

IV. Passage over President's Veto

A. President's Veto Message—Congressional Record—*February 22, 1944*

B. House Debate—Congressional Record—*February 24, 1944*

C. Senate Debate—Congressional Record—*February 25, 29, 1944*

V. Public Law 235—78th Congress—*February 25, 1944*

Note: House Report No. 871 (to accompany H.R. 3687)—*November 18, 1943* (Report not included—social security tax freeze amendment added to the House-passed bill by the Senate Committee on Finance.)

VII. Foreign War Shipping Crews Exclusion

I. Reported to and Passed House

A. Committee on the Merchant Marine and Fisheries Report
House Report No. 1215 (to accompany H.R. *3259)-March 1, 1944*

B. Committee Bill Reported to the House
H.R. 3259 (reported with amendments)-March *1, 1944* (See text, Congressional Record p. 2264.)

C. House Debate—Congressional Record— *March 6, 1944*
(House passed Committee-reported bill.)

II. Reported to and Passed Senate

A. Committee on Commerce Report
Senate Report No. 790 (to accompany H.R. *3259)-March 29, 1944*

B. Senate Debate—Congressional Record— *March 30, 1944*
(Committee reported and Senate passed House bill.)

III. Public Law 285-78th Congress-*April 4, 1944*

VIII. 1945 FICA Rate Freeze

I. Reported to and Passed House

A. Committee on Ways and Means Report
House Report No. 2010 (to accompany H.R. 5564)-*December 1, 1944*

B. Committee Bill Reported to the House
H.R. 5564 (reported without amendment)—*December 1, 1944*

C. House Debate—Congressional Record—*December 5, 1944*
(House passed Committee-reported bill.)

II. Reported to and Passed Senate

A. Committee on Finance Report
Senate Report No. 1356 (to accompany H.R. *5564)—December 1, 1944*

B. Senate Debate—Congressional Record—*December* 6, *8, 1944*
(Committee reported and Senate passed House bill.)

III. Public Law 495-78th *Congress-December 16, 1944*

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Listing of Reference Material

IX. War Shipping, Employer Tax

I. Reported to and Passed House

A. Committee on Ways and Means Report
House Report No. 34 (to accompany H.R. *1429)—January 23, 1945*

B. Committee Bill Reported to the House
H.R. 1429 (reported without amendment)—*January 23, 1945*

C. House Debate—Congressional Record— *February 5, 1945*
(House passed Committee-reported bill.)

II. Reported to and Passed Senate

A. Committee on Finance Report
Senate Report No. 85 (to accompany H.R. *1429)-March 8, 1945*

B. Senate Debate—Congressional Record—*March 15, 1945*
(Committee reported and Senate passed House bill.)

III. Public Law 21-79th Congress-*March 24, 1945*

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(House passed Committee-reported bill.)

II. Reported to and Passed Senate

A. Committee on Finance Report
Senate Report No. 861 (to accompany H.R. 4489)—*December 18, 1945*

B. Committee Bill Reported to the Senate
H.R. 4489 (reported with amendments)—*Decemb er 18, 1945*

C. Senate Debate—Congressional Record—*December 20, 1945*
(Senate amended and passed Committee-reported bill.)

III. House Concurred in Senate Amendments—Congressional Record—*December 21, 1945*

IV. Public Law 291-79th *Congress-December 29, 1945*

I. Reported to House

A. Committee on Interstate and Foreign Commerce Report
House Report No. 1989 (to accompany H.R. *1362)-May 9, 1946*

B. Committee Bill Reported to the House
H.R. 1362 (reported with amendments)— *May 9, 1946*

II. Passed House

A. House Debate—Congressional Record—*June 10, 20, July 3, 1946*

B. House-Passed Bill
H.R. 1362 (with amendments)-*July 5, 1946*

III. Reported to and Passed Senate

A. Committee on Interstate Commerce Report
Senate Report No. 1710 (to accompany H.R. 1362)
Parts 1 and *2-July 12, 15, 1946*
(Committee reported, House-passed bill.)

B. Senate Debate—Congressional Record—*July 19, 23, 25—26, 1946*

C. Senate—Passed Bill with Numbered Amendments— *July 26, 1946*
(See text of Senate amendments—Congressional Record pp. 10317—18 filed under IV.)

IV. House Concurred in Senate Amendments—Congressional Record—*July 27, 29, 1946*

V. Public Law
Public Law 572-79th Congress-*July 31, 1946*

Appendix

Listing of Reference Materials

I. Reported to and Passed House

A. Committee on the Judiciary Report (excerpts only)
House Report No. 2398 (to accompany H.R. *6890)-June 27, 1946*

B. Committee Bill Reported to the House
H.R. 6890 (reported without amendment)—*June 27, 1946*

C. House Debate—Congressional Record—*July 13, 16, 25-26, 1946*
(House passed Committee-reported bill amended to conform with Senate Judiciary Committee bill (S. 2378)—see Congressional Record pp. 10217-18.)

II. Reported to and Passed Senate

A. Committee on the Judiciary Report
Senate Report No. 1839 (to accompany S. *2378)-July 26, 1946*

B. Committee Bill Reported to the Senate
S. 2378 (reported with amendments)—*July 26, 1946*

C. Senate Debate—Congressional Record—*July 29, 1946*

(Senate amended and passed H.R. 6890—see Congressional Record p. 10371.)

III. House Concurred in Senate Amendments—Congressional Record—*July 30-31, 1946*

IV. Public Law 671-79th *Congress-August 8, 1946*

Appendix

Listing of Reference Materials

79TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 777

AMENDING THE BONNEVILLE PROJECT ACT

JUNE 21, 1945.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MANSFIELD of Texas, from the Committee on Rivers and Harbors, submitted the following

REPORT

[To accompany H. R. 2690]

The Committee on Rivers and Harbors, to whom was referred identical bills (H. R. 2690 and H. R. 2693) to amend the Bonneville Project Act, having considered the same, submit the following report thereon with the recommendation that H. R. 2690 do pass with the following amendments:

Page 2, line 1, change the semicolon to a period, and strike the balance of the line and all of lines 2 through 12.

Page 3, strike lines 24 and 25; pages 4 and 5, strike the entire page; page 6, strike lines 1 through 9; and substitute the following in lieu thereof:

(b) The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are authorized to appoint, subject to the civil-service laws, such officers and employees as may be necessary to carry out the purposes of this Act, the appointment of whom is not otherwise provided for, and to fix their compensation in accordance with the Classification Act of 1923, as amended. The Administrator may employ laborers, mechanics, and workmen in connection with construction work or the operation and maintenance of electrical facilities (hereinafter called "laborers, mechanics, and workmen") subject to the civil-service laws, and fix their compensation without regard to the Classification Act of 1923, as amended, and any other laws, rules, or regulations relating to the payment of employees of the United States except the Act of May 29, 1930 (46 Stat. 468), as amended, to the extent that it otherwise is applicable. The Administrator is further authorized to employ physicians, under agreement and without regard to the civil-service laws or regulations, to make physical examinations of employees or prospective employees who are or may become laborers, mechanics, and workmen. The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are also authorized to appoint, without regard to the civil-service laws, such experts as may be necessary for carrying out the functions entrusted to them under this Act and to fix the compensation of each of such experts without regard to the Classification Act of 1923, as amended, but at not to exceed $7,500 per annum.

Page 8, add a new section, to be designated section 7, as follows:

SEC. 7. (a) Section 1426 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"(j) Certain Employees of Bonneville Power Administrator.—The term 'employment' shall include such service as is determined by the Bonneville

Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator, but shall not include any service performed by such a laborer, mechanic, or workman, to whom the Act of May 29, 1930 (46 Stat. 468), as amended, applies. The term 'wages' means, with respect to service which constitutes employment by reason of this subsection, such amount of remuneration as is determined (subject to the provisions of this section) by the Administrator to be paid for such service. The Administrator is authorized and directed to comply with the provisions of the internal revenue laws on behalf of the United States as the employer of individuals whose service constitutes employment by reason of this subsection."

(b) Section 209 of the Social Security Act, as amended, is amended by adding at the end thereof the following new subsection:

"(p) (1) The term 'employment' shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator, but shall not include any service performed by such a laborer, mechanic, or workman, to whom the Act of May 29, 1930 (46 Stat. 468), as amended, applies.

"(2) The Social Security Board shall not make determinations as to whether an individual has performed services which are employment by reason of this subsection, the periods of such services, the amounts of remuneration for such services which constitutes 'wages' under the provisions of this section, or the periods in which or for which such wages were paid, but shall accept the determinations with respect thereto of the Administrator, and such agents as he may designate, as evidenced by returns filed by the Administrator as an employer pursuant to section 1426 (j) of the Internal Revenue Code and certifications made pursuant to this subsection. Such determinations shall be final and conclusive.

"(3) The Administrator is authorized and directed, upon written request of the Social Security Board, to make certification to it with respect to any matter determinable for the Board by the Administrator under this subsection, which the Board finds necessary in administering this title."

(c) Section 1606 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"(e) The legislature of any State may, with respect to service to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Bonneville Power Administrator (hereinafter called the Administrator), require the Administrator, who for the purposes of this subsection is designated an instrumentality of the United States, and any such employee, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Board under section 1603 and to comply otherwise with such law. Such permission is subject to the conditions imposed by subsection (b) of this section upon permission to State legislatures to require contributions from instrumentalities of the United States. The Administrator is authorized and directed to comply with the provisions of any applicable State unemployment compensation law on behalf of the United States as the employer of individuals whose service constitutes employment under such law by reason of this subsection."

(d) Section 1607 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"(m) CERTAIN EMPLOYEES OF BONNEVILLE POWER ADMINISTRATOR.—The term 'employment' shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator. The term 'wages' means, with respect to service which constitutes employment by reason of this subsection, such amount of remuneration as is determined (subject to the provisions of this section) by the Administrator to be paid for such service. The Administrator is authorized and directed to comply with the provisions of the internal revenue laws on behalf of the United States as the employer of individuals whose service constitutes employment by reason of this subsection."

STATEMENT

The purpose of this bill is to permit the Bonneville Power Administrator to use better methods of administration in carrying out his present functions. It would not extend his authority in the power field and is concerned chiefly with the relationships of the Administrator with his employees and with other Federal agencies. They would enable the Administrator to employ business principles and methods in the operation of a business enterprise and would eliminate some hampering procedures designed primarily for agencies conducting governmental regulatory programs.

Bonneville Power Administration is located, and its activities and interests are centered, in the Pacific Northwest, 3,000 miles from Washington. The Department of the Interior has wisely recognized that such a regional agency must be as free as possible to deal with problems which are essentially local matters. That Department exercises supervision only where major policy considerations are involved and leaves the administration of the policies to the Bonneville Power Administrator. H. R. 2690 is based on the same principle.

Section 1 authorizes the Administrator to amend contracts, compromise contract claims, and make expenditures upon such terms and conditions and in such manner as he may determine.

Sections 2 and 3 are technical amendments to authorize the Administrator to dispose of energy to other Federal agencies and to do so at rates approved by the Federal Power Commission.

Section 4 makes the Administrator's cost accounts more accurate, relieves him from the necessity of maintaining duplicate records, and makes it mandatory for him to obtain an independent commercial-type audit each year.

Section 5 authorizes the Administrator to appoint laborers, mechanics, and workmen employed in connection with construction work or the operation and maintenance of electrical facilities, pursuant to the civil-service laws, but to fix their compensation without regard to laws relating to the payment of employees of the United States. It also requires the Administrator to fix the compensation of all other employees, with the exception of experts, pursuant to the Classification Act.

Section 6 grants the Administrator authority to determine, compromise, and pay tort claims, not in excess of $1,000, against the United States, and to settle and compromise claims of the United States arising out of damage to property under the control of the Administrator. The section also permits the Administrator to be represented in litigation by his own attorneys except in certain types of cases in which the litigation would be subject to the direction or supervision of the Attorney General.

Section 7 extends the retirement protection of the Social Security Act to all laborers, mechanics, and workmen employed in connection with construction work or the operation and maintenance of electrical facilities, who are not subject to the Civil Service Retirement Act, makes the unemployment compensation tax provisions of the Internal Revenue Code applicable to all such laborers, mechanics, and workmen, and grants the States permission to extend their unemployment compensation acts to include such employees.

A more detailed consideration of the provisions of the bill follows.

Section 1

Section 1 authorizes the Administrator to amend, modify, and cancel contracts. Strong contracts, containing provisions in favor of the United States sufficient to permit it to control situations when such control is necessary, should be required. At the same time Bonneville should have authority to relax the contracts when good business dictates that it do so. Now the Administration may modify a contract only if it is in the interest of the Government that it do so, which has been construed to mean not only that there must be a new legal consideration for the amendment, but also that the United States must derive some substantial benefit to warrant any change in the contract. The alternative of compelling the execution of weak contracts in order to avoid unjust results and hardship on purchasers does not further the interests of the Government. The Administrator's discretion in this respect is subject to the supervision and direction of the Secretary of the Interior, pursuant to section 2 (a) of the Bonneville Project Act, as amended by the act of March 6, 1940.

The section also permits the Administrator to compromise claims arising out of contracts he has executed. The Administrator is a responsible officer of the Government and is the one who is most familiar with the claim and the facts out of which it arose. The discretion to compromise and settle it should be a part of Bonneville's business operations. It should not be compelled to lose, or run the risk of losing, advantageous settlements because of the delays involved in sending offers back and forth across the continent for consideration by a number of agencies before acceptance is possible.

The bill permits the Administration to broaden its sources of supply and will result in greater competition by enabling the Administrator to make advance, progress, and similar payments. Small manufacturers often are precluded from bidding on contracts involving the purchase of expensive equipment because of their inability to finance their operations during the period involved in manufacturing. There would be no risk in making advance payments if an adequate performance bond were supplied. This could be of considerable importance in the development of industry in the Northwest. By making advance and partial payments against purchases of equipment, Bonneville can encourage and assist small industries producing such equipment to establish themselves in the Northwest.

While arguments can be marshaled to support the provision relieving the GAO of its obligation to hold certifying officers personally liable for expenditures which are ultimately held to be unauthorized, the committee does not deem it advisable to recommend that Congress approve that policy at the present time.

The authority granted by this section was granted to the TVA by the 1941 amendment to section 9 (b) of the TVA Act (55 Stat. 775).

Sections 2 and 3

The Bonneville Act speaks only of "sales" of electric energy. Technically there can be no sale from the Administrator to another Federal agency, as title to the energy is at all times in the United States. The dispositions authorized will be on the same basis as sales, namely, at rates approved by the Federal Power Commission.

This accords with the policy incorporated in recent bills and acts, including the Flood Control Act (Public Law 534, 78th Cong.) enacted last December.

Section 4

Section 4 authorizes the Administrator to make appropriate obligations of funds for sick and annual leave of absence as such leave is earned. It does not in any way change the leave laws so far as individual employees are concerned. Under the Federal Power Commission cost-accounting system, such leave is a proper charge against the work benefiting from the employee's services at the time the leave is earned. Under Treasury and Budget accounting such leave cannot be charged unless funds are obligated. The amendment permits the Administrator to follow proper cost-accounting practices under the Federal Power Commission system of accounts and eliminates the necessity of maintaining duplicate records for both systems.

Section 4 makes it mandatory for the Administrator to have an independent commercial-type audit undertaken each year. There will be no duplication between a regular voucher audit by the General Accounting Office and an independent commercial-type audit. The former will be concerned with the appropriation and fund accounts of the Administrator and will determine the legality of expenditures. The latter will be concerned with the utility cost accounts maintained by the Administrator pursuant to the system prescribed by the Federal Power Commission. Bonneville is essentially a business agency, the revenues of which are far in excess of its expenditures. Its financial transactions should be examined on a balance-sheet and profit-and-loss basis in the same manner as any similar commercial enterprise. Congress will be in a better position to appraise the appropriation estimates submitted to it each year. The Comptroller General has made no objection to this provision for an independent commercial audit, and the committee believes that such an audit of the business operations of Bonneville would be desirable.

The final sentence of the section eliminates any conflict between section 9 (a) of the Bonneville Project Act, which directs the Administrator to keep his accounts subject to the requirements of the Federal Water Power Act, and section 309 of the Budget and Accounting Act of 1921 (42 Stat. 25), which authorizes the General Accounting Office to establish forms, accounts, and procedures for administrative appropriation and fund accounting. It also relieves Bonneville from the necessity of making two different types of reports for the same operation. The figures in these reports do not and cannot agree because of the differences in the accounting systems on which the reports are based, one being the Federal Power Commission cost-accounting system and the other the General Accounting Office Budget and Treasury appropriation and fund-accounting system.

Section 5

Section 5 consolidates in a single section the various provisions relating to personnel matters. It extends the application of the Classification Act to a number of positions which are not now covered thereby. The only positions, the compensation of which will not be fixed pursuant to the Classification Act, will be those designated by

the Civil Service Commission as "expert." This exception is not a departure from the present act and is necessary for consulting and advisory services.

The Bonneville Act provides for two classes of personnel. The first class includes the Assistant Administrator, chief engineer, general counsel, attorneys, engineers, and other experts. Their compensation may be fixed without regard to the Classification Act and is subject only to a limitation of $7,500 per annum. The second class includes all other employees. Their compensation must be fixed pursuant to the Classification Act, and the limitation of $7,500 per annum does not apply.

The Civil Service Commission and the Bonneville Power Administration have been under the impression, since the project was first initiated, that the Bonneville Act placed most engineers and attorneys in the second class and required their compensation to be fixed pursuant to the Classification Act. The Comptroller General ruled last November that all engineers and attorneys are in the first class and that their salaries are to be fixed at such rates as the Administrator may determine, subject to the limitation of $7,500 per annum. Questions as to the applicability of the Mead-Ramspeck Act, providing for automatic salary increases, and as to the current pay bills now before Congress are raised. This section disposes of these problems and places the engineers and attorneys on an equal plane with the other employees by requiring that all employees, other than experts, be compensated pursuant to the Classification Act.

The present act compels a discrimination in the salaries paid the top administrative officials. The effect of the ruling of the Comptroller General above referred to, and of a recent decision of the Civil Service Commission that the positions of power manager and controller are not expert positions, has been to place such positions in the second class of personnel prescribed by the Bonneville Act. Their compensation must therefore be fixed pursuant to the Classification Act, which, on the basis of the duties of the positions, requires that $8,000, the minimum salary for grades P. and S. 8 and CAF–15, respectfully, be paid. However, three other top positions, the assistant administrator, chief engineer, and general counsel, are in the first class of personnel and are subject to the $7,500 limitation. The Controller was recently promoted to Assistant Administrator, and the promotion compelled the payment of a lower salary. This discrimination and the discrimination between the salaries of Bonneville officials and officials in the $8,000 grade performing similar services in other agencies should be eliminated.

Subsection (b) does not differ from the present act in providing for the appointment of laborers, mechanics, and workmen employed in connection with construction work or the operation and maintenance of electrical facilities pursuant to the civil-service laws. However, it will permit Bonneville to follow many of the labor practices customary in the area in the same manner as private utilities and contractors engaged in similar work. The Administration is operating a business enterprise, and it should be able to conform with labor practices common in that business. Its inability to do so places it in a most unfavorable light and causes unsatisfactory labor relations. Most of the difficulties relate directly or indirectly to the compensation received by employees. A few of these are overtime pay for work in

excess of 8 hours per day, overtime pay on holidays and Sundays, minimum blocks of pay for emergency and call work, and a night differential or its equivalent. The Administration will be able to meet these problems under the bill.

Bonneville also is authorized (1) to provide and pay for physical examinations of construction and operation and maintenance workers at the time of their employment, an essential requirement for health, accident protection, and even the hiring of workers under the current manpower shortage, and (2) to utilize voluntary services and pay travel and other expenses in connection therewith.

Section 6

Section 6 permits the Administrator to settle, compromise, and pay tort claims not in excess of $1,000 against the United States, arising out of activities of his employees within the scope of their employment. The only current authorization for the payment of these claims is the Small Claims Act (31 U. S. C. 215). That procedure is laborious and expensive to the Government. Bonneville's experience has disclosed that a year to a year and one-half usually elapses between the filing of a claim and the receipt of payment. Moreover, the Small Claims Act permits the payment of claims arising only out of damage to property and does not authorize the payment of claims for personal injuries or actual losses which do not result from damage to property.

The Administration also is authorized to settle and compromise claims for damages to Government property under its control. These claims have been averaging less than $50 each, yet they must now be sent back and forth from coast to coast and be processed by at least two agencies. Ability to dispose of these claims promptly will decrease administrative costs and result in collections otherwise unobtainable.

The amendment permits the Administrator to be represented in routine litigation by his own attorneys, but subjects litigation involving constitutional issues or appearances in the appellate courts of the United States to the supervision and control of the Attorney General. Business considerations must necessarily affect the institution and conduct of litigation just as they affect the conduct of Bonneville's other activities. The Administration is in the best position to determine how alternative methods of handling a case may affect its programs and customer relations. Inefficiency is a certain result from the present division of responsibility for litigation between the Department of Justice in Washington, D. C., its special attorneys and United States attorneys in Tacoma, Seattle, Spokane, and Portland, and the Administrator's officers in Portland. Instances of delay and lack of coordination were presented to the committee. Most of Bonneville's litigation is exceedingly small in dollar amount and is local in character. It can best be handled by Bonneville's attorneys. On the other hand, the Attorney General should have supervision over cases involving constitutional issues or an appearance in a Federal appellate court. The bill grants the Attorney General such authority.

The present act provides that the Administrator may, under the supervision of the Attorney General, bring such suits as may be necessary to carry out the purposes of the act, and that he shall be represented by the United States attorneys for the districts in which such

litigation may arise, or by such attorneys as the Attorney General may designate as authorized by law, in conjunction with the regularly employed attorneys of the Administrator.

A dispute has arisen between Bonneville and the Department of Justice over the meaning of this provision. The former contends that its attorneys are entitled to at least equal participation in the handling of litigation. The Department of Justice construes the act as placing complete control of litigation in it, Bonneville's attorneys to participate only to such extent as the Department of Justice deems desirable. The act should be clarified to dispel this confusion. The bill would do so on a basis consistent with the needs of the Administration to conduct local litigation as a part of its business activities. At the same time the Department of Justice would have responsibility for important cases involving constitutional issues or an appearance in a Federal appellate court.

Section 7

Retirement and unemployment compensation benefits are two more troublesome issues in the Administrator's labor relations. One group of construction and operation and maintenance employees is subject to civil-service retirement protection. Another group receives no retirement protection whatever. Neither group receives unemployment compensation benefits. Employees of private utilities and contractors who perform similar work receive social-security protection and are eligible for unemployment compensation benefits.

It would be unfair to those employees now under the Civil Service Retirement Act to transfer them to the less advantageous old age insurance plan under the Social Security Act. The section makes appropriate amendments to the Internal Revenue Code and Social Security Act to (1) leave under the Civil Service Retirement Act all laborers, mechanics, and workmen employed in connection with construction work or the operation and maintenance of electrical facilities who are now under that act, (2) extend social-security protection to all such employees who are not under the Civil Service Retirement Act and who have no retirement protection, (3) make the unemployment compensation tax provisions of the Internal Revenue Code applicable to all laborers, mechanics, and workmen employed in connection with construction work or the operation and maintenance of electrical facilities, and (4) grant the States permission to extend their unemployment compensation acts to include these employees.

Pursuant to paragraph 2 (a) of rule XIII, the following are the sections of the Bonneville Act which will be amended by the bill as it was introduced, stricken language being enclosed in brackets and added language being italicized.

ACT OF AUGUST 20, 1937 (50 STAT. 731), AS AMENDED BY THE ACT OF MARCH 6, 1940 (54 STAT. 47)

SEC. 2. (f) [Subject to the provisions of this Act, the Administrator is authorized, in the name of the United States, to negotiate and enter into such contracts, agreements, and arrangements as he shall find necessary or appropriate to carry out the purposes of this Act.] *Subject only to the provisions of this Act, the Administrator is authorized to enter into such contracts, agreements, and arrangements, including the amendment, modification, adjustment, or cancellation thereof and the compromise or final settlement of any claim arising thereunder, and to make such expenditures, upon such terms and conditions and in such manner as he may deem*

necessary; and the Secretary of the Interior may prescribe by regulation the Administrator's procedure for authorizing or approving such contracts, agreements, arrangements, and expenditures. Notwithstanding the provisions of any other law governing the expenditure of public funds, the General Accounting Office in the settlement of the accounts of the Administrator shall not disallow credit for nor withhold funds because of any expenditure, not in violation of any regulation which the Secretary of the Interior may have prescribed, which the Administrator shall determine to have been necessary to carry out the provisions of this Act.

SEC. 5. (a) Subject to the provisions of this Act and to such rate schedules as the Federal Power Commission may approve, as hereinafter provided, the Administrator shall negotiate and enter into contracts for the sale at wholesale of electric energy, either for resale or direct consumption, to public bodies and cooperatives and to private agencies and persons *and for the disposition of electric energy to Federal agencies.* Contracts for the sale of electric energy to any private person or agency other than a privately owned public utility engaged in selling electric energy to the general public, shall contain a provision forbidding such private purchaser to resell any of such electric energy so purchased to any private utility or agency engaged in the sale of electric energy to the general public, and requiring the immediate canceling of such contract of sale in the event of violation of such provision. Contracts entered into under this subsection shall be binding in accordance with the terms thereof and shall be effective for such period or periods, including renewals or extensions, as may be provided therein, not exceeding in the aggregate twenty years from the respective dates of the making of such contracts. Contracts entered into under this subsection shall contain (1) such provisions as the Administrator and purchaser agree upon for the equitable adjustment of rates at appropriate intervals, not less frequently than once in every five years, and (2) in the case of a contract with any purchaser engaged in the business of selling electric energy to the general public, the contract shall provide that the Administrator may cancel such contract upon five years' notice in writing if in the judgment of the Administrator any part of the electric energy purchased under such contract is likely to be needed to satisfy the requirement of the said public bodies or cooperatives referred to in this Act, and that such cancellation may be with respect to all or any part of the electric energy so purchased under said contract to the end that the preferential rights and priorities accorded public bodies and cooperatives under this Act shall at all times be preserved. Contracts entered into with any utility engaged in the sale of electric energy to the general public shall contain such terms and conditions, including among other things stipulations concerning resale and resale rates by any such utility, as the Administrator may deem necessary, desirable, or appropriate to effectuate the purposes of this Act and to insure that resale by such utility to the ultimate consumer shall be at rates which are reasonable and nondiscriminatory. Such contract shall also require such utility to keep on file in the office of the Administrator a schedule of all its rates and charges to the public for electric energy and such alterations and changes therein as may be put into effect by such utility.

SEC. 6. Schedules of rates and charges for electric energy produced at the Bonneville project and sold to purchasers as in this Act provided shall be prepared by the Administrator and become effective upon confirmation and approval thereof by the Federal Power Commission [.]; *and such rates and charges shall also be applicable to disposition of electric energy to Federal agencies.* Subject to confirmation and approval by the Federal Power Commission, such rate schedules may be modified from time to time by the Administrator, and shall be fixed and established with a view to encouraging the widest possible diversified use of electric energy. The said rate schedules may provide for uniform rates or rates uniform throughout prescribed transmission areas in order to extend the benefits of an integrated transmission system and encourage the equitable distribution of the electric energy developed at the Bonneville project.

SEC. 9. (1) The Administrator, subject to the requirements of the Federal Water Power Act, shall keep complete and accurate accounts of operations, including all funds expended and received in connection with transmission and sale of electric energy generated at the Bonneville project [.], *and in the maintenance of such accounts, appropriate obligations shall be established for annual and sick leave of absence as earned. The Administrator shall, after the close of each fiscal year, obtain an independent commercial type audit of such accounts. The forms, systems, and procedures prescribed by the Comptroller General for the Administrator's appropriation and fund accounting shall be in accordance with the requirements of the Federal Water Power Act with respect to accounts of electric operations*

of public utilities and the regulations of the Federal Power Commission pursuant thereto.

SEC. 2. (a) The electric energy generated in the operation of the said Bonneville project shall be disposed of by the said Administrator as hereinafter provided. The Administrator shall be appointed by the Secretary of the Interior; shall be responsible to said Secretary of the Interior; shall receive a salary at the rate of $10,000 per year; and shall maintain his principal office at a place selected by him in the vicinity of the Bonneville project. [The Secretary of the Interior shall also appoint, without regard to the civil-service laws, an Assistant Administrator, chief engineer, and general counsel and shall fix the compensation of each at not exceeding $7,500 per annum. The Assistant Administrator shall perform the duties and exercise the powers of the Administrator, in the event of the absence or sickness of the Administrator until such absence or sickness shall cease, and, in the event of a vacancy in the office of Administrator until a successor is appointed.] The Administrator shall, as hereinafter provided, make all arrangements for the sale and disposition of electric energy generated at Bonneville project not required for the operation of the dam and locks at such project and the navigation facilities employed in connection therewith. He shall act in consultation with an advisory board composed of a representative designated by the Secretary of War, a representative designated by the Secretary of the Interior, a representative designated by the Federal Power Commission, and a representative designated by the Secretary of Agriculture. The form of administration herein established for the Bonneville project is intended to be provisional pending the establishment of a permanent administration for Bonneville and other projects in the Columbia River Basin. The Secretary of War shall install and maintain additional machinery, equipment, and facilities for the generation of electric energy at the Bonneville project when in the judgment of the Administrator such additional generating facilities are desirable to meet actual or potential market requirements for such electric energy. The Secretary of War shall schedule the operations of the several electrical generating units and appurtenant equipment of the Bonneville project in accordance with the requirements of the Administrator. The Secretary of War shall provide and maintain for the use of the Administrator at said Bonneville project adequate station space and equipment, including such switches, switchboards, instruments, and dispatching facilities as may be required by the Administrator for proper reception, handling, and dispatching of the electric energy produced at the said project, together with transformers and other equipment required by the Administrator for the transmission of such energy from that place at suitable voltage to the markets which the Administrator desires to serve. The office of the Administrator of the Bonneville project is hereby constituted an office in the Department of the Interior and shall be under the jurisdiction and control of the Secretary of the Interior. All functions vested in the Administrator of the Bonneville project under this Act may be exercised by the Secretary of the Interior and, subject to his supervision and direction, by the Administrator and other personnel of the project.

SEC. 10. [The Administrator, the Secretary of War, and the Federal Power Commission, respectively, shall appoint such attorneys, engineers, and other experts as may be necessary for carrying out the functions entrusted to them under this Act, without regard to the provisions of the civil-service laws and shall fix the compensation of each of such attorneys, engineers, and other experts at not to exceed $7,500 per annum; and they may, subject to the civil-service laws, appoint such other officers and employees as may be necessary to carry out such functions and fix their salaries in accordance with the Classification Act of 1923 as amended.]

(a) The Secretary of the Interior shall appoint, without regard to the civil-service laws, an Assistant Administrator, chief engineer, and general counsel and shall fix the compensation of each in accordance with the Classification Act of 1923, as amended. The Assistant Administrator shall perform the duties and exercise the powers of the Administrator, in the event of the absence or sickness of the Administrator until such absence or sickness shall cease, and in the event of a vacancy in the office of Administrator, until a successor is appointed.

(b) The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are authorized to appoint, subject to the civil-service laws, such officers and employees as may be necessary to carry out the purposes of this Act, the appointment of whom is not otherwise provided for, and to fix their compensation in accordance with the Classification Act of 1923, as amended: Provided, however, That to the extent that the civil-service laws, Classification Act, and other laws or regulations governing the employment or payment of employees of the United States are inconsistent with agreements made by the Administrator with representatives of laborers,

mechanics, and workmen employed in connection with the construction work or the operation and maintenance of electric facilities, the said Act, laws, and regulations shall not apply to matters covered by such agreements; but in connection with the selection, promotion, or retention of any employee, no political test or qualifications shall be permitted or given consideration, but all such actions shall be taken on the basis of the employee's merit and efficiency: Provided, further, That so long as any such contract provides that employees performing services for the Administrator pursuant thereto shall be entitled to the benefits of the Social Security Act, such services shall be deemed to be "employment" within the meaning of the Social Security Act and sections 1400 through 1432 of the Internal Revenue Code, and such employees, if they otherwise would be so classified, shall not be deemed to be employees within the meaning of the Act of May 22, 1920 (41 Stat. 614), and all Acts amendatory thereof or supplementary thereto, and so long as any such contract provides that employees prrforming services for the Administrator pursuant thereto shall be entitled to unemployment compensation benefits, such services shall be deemed to be "employment" within the meaning of sections 1600 through 1611 of the Internal Revenue Code if contributions upon the basis of the compensation for such services are required to be paid under a State unemployment compensation act, and consent hereby is given to the States to require the Administrator to make payments to State unemployment compensation funds for services performed for him under any such contract; the Administrator is authorized to comply with the provisions of the Social Security Act, the Internal Revenue Code, and any applicable State unemployment compensation act on behalf of the United States as the employer of individuals whose service constitutes employment under such act, code, and laws by reason of this section. The Administrator is further authorized to employ physicians, under agreement and without regard to civil-service laws or regulations, to make physical examinations of employees or prospective employees who are or may become laborers, mechanics, and workmen engaged on construction work or the operation and maintenance of electrical facilities. The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are also authorized to appoint, without regard to the civil-service laws, such experts as may be necessary for carrying out the functions entrusted to them under this Act and to fix the compensation of each of such experts without regard to the Classification Act of 1923, as amended. but at not to exceed $7,500 per annum.

(c) The Administrator may accept and utilize such voluntary and uncompensated services and with the consent of the agency concerned may utilize such officers, employees, or equipment of any agency of the Federal, State, or local governments which he finds helpful in carrying out the purposes of this Act; in connection with the utilization of such services, reasonable payments may be allowed for necessary travel and other expenses.

SEC. 12. [The Administrator may, in the name of the United States, under the supervision of the Attorney General, bring such suits at law or in equity as in his judgment may be necessary to carry out the purposes of this Act; and he shall be represented in the prosecution and defense of all litigation affecting the status or operation of Bonneville project by the United States attorneys for the districts, respectively, in which such litigation may arise, or by such attorney or attorneys as the Attorney General may designate as authorized by law, in conjunction with the regularly employed attorneys of the Administrator.]

(a) The Administrator is hereby authorized to determine, settle, compromise, and pay claims and demands against the United States which are not in excess of $1,000 and are presented to the Administrator in writing within one year from the date of accrual thereof, for any losses, injuries, or damages to persons or property, or for the death of persons, resulting from acts or omissions of employees acting within the scope of their employment pursuant to this Act. The Administrator is also authorized to determine, compromise, and settle any claims and demands of the United States for any losses, injuries, or damages to property under the Administrator's control, against other persons or public or private corporations. The Administrator's determination, compromise, settlement, or payment of any of the claims referred to in this subsection shall be final and conclusive upon all officers of the Government, notwithstanding the provisions of any other Act to the contrary. When claims presented to the Administrator under this subsection arise, in whole or in part, out of any damage done to private property, the Administrator may repair all or any part of such damage in lieu of making such payments.

(b) The Administrator may, in the name of the United States, bring such suits at law or in equity as in his judgment may be necessary to carry out the purposes of this Act; and he shall be represented in the prosecution and defense of all litigation, including condemnation proceedings, affecting the status or operation of the Bonneville project by his attorneys: Provided, however, That such attorneys shall supply the

Attorney General with copies of the pleadings in all such cases and that the handling of litigation which, in the Attorney General's opinion, involves interpretation of the Constitution of the United States or which involves appearance in any United States circuit court of appeals or the United States Supreme Court shall be subject to the Attorney General's direction or supervision. The Administrator may compromise and make final settlement of such litigation and pay the amount due under any compromise or judgment. Complaints in condemnation proceedings permitted by section 2 (c) and 2 (d) of this Act shall be signed, verified, and filed by the Administrator.

The following are the departmental reports on the bills:

THE SECRETARY OF THE INTERIOR,
Washington, D. C., June 18, 1945.

Hon. JOSEPH J. MANSFIELD,
Chairman, Committee on Rivers and Harbors,
House of Representatives.

MY DEAR MR. MANSFIELD: Your letter of March 22 requests a report from the Department of the Interior on H. R. 2690 and H. R. 2693, duplicate bills to amend the Bonneville Project Act.

I heartily favor the purposes of these bills and recommend that one or the other of them be enacted, with the amendments hereinafter suggested.

The Bonneville Project Act, by its terms, established only a provisional form of administration pending the creation of a permanent administration for Bonneville and other projects in the Columbia River Basin. These bills do not change the basic form of administration or affect its permanence. There is no extension of the scope of the functions of the Bonneville Power Administrator in the public power field. The bills merely authorize the Administrator to employ better methods of administration with which to carry out his present functions.

The Bonneville Power Administration is a regional agency. Its activities and interests are centered in the Pacific Northwest in which it is, by statute, required to maintain its headquarters. Such an agency should be as free as possible to administer problems which are essentially local in character. This Department has recognized that fact and has given the Bonneville Power Administration a degree of autonomy which, while somewhat unusual in governmental administration, is nevertheless compatible with the nature of the agency and the regional character of its programs and functions. The Department of the Interior exercises supervision only with respect to matters of major policy. The details of administration are handled by the Bonneville Power Administrator.

Furthermore, the Bonneville Power Administration is not engaged in a governmental regulatory program. It operates a business enterprise from which the Government derives a return of no small proportions. Government procedure was not designed for such an agency, and in many instances it has hindered the operations of the Administrator to an unwarranted extent. The bills under consideration recognize these characteristics of the Bonneville Power Administration and will facilitate its operations as a regional and business agency.

Section 1 would authorize the Administrator to amend contracts. It is a normal business practice for one party to insert in a contract all the provisions in his favor to which the other party will consent. If there develops a situation which was not anticipated, the party in whose favor the provision runs will often modify the contract or waive its application. In other words, a party will insist upon a strong contract to grant him control of a situation if such control becomes necessary, but he will modify or waive a contractual provision where it proves too restrictive and he is not substantially affected. The Bonneville Power Administrator should require a strong contract to protect fully the interests of the United States, but he also should be able to relax it when the control is unnecessary or when good business dictates that he do so. However, as a general matter, an officer of the United States cannot modify a Government contract. The alternative of compelling the Administrator to execute a comparatively weak contract so as to avoid unjust results is inimical to the interests of the Government. The bills would enable the Administrator to operate with much the same flexibility as a private utility or business, but would by no means give him an unlimited discretion, as they require him to conform to the procedural regulations which the Secretary of the Interior prescribes. In addition, he is subject generally to the supervision and direction of the Secretary of the Interior pursuant to section 2 (a) of the Bonneville Project Act, as amended by the act of March 6, 1940.

This section would permit the Administrator to compromise claims arising out of contracts which he has executed. Now such claims may be compromised only by two or three officers of the Government, and the extent of their respective jurisdictions is not clear. An offer to compromise even the smallest claim which the Government asserts must be referred to one of these officials, and delays are inevitable. A prompt settlement and disposal of a claim by or against the Administrator, one of the chief reasons to compromise such a claim, is made impossible if the offer must be sent back and forth across the continent for consideration by a number of agencies before acceptance is possible. The Administrator is a responsible officer of the Government and is the one who is the most familiar with the claim and the facts out of which it arose. He should have the discretion to compromise and settle it as a part of his normal business operations.

The final sentence of section 1 would relieve the General Accounting Office of its obligation to hold certifying officers liable in the event the Comptroller General believes that the Administrator has exceeded his powers under the Bonneville Act or has not complied with some general statute relating to the expenditure of Government funds. In view of the objection raised against this provision (p. 2, lines 4–12, inclusive) by the General Accounting Office, and in further view of the advice of the Bureau of the Budget that the provision would not be in accord with the program of the President, I recommend its deletion.

Sections 2 and 3 are technical amendments authorizing the Administrator to dispose of electric energy to other Federal agencies (technically there can be no sale by the Administrator to such agencies as title to the energy is at all times in the United States) and to do so at rates approved by the Federal Power Commission as is the case with all other sales.

Section 4 would authorize the obligation of funds for sick and annual leave of absence, as such leave is earned. The amendment would improve the accuracy of the cost accounts of the Administrator and would remove the necessity for maintaining duplicate cost accounts for the Federal Power Commission on the one hand, and the Bureau of the Budget and the Department of Treasury on the other.

This section would further empower the Administrator to have an independent commercial-type audit undertaken. There would be no duplication of the audit by the General Accounting Office. Both a Government-type audit and an independent commercial-type audit are needed; the former to determine the legality of expenditures, and the latter to permit, upon the basis of an independent certificate, a comparison of the activities and the financial statements of the Administrator with those of private utilities.

The final sentence of the section would eliminate any conflict between section 9 (a) of the Bonneville Project Act and section 309 of the Budget and Accounting Act of 1921 (42 Stat. 25) and any necessity for maintaining duplicate records to comply with both acts.

Section 5 would consolidate in a single section the various provisions relating to personnel matters. It would extend the application of the Classification Act to a number of positions which are not now covered thereby. The only administrative positions, the compensation of which would not be fixed pursuant to the Classification Act, would be those designated by the Civil Service Commission as "expert." This exception, concerning which there is no change from the present act, is necessary for consulting and advisory services.

The effect of this change is to withdraw the authority of the Administrator and Secretary to fix the salaries of certain employees, subject only to a maximum limit of $7,500 per annum, and to substitute in lieu thereof the requirement that their compensation be fixed pursuant to the Classification Act. Under a recent ruling of the Civil Service Commission the positions of power manager and controller can be classified as P. and S. 8 and CAF–15, respectively, with base salaries of $8,000. This is in accord with the normal practice in other agencies of classifying top administrative positions in the $8,000 grade. However, three other top positions, the Assistant Administrator, chief engineer, and general counsel, are now subject to the $7,500 maximum. The amendment would remove this anomaly by requiring all such salaries to be fixed pursuant to the Classification Act. It would also remove the discrimination between the Administrator's employees and employees holding similar positions in other agencies.

The activities of the Administrator, because of the field in which he operates, are constantly being compared with those of private utilities and private contractors. With respect to labor practices, the Administrator suffers by such a comparison. He operates and maintains electrical facilities and occasionally undertakes construction on force account, and he should be able to follow the same labor practices as do private utilities and contractors in the same work. When the Government

operates a business activity, it should attempt to conform to the best labor practices which are customary in that activity.

Objections have been raised, however, against some of the provisions of subsection (b) of this section. I have been informed that the Civil Service Commission has objected to the provisions which would permit the employment of certain classes of laborers, mechanics, and workmen without regard to the civil-service laws, and that representatives of the employees concerned have concurred in this objection. In order to remove the grounds for this objection, I recommend that subsection (b) be revised in accordance with the enclosed redraft. This redraft would provide that the employees in question should be appointed pursuant to the civil-service laws, while their compensation might be fixed independently of the Classification Act in order to accomplish the objective of permitting conformity with local labor conditions and practices.

Several departments and agencies have also taken exception to the provisions of subsection (b) which would grant social security and unemployment compensation benefits on the basis of collective bargaining agreements. They recommend that such coverage be made mandatory by the statute, that employees now under the Civil Service Retirement Act be not transferred to the old-age insurance system of the Social Security Act, and that any provisions of law which concern social security or unemployment compensation benefits be written in the form of amendments to the Internal Revenue Code and the Social Security Act.

To meet these objections, the provisions in question have been omitted from the enclosed redraft of subsection (b), and a new section 7 containing substitute provisions has been prepared. This new section would amend the Internal Revenue Code and the Social Security Act to provide for social-security protection of laborers, mechanics, and workmen engaged in construction, operation, or maintenance work, if not subject to the Civil Service Retirement Act, and would grant unemployment-compensation benefits to these employees. It would likewise resolve the fears of employees' representatives that some employees might lose their right to participate in the benefits of the Civil Service Retirement Act. I recommend that this proposed section 7, a draft of which is enclosed, be added to the bills.

Section 6 would permit the Administrator to settle, compromise, and pay tort claims not in excess of $1,000 against the United States arising out of activities of his employees within the scope of their employment. The only present provision for the payment of such claims is the Small Claims Act (31 U. S. C. 215). That procedure is laborious and expensive, and its inadequacy to meet the needs of a business agency, the programs of which demand prompt action and satisfactory public relations, is disclosed by the year to a year and a half which usually elapses between the filing of a claim and the receipt of payment. The Small Claims Act is not adequate to grant reasonably proper protection to the public because it is too limited in scope. It does not authorize the payment of claims for personal injuries or actual losses not resulting from damage to property.

The Administrator also would be given authority to settle and compromise claims for damages to Government property under his control. He now has no authority to compromise such claims, and they must be referred to the Department of Justice even though they have been averaging less than $50 each in amount. The delay involved in shuffling such claims back and forth from one coast to the other and the unjustifiable expense incurred in having these small claims processed by at least two agencies instead of one would be eliminated by these bills.

The amendment would permit the Administrator to be represented in routine litigation by his own attorneys, but would subject litigation involving constitutional issues or appearances in the appellate courts of the United States to the supervision and control of the Attorney General. Business considerations, best known to the Administrator, must necessarily affect the institution and conduct of litigation just as they affect the conduct of his other activities. The Administrator is in the best position to determine how alternative methods of handling a case may affect his programs and customer relations. He should not be required to delegate a part of his functions, such as the conduct of his litigation, to other agencies, since by statute he has the basic responsibility for making the Government-owned power facilities in the Pacific Northwest pay their way. Delays and confusion cannot be avoided, despite the efforts of all parties for cooperation, as long as responsibility for so important a phase of management as litigation is divided between the Department of Justice in Washington, D. C., its special attorneys, and United States attorneys in Tacoma, Seattle, Spokane, and Portland, and the Administrator's officers in Portland.

The Attorney General should continue to exercise supervision over important litigation, just as this Department exercises supervision when policy matters of national importance are involved. The amendment would give the Attorney General control of such litigation, yet would leave the Administrator free to conduct the local litigation which the nature of his activities demands.

I am certain that the legislation embodied in these bills, with the amendments recommended in this report, would enable the Bonneville Power Administrator to carry on his existing duties more efficiently and to attain more rapidly the objectives of Congress in the Bonneville Project Act.

The Director of the Bureau of the Budget has advised me that, except for the objection to part of section 1 heretofore discussed, there would be no objection to the submission of this report.

Sincerely yours,

HAROLD L. ICKES, *Secretary of the Interior.*

1. Amendment to section 5 of H. R. 2690 and H. R. 2693 by which subsection (b) of section 10 of the Bonneville Act will be amended to read as follows:

"(b) The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are authorized to appoint, subject to the civil-service laws, such officers and employees as may be necessary to carry out the purposes of this Act, the appointment of whom is not otherwise provided for, and to fix their compensation in accordance with the Classification Act of 1923, as amended. The Administrator may employ laborers, mechanics, and workmen in connection with construction work or the operation and maintenance of electrical facilities (hereinafter called 'laborers, mechanics, and workmen') subject to the civil-service laws, and fix their compensation without regard to the Classification Act of 1923, as amended, and any other laws, rules, or regulations relating to the payment of employees of the United States except the Act of May 29, 1930 (46 Stat. 468), as amended, to the extent that it otherwise is applicable. The Administrator is further authorized to employ physicians, under agreement and without regard to the civil-service laws or regulations, to make physical examinations of employees or prospective employees who are or may become laborers, mechanics, and workmen. The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are also authorized to appoint, without regard to the civil-service laws, such experts as may be necessary for carrying out the functions entrusted to them under this Act and to fix the compensation of each of such experts without regard to the Classification Act of 1923, as amended, but at not to exceed $7,500 per annum."

2. Amendment to H. R. 2690 and H. R. 2693 by adding a new section, to be designated section 7, to read as follows:

"SEC. 7 (a). Section 1426 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

" '(j) CERTAIN EMPLOYEES OF BONNEVILLE POWER ADMINISTRATOR.—The term "employment" shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator, but shall not include any service performed by such a laborer, mechanic, or workman, to whom the Act of May 29, 1930 (46 Stat. 468), as amended, applies. The term "wages" means, with respect to service which constitutes employment by reason of this subsection, such amount of remuneration as is determined (subject to the provisions of this section) by the Administrator to be paid for such service. The Administrator is authorized and directed to comply with the provisions of the internal revenue laws on behalf of the United States as the employer of individuals whose service constitutes employment by reason of this subsection.'

"(b) Section 209 of the Social Security Act, as amended, is amended by adding at the end thereof the following new subsection:

" '(p) (1) The term "employment" shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator, but shall not include any service performed by such a laborer, mechanic, or workman, to whom the Act of May 29, 1930 (46 Stat. 468), as amended, applies.

" '(2) The Social Security Board shall not make determinations as to whether an individual has performed services which are employment by reason of this subsection, the periods of such services, the amounts of remuneration for such

services which constitutes "wages" under the provisions of this section, or the periods in which or for which such wages were paid, but shall accept the determinations with respect thereto of the Administrator, and such agents as he may designate, as evidenced by returns filed by the Administrator as an employer pursuant to section 1426 (j) of the Internal Revenue Code and certifications made pursuant to this subsection. Such determinations shall be final and conclusive.

"'(3) The Administrator is authorized and directed, upon written request of the Social Security Board, to make certification to it with respect to any matter determinable for the Board by the Administrator under this subsection, which the Board finds necessary in administering this title.'"

"(c) Section 1606 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"'(c) The legislature of any State may, with respect to service to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Bonneville Power Administrator (hereinafter called the Administrator), require the Administrator, who for the purposes of this subsection is designated an instrumentality of the United States, and any such employee, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Board under section 1603 and to comply otherwise with such law. Such permission is subject to the conditions imposed by subsection (b) of this section upon permission to State legislatures to require contributions from instrumentalities of the United States. The Administrator is authorized and directed to comply with the provisions of any applicable State unemployment compensation law on behalf of the United States as the employer of individuals whose service constitutes employment under such law by reason of this subsection.'

"(d) Section 1607 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"'(m) CERTAIN EMPLOYEES OF BONNEVILLE POWER ADMINISTRATOR.—The term "employment" shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator. The term "wages" means, with respect to service which constitutes employment by reason of this subsection, such amount of remuneration as is determined (subject to the provisions of this section) by the Administrator to be paid for such service. The Administrator is authorized and directed to comply with the provisions of the internal revenue laws on behalf of the United States as the employer of individuals whose service constitutes employment by reason of this subsection.'"

DEPARTMENT OF JUSTICE,
Washington, D. C., June 15, 1945.

Hon. JOSEPH J. MANSFIELD,
Chairman, Committee on Rivers and Harbors,
House of Representatives, Washington, D. C.

MY DEAR MR. CONGRESSMAN: This will refer to your request for my views with respect to H. R. 2690 and H. R. 2693, bills to amend the Bonneville Project Act. These bills are identical and my reference and comment are applicable to each of them. The bill authorizes the Administrator to enter into and compromise, cancel, amend, or modify contracts and agreements and to make expenditures he deems necessary without regard to other provisions of law regarding expenditures of public funds. The bill further authorizes the appointment by the Secretary of the Interior of an Assistant Administrator, chief engineer, and general counsel. The Administrator, the Secretary of War, and the Federal Power Commission are authorized to appoint, subject to the civil-service laws, such officers or employees as may be necessary to carry out the purposes of the act. The Administrator is authorized to compromise and pay any claims and demands against the United States for injuries resulting from acts or omissions of employees of the Bonneville Power Administration, providing such claims are presented within 1 year and do not exceed $1,000. The Administrator is also empowered to compromise and settle any claims and demands asserted by the Administration against other persons or public or private corporations, such compromise being final and conclusive upon all officers of the Government.

The Administrator is authorized to bring such suits as he deems necessary to carry out the purpose of the act and he is to be represented in all litigation, including condemnation proceedings, by his attorneys, but the attorneys are required to supply the Attorney General with copies of the pleadings in all cases, and the handling of litigation which in the opinion of the Attorney General involves an interpretation of the Constitution or will involve appearances in any United States circuit court of appeals or the United States Supreme Court is subject to the Attorney General's direction or supervision. The Administrator may compromise any such litigation and pay the amount due under any compromise or judgment. The bill also contains certain provisions with respect to the disposition of electric energy to Federal agencies and the rates applicable thereto as well as other provisions administrative in their nature.

Whether the bill should be enacted into law is a matter of legislative policy. There are certain features of the bill, however, which represent such a sharp departure from the present governmental procedure that I feel I should direct your attention to them and comment upon them.

Insofar as litigation involving the functions of the Bonneville Power Administration is concerned, the enactment of the provisions in the bill with respect to the conduct of litigation by the attorneys for the Administrator would effect a repeal of numerous statutes under which the conduct and control of litigation to which the United States is a party has long been vested by the Congress in the Attorney General or his subordinates. Among such statutes are the act of September 24, 1789, as amended (1 Stat. 92, sec. 771, R. S., 28 U. S. C. 485), which authorizes the district attorneys to appear in all matters in which the United States is concerned; the act of June 22, 1870, as amended (16 Stat. 162, sec. 359, R. S., 5 U. S. C. 309), permitting the Attorney General to conduct any case in any court of the United States in which the United States is interested if he deems it for the best interests of the United States; the act of June 30, 1906 (34 Stat. 816, 5 U. S. C. 310), which authorizes the Attorney General or any attorney appointed by him to participate in any proceeding which the district attorney is authorized by law to conduct; and the act of March 2, 1889 (25 Stat. 941, 40 U. S. C. 256) under which all legal services connected with procuring titles to sites for public buildings are rendered by the United States district attorney. Further, section 5 of Executive Order No. 6166 of June 10, 1933, issued under authority of part 2, title IV of the act of June 30, 1932 (ch. 314, 47 Stat. 382), which vested, in the broadest language, the prosecution and defense of claims against the United States and the conduct of all phases of litigation in the Department of Justice would be superseded by the bill as far as the litigation of the Bonneville Power Administration is concerned.

Whether approached from the viewpoint of the interests of the United States or the interests of the citizen, uniform conduct and disposition are essential in a matter so vital as litigation between the sovereign and the citizen. This uniformity is quite obviously not obtainable when the direction and control of litigation are placed in the hands of and are dependent upon the judgment and discretion of a multitude of officers. The Administrator of the Bonneville Power Administration in the management and control of the officers of the Administration is in effect an officer of the United States since the powers and functions exercised by the Administration are the powers and functions of the United States. The bill authorizes the Administrator to sue or defend "in the name of the United States" and the United States would be bound by the result of the litigation. Were the practice provided in the bill to become general the United States would in all probability be found advocating contradictory positions in litigation presenting identical questions. Moreover, the grant of such broad powers in respect to litigation to the Administrator would undoubtedly be urged as a precedent for the grant of similar powers to other agencies with the ultimate result, if the practice were adopted, of excessive duplication of personnel and expense and a dispersion of responsibility which could only be injurious to the interests of the United States.

I am aware of no reason based upon either the geographical location of the Bonneville Power Administration or the nature of its functions which would justify the risk of such consequences as I have discussed, particularly when both the Congress and the President have so generally placed the conduct and control of the litigation of the United States under the Attorney General and the Department of Justice since the inception of the Government.

Section 6 (b) of the bill requires counsel for the Administrator to furnish the Attorney General with copies of pleadings in all litigation and places the direction

or supervision of litigation involving constitutional questions or appearances in the circuit courts of appeal or the Supreme Court in the Attorney General if in the opinion of the latter such questions or appearances are involved. This provision would not, I believe, eliminate the objections I have mentioned. It is not always apparent at the beginning of litigation that constitutional questions may be raised and nearly every suit instituted in a district court potentially involves an appearance in a circuit court of appeals and possibly even in the Supreme Court. The ambiguity in the words "direction or supervision" might present vexatious questions as to handling even the types of cases intended as between the Attorney General and counsel for the Administrator.

The authority granted to the Administrator by the bill to "compromise and make final settlement of such litigation" would probably make effective direction or supervision by the Attorney General impossible. Litigation cannot be conducted without compromise and settlement whether the litigation is pending in the trial or appellate court, but with the unfettered power vested in the Administrator to compromise or settle, effective direction of the litigation in the appellate courts by the Attorney General would hardly be possible for, no matter how urgent the need for determination of the legal or constitutional question might be, settlement before a determination by the court would prevent such a judicial determination.

Section 1 of the bill removes the Administrator from the auditing control of the General Accounting Office and authorizes the Administrator to make any expenditures necessary to carry out the provisions of the Bonneville Project Act not in violation of any regulation of the Secretary of the Interior, "notwithstanding the provisions of any other law governing the expenditure of public funds."

The Congress has usually required the expenditures of the Executive Departments and agencies to be audited by the General Accounting Office, and this provision in the bill with respect to the expenditure of funds might be construed to render section 355 of the Revised Statutes (40 U. S. C. 255) inapplicable to the acquisitions of lands by the Administration. Section 355 of the Revised Statutes provides that no public funds shall be expended for any lands acquired for the purpose of erecting thereon public buildings or structures of any kind whatever until the title thereto shall have been approved by the Attorney General. The transfer of the function of passing on the validity of title to lands acquired by the United States to an official other than the Attorney General is likewise believed to be an unwarranted deviation from a general, long-established and manifestly sound practice.

Under the provisions of the joint resolution of September 11, 1841 (5 Stat. 468) and of section 355 of the Revised Statutes, as amended (40 U. S. C. 255) the duty of determining the validity of titles to land acquired by the Government has for more than a century been vested in the Attorney General with respect to the vast majority of acquisitions. Section 355 was amended on October 9, 1940 (54 Stat. 1083) in a number of respects, and particularly so as to permit the Attorney General to approve title to "low value lands" subject to such infirmities as in his opinion might, without jeopardizing the interests of the United States, be left for removal by condemnation or other appropriate proceedings if and when necessary. This amendment has proved of great advantage, especially during the period of emergency and war, in saving time and expense to the Government, as well as in permitting speedy payments to landowners. Further, under the Second War Powers Act (56 Stat. 171) designated agencies of the Government are authorized to enter and erect improvements upon land prior to the approval of title by the Attorney General. However, this is emergency legislation intended to apply only during the present emergency. The acquisition of land under the bill does not appear to be of an emergency character justifying any deviation from the general, long-established and sound policy of requiring all titles to Government acquired land to be approved by the Attorney General.

Another advantage of the long-standing policy of examination of title in the Department of Justice has been that the agency of the Government acquiring the land has the independent checking of the title by a disinterested agency. While some relaxation of this process has occurred during the war period, I raise the question whether in ordinary times when more care and attention can be given, it is not a wise policy that this long standing practice be continued. The personnel of the Department of Justice assigned to the acquisition of land by purchase and to the conduct of condemnation cases has developed a trained and expert organization in these specialized fields of law. The existing staff is already in the

field and will continue to conduct condemnation cases and examine titles for other agencies of the Government. The conduct by the Administration of its own condemnation proceedings, and possibly the examination of titles for acquisition by purchase could only result in a duplication of effort and an increase in cost to the Government since the handling of such matters would require little, if any, additional personnel by the Department of Justice.

It is further suggested that the following paragraph be added at the end of section 6 of the bill:

"(c) Nothing herein shall be deemed to constitute a consent on the part of the United States to be sued on a claim sounding in tort, except insofar as is now provided by law."

I have been informed by the Director of the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

FRANCIS BIDDLE, *Attorney General.*

DEPARTMENT OF LABOR,
Washington, May 5, 1945.

Hon. J. J. MANSFIELD,
Chairman, Committee on Rivers and Harbors,
House of Representatives, Washington, D. C.

DEAR CONGRESSMAN MANSFIELD: You have requested the opinion of this Department on the advisability of enacting the provisions of H. R. 2690 and H. R. 2693, duplicate bills to amend the Bonneville Project Act.

These bills would confer upon the Bonneville Power Administrator certain powers in connection with the administration of the Bonneville project, including the power to make, amend, and cancel contracts, to compromise and settle tort and contract claims under the general supervision of the Interior Department, to make expenditures in accordance with Interior Department regulations without the advance approval of the Comptroller General, to obtain commercial-type audits of project accounts, and to conduct routine litigation and be represented by his own attorneys. Provisions are also included which deal with conditions of employment of laborers, mechanics, and workmen employed in connection with construction work or the operation and maintenance of electric facilities. I shall confine my comments to these provisions.

The proviso in section 5 (b), beginning at page 4, line 5, and ending at page 6, line 2, would render the Classification Act of 1923, as amended, and any other Federal laws governing employment and payment of employees of the United States, inapplicable to laborers, mechanics, and workmen employed by the Administrator in connection with construction work, or operation or maintenance of electric facilities, to the extent that the act is in conflict with provisions of collective bargaining agreements between the Administrator and the representatives of such laborers, mechanics, and workmen. Political tests for the employment, retention or promotion of employees would, however, be prohibited. Stipulations in such collective bargaining agreements that employees covered by the agreements shall be entitled to the benefits of the Social Security Act would be given effect by the provision in the bills that where such collective bargaining agreements so provide, services rendered by employees pursuant to the agreements shall be deemed employment within the meaning of sections 1400 through 1432 of the Internal Revenue Code, and that such employees shall not be deemed employees for purposes of the act of May 20, 1920, as amended. A comparable provision would give effect to collective bargaining agreements stipulating that employees employed pursuant thereto shall be entitled to unemployment compensation, by bringing their services within the meaning of "employment" as defined for purposes of sections 1600 through 1611 of the Internal Revenue Code, if contributions upon the basis of the compensation due for such services are required to be paid under a State unemployment compensation act. The Administrator would be authorized to comply with the provisions of the Social Security Act, the Internal Revenue Code, and any applicable State unemployment compensation law on behalf of the United States as the employer of individuals whose services constitute employment under such laws by virtue of this section. He would also be permitted to employ physicians, under agreement and without regard to civil-service laws, to examine persons employed or about to be employed as laborers, mechanics, and workmen on construction, maintenance, or operation of electric facilities.

It is my understanding that the Department of the Interior, under whose supervision the Bonneville project is administered, is of the opinion that the necessity of conforming with civil-service laws and other laws or regulations governing employment or payment of employees of the United States in the employment of laborers, mechanics, and workmen in construction work and the operation and maintenance of facilities places the project at a disadvantage in comparison with privately operated utilities, from the point of view of procurement and utilization of labor of this character. The inquiries I have made support this view. It may also be noted in this connection that the Tennessee Valley Authority, which is an example of successful Government operation of a public utility, is not bound by civil-service laws in the employment of personnel, including laborers and mechanics. I would, accordingly, recommend the enactment of the above-summarized provisions of sections 5 (b) of the proposed bills, which would bring the Bonneville Project Act into closer conformity with the comparable provisions of the Tennessee Valley Authority Act.

I would, however, propose an amendment by way of addition to section 5 (b), in substantially the following language to be inserted between the semicolon on line 14, page 4, and the clause which now follows:

"and such laborers, mechanics, and workmen shall be paid not less than the prevailing rates of wages, in the same manner as if the work upon which they are engaged had been let by contract;".

Such an amendment would, I believe, be desirable and consistent with the changes in the status of these employees which the enactment of section 5 (b) would bring about.

The Bureau of the Budget advises that it would have no objection to the submission of this report.

Very truly yours,

FRANCES PERKINS.

FEDERAL SECURITY AGENCY,
Washington, June 13, 1945.

Hon. JOSEPH J. MANSFIELD,
Chairman, Committee on Rivers and Harbors,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: Further reference is made to you letter of March 22, 1945, addressed to the Social Security Board, requesting an expression of its views regarding H. R. 2690 and H. R. 2693, identical bills to amend the Bonneville Project Act.

The provisions of the bills with which this Agency is concerned would, if any agreement between the Administrator of the Bonneville project and representatives of "laborers, mechanics, and workmen employed in connection with the construction work or the operation and maintenance of electric facilities" should provide that employees performing services pursuant to such agreement are entitled to the benefits of the Social Security Act, make such service "employment" within the meaning of the Social Security Act and the Federal Insurance Contribution Act. Likewise, if such an agreement should provide for unemployment compensation benefits and if contributions with respect to the compensation due for such services should be required of the Administrator under a State unemployment compensation act, such service would be "employment" under the Federal Unemployment Tax Act. If any service should be "employment" under the Social Security Act the persons performing it would not be employees within the meaning of the Civil Service Retirement Act.

This Agency has, as a long-range policy, urged the extension of social security coverage to employment areas not subject to the Social Security Act. We believe, however, that coverage should generally be on a compulsory rather than a voluntary basis. To make this right dependent upon the result of a collective bargaining agreement seems neither equitable nor administratively feasible.

We recommend that the bills be amended to include all employees of the Administrator within the coverage of the Social Security Act. Since the authors of the bills apparently contemplated that a higher level of retirement benefits under the civil service retirement system would apply to some of the employees, a supplementary system providing additional benefits for such employees could be superimposed upon the broad basis of the social security system.

If this should not be acceptable, then consideration might be given to extending the benefits of the Social Security Act to all those employees of the Administrator who would not be included in the civil service retirement system without limiting

such extended coverage to persons in the class of laborers, mechanics, and workmen. Specifically, we believe that some difficulty might be experienced in determining the limits of such a class as that suggested in the bills, especially with respect to persons in supervisory positions although probably most of the latter would be covered under the civil service retirement system. On the other hand, we believe it would be practicable to draw a line between those persons covered under such system and those not so covered.

Regardless of the extent to which old-age and survivors insurance system is made applicable to employees of the Administrator, however, it seems to us highly desirable that the method of extension be that of specific amendment of the Social Security Act. Such a procedure has been followed in making other extensions of coverage and it preserves the advantages of codification of the law.

Under the unemployment compensation provisions of the bills coverage would be extended only to those employees who were able to obtain it through collective bargaining and whose services were performed within the jurisdiction of States which would require the Administrator to make contributions to their unemployment compensation funds. The bills give consent to the States to require the Administrator to contribute with respect to service performed by him under such an agreement. The coverage would not be compulsory and the bills contain no specific provisions regarding the term for which any coverage effected would exist. Again, it is our opinion that coverage should be compulsory. Furthermore, it seems administratively impractical to provide for such coverage on any but a long-range basis.

Employment in four States—Oregon, Washington, Idaho, and Montana—might now or in the near future be involved in the operations of the project. In some of these coverage might be automatically extended by the consent to State taxation contained in the bills because of provisions in the laws of such States covering service for Federal instrumentalities to the extent permitted by the Congress; although it is by no means clear that the States would consider the Administrator to be an "instrumentality" within the meaning of their laws.

We suggest that permission to the States to effect the coverage desired should be patterned on the present section 1606 (b) of the Internal Revenue Code applicable to certain Federal instrumentalities, that the Administration be designated as an "instrumentality" of the United States for this purpose, and that the Administrator be directed to comply with applicable State unemployment compensation laws.

The Bureau of the Budget advises that there is no objection to the submission of this report to your committee.

Sincerely yours,

WATSON B. MILLER,
Acting Administrator.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, April 26, 1945.

Hon. JOSEPH J. MANSFIELD,
Chairman, Committee on Rivers and Harbors,
House of Representatives.

MY DEAR MR. CHAIRMAN: Further reference is made to your letter of March 22, 1945, acknowledged March 23, requesting a report on H. R. 2690 and H. R. 2693, Seventy-ninth Congress, duplicate bills entitled "A bill to amend the Bonneville Project Act."

The general purpose of the proposed legislation appears to be to broaden the authority of the Administrator of the Bonneville project so as to enable him to conduct the business of the project with a freedom similar to that which has been conferred on public corporations carrying on similar or comparable activities. I am not disposed to disagree with such purpose, in view of the fact that the activities of the Bonneville project are chiefly of a commercial or nongovernmental character. However, it is believed that some of the proposed amendments are undesirable or questionable in that, to a considerable extent, they would free the Administrator from requirements and restrictions usually and properly applicable to the conduct of Government business and the safeguarding of public funds.

The final sentence of section 1 of the bills reads:

"* * * Notwithstanding the provisions of any other law governing the expenditure of public funds, the General Accounting Office in the settlement of the accounts of the Administrator shall not disallow credit for nor withhold funds because of any expenditure, not in violation of any regulation which the Secretary

of the Interior may have prescribed, which the Administrator shall determine to have been necessary to carry out the provisions of this Act."

Similar authority has been granted the Board of Directors of the Tennessee Valley Authority by the act of November 21, 1941 (55 Stat. 775), under which this Office has been observing and recording the activities of the Board to determine whether such authority is necessary and in the interest of the Government or whether some modification thereof may be desirable. But I do not believe that such authority should be extended to other Government agencies at this time or that the General Accounting Office should be expressly prohibited by statute from withholding funds, or disallowing credit in the accounts of accountable officers by reason of expenditures considered to have been improper. It is recommended, therefore, that the said final sentence of section 1, quoted above, be eliminated.

In section 5 of the pending bills, amending section 10 of the act, it is provided, in part:

"* * * *Provided, however,* That to the extent that the civil-service laws, Classification Act, and other laws or regulations governing the employment or payment of employees of the United States are inconsistent with agreements made by the Administrator with representatives of laborers, mechanics, and workmen employed in connection with the construction work or the operation and maintenance of electric facilities, the said Act, laws, and regulations shall not apply to matters covered by such agreements; * * * *Provided, further,* That so long as any such contract provides that employees performing services for the Administrator pursuant thereto shall be entitled to the benefits of the Social Security Act, such services shall be deemed to be 'employment' within the meaning of the Social Security Act and sections 1400 through 1432 of the Internal Revenue Code, and such employees, if they otherwise would be so classified, shall not be deemed to be employees within the meaning of the Act of May 22, 1920 (41 Stat. 614), and all Acts amendatory thereof or supplementary thereto and so long as any such contract provides that employees performing services for the Administrator pursuant thereto shall be entitled to unemployment compensation benefits, such services shall be deemed to be 'employment' within the meaning of sections 1600 through 1611 of the Internal Revenue Code if contributions upon the basis of the compensation due for such services are required to be paid under a State unemployment compensation act, and consent hereby is given to the States to require the Administrator to make payments to State unemployment compensation funds for services performed for him under any such contract; the Administrator is authorized to comply with the provisions of the Social Security Act, the Internal Revenue Code, and any applicable State unemployment compensation act on behalf of the United States as the employer of individuals whose service constitutes employment under such act, code, and laws by reason of this section. * * *"

The quoted provision would be a new departure in Federal legislation and would set a precedent of far-reaching consequences in Government employment. Administrative collective bargaining with employee representatives would be substituted for legislative control of rates of compensation and other Government employee relations. It may be observed that the Tennessee Valley Authority Act contains no such provision. (See 16 U. S. C. 831b.)

Section 6 of the bills, amending section 12 of the act, provides in part:

"(b) The Administrator may, in the name of the United States, bring such suits at law or in equity as in his judgment may be necessary to carry out the purposes of this Act; and he shall be represented in the prosecution and defense of all litigation, including condemnation proceedings, affecting the status or operation of the Bonneville project by his attorneys: *Provided, however,* That such attorneys shall supply the Attorney General with copies of the pleadings in all such cases and that the handling of litigation which, in the Attorney General's opinion, involves interpretation of the Constitution of the United States or which involves appearance in any United States circuit court of appeals or the United States Supreme Court shall be subject to the Attorney General's direction or supervision. The Administrator may compromise and make final settlement of such litigation and pay the amount due under any compromise or judgment. * * *"

The quoted provision that the Administrator shall be represented by his attorneys in all litigation, together with the provisions relating to the settlement of claims (see sec. 1 and subsec. (a) in sec. 6 of the subject bills), would result largely in a duplication in the Department of the Interior of the regular, established functions of the Department of Justice and the General Accounting Office with

respect to defending, prosecuting, and settling suits and claims by and against the Government. It may be that the nature of the contemplated activities of the Bonneville project would justify some such duplication of these functions.

It is noted, too, that the above-quoted subsection (b) of section 6 of the bill would authorize the Administrator to pay judgments. This would be contrary to the established general procedure of reporting judgments to the Congress for appropriations, thus keeping such matters under legislative scrutiny.

Other than as indicated above, I have no recommendations to make with respect to enactment of the bills.

Sincerely yours,

LINDSAY C. WARREN,
Comptroller General of the United States.

UNITED STATES CIVIL SERVICE COMMISSION,
Washington, D. C., June 15, 1945.

Hon. J. J. MANSFIELD,
Chairman, Committee on Rivers and Harbors,
House of Representatives.

DEAR MR. MANSFIELD: Further reference is made to your letter of March 22, requesting a report of the Commission's views regarding H. R. 2690 and H. R. 2693, duplicate bills to amend the Bonneville Project Act.

The following personnel provisions appear in these bills:

"SEC. 5. Section 2 (a) of the said Act is hereby amended by striking the language inserted by section 1 of the Act of March 6, 1940 (54 Stat. 47); and section 10 of the said Act is hereby amended to read as follows:

"'(a) The Secretary of the Interior shall appoint, without regard to the civil-service laws, an Assistant Administrator, chief engineer, and general counsel and shall fix the compensation of each in accordance with the Classification Act of 1923, as amended. The Assistant Administrator shall perform the duties and exercise the powers of the Administrator, in the event of the absence or sickness of the Administrator until such absence or sickness shall cease, and in the event of a vacancy in the office of Administrator, until a successor is appointed.

"'(b) The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are authorized to appoint, subject to the civil-service laws, such officers and employees as may be necessary to carry out the purposes of this Act, the appointment of whom is not otherwise provided for, and to fix their compensation in accordance with the Classification Act of 1923, as amended: *Provided, however,* That to the extent that the civil-service laws, Classification Act, and other laws or regulations governing the employment or payment of employees of the United States are inconsistent with agreements made by the Administrator with representatives of laborers, mechanics, and workmen employed in connection with the construction work or the operation and maintenance of electric facilities, the said Act, laws, and regulations shall not apply to matters covered by such agreements; but in connection with the selection, promotion, or retention of any employee, no political test or qualifications shall be permitted or given consideration, but all such actions shall be taken on the basis of the employee's merit and efficiency: *Provided further,* That so long as any such contract provides that employees performing services for the Administrator pursuant thereto shall be entitled to the benefits of the Social Security Act, such services shall be deemed to be "employment" within the meaning of the Social Security Act and sections 1400 through 1432 of the Internal Revenue Code, and such employees, if they otherwise would be so classified, shall not be deemed to be employees within the meaning of the Act of May 22, 1920 (41 Stat. 614), and all Acts amendatory thereof or supplementary thereto, and so long as any such contract provides that employees performing services for the Administrator pursuant thereto shall be entitled to unemployment compensation benefits, such services shall be deemed to be "employment" within the meaning of sections 1600 through 1611 of the Internal Revenue Code if contributions upon the basis of the compensation due for such services are required to be paid under a State unemployment compensation act, and consent hereby is given to the States to require the Administrator to make payments to State unemployment compensation funds for services performed for him under any such contract; the Administrator is authorized to comply with the provisions of the Social Security Act, the Internal Revenue Code, and any applicable State unemployment compensation act on behalf of the United States as the employer of individuals whose service constitutes employment under such Act,

code, and laws by reason of this section. The Administrator is further authorized to employ physicians, under agreement and without regard to civil-service laws or regulations, to make physical examinations of employees or prospective employees who are or may become laborers, mechanics, and workmen engaged on construction work or the operation and maintenance of electrical facilities. The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are also authorized to appoint, without regard to the civil-service laws, such experts as may be necessary for carrying out the functions entrusted to them under this Act and to fix the compensation of each of such experts without regard to the Classification Act of 1923, as amended, but at not to exceed $7,500 per annum.

" '(c) The Administrator may accept and utilize such voluntary and uncompensated services and with the consent of the agency concerned may utilize such officers, employees, or equipment of any agency of the Federal, State, or local governments which he finds helpful in carrying out the purposes of this Act; in connection with the utilization of such services, reasonable payments may be allowed for necessary travel and other expenses.' "

With regard to section 5 (a), the only change this amendment would make in existing law would be to require that the compensation of the Assistant Administrator, chief engineer, and general counsel be fixed in accordance with the Classification Act of 1923, as amended. The law at present requires that the compensation of each be fixed at not exceeding $7,500 per annum. The Commission sees no objection to this change.

The first proviso of section 5 (b) would change the methods and conditions of employment and payment of laborers, mechanics, and workmen employed in connection with the construction work or the operation and maintenance of electric facilities. At present the employment of these workmen is subject to civil-service requirements, and their payment is governed by the laws and decisions of the Comptroller General which govern employments paid from appropriated Federal funds. The proposed change would permit these matters to be governed by agreements with representatives of the employees.

It is understood that the principal reason for the proposed change is the belief of the Bonneville Administration that it should be able to follow pay procedures and practices which are followed by private utility companies under agreements with unions. Private power companies, for example, are able to pay double rates when employees are called back for emergency service, and pay premium rates for Sunday and holiday work even when those days occur during a regular tour of duty, which is not permissible in the Federal service without specific statutory authority.

If it is considered desirable to afford the Bonneville Administration discretion to compete with private utility companies with regard to pay of workmen, the Commission believes it would be preferable to accomplish this by a provision relating to pay alone, without excepting their employment from civil-service requirements. No reason appears for excepting the employment of such workers from competition under the Civil Service Act. If favorable consideration is to be given to the exception from pay requirements, it could be accomplished by substituting the following language for the first proviso to section 5 (b):

"The Administrator may fix the compensation of laborers, mechanics, and workmen employed in connection with construction work or the operation and maintenance of electrical facilities (hereinafter called 'laborers, mechanics, and workmen') in accordance with the practices of comparable industries in the locality."

The second proviso of section 5 (b) would permit the employees concerned to be removed from the purview of the Civil Service Retirement Act and become subject to the retirement and unemployment compensation provisions of the social-security system. It is doubtful that the employees would consider it advantageous to be removed from the coverage of the Civil Service Retirement Act.

Section 5 would also authorize the employment of physicians by agreement without regard to civil-service laws or regulations, to make physical examinations of such employees and prospective employees. The employment of physicians for this purpose would probably not be full time or extensive. When such employments are subject to civil-service requirements, it is customary, when it is

found to be impracticable to recruit for the positions through civil-service procedures, to except them from competition through inclusion in schedule A or B of the Civil Service Rules by Executive order. As a rule, it is believed preferable not to make a statutory exception. However, the Commission does not feel required to object strongly to this particular provision.

The exception of experts from civil-service requirements is already contained in the Bonneville Project Act. Although the Commission believes that such statutory exceptions are undesirable, this exception would not constitute a change in existing law.

In accordance with established procedure the Commission has been informed by the Bureau of the Budget that there would be no objection to the presentation of this report to your committee.

By direction of the Commission:

Sincerely yours,

HARRY B. MITCHELL, *President.*

O

AMENDING THE BONNEVILLE PROJECT ACT

The Clerk called the bill (H. R. 2690) to amend the Bonneville Project Act.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That section 2 (f) of the act of August 20, 1937 (50 Stat. 731), as amended by the act of March 6, 1940 (54 Stat. 47), is hereby amended to read as follows:

"Subject only to the provisions of this act, the Administrator is authorized to enter into such contracts, agreements, and arrangements, including the amendment, modification, adjustment, or cancellation thereof and the compromise or final settlement of any claim arising thereunder, and to make such expenditures, upon such terms and conditions and in such manner as he may deem necessary; and the Secretary of the Interior may prescribe by regulation the Administrator's procedure for authorizing or approving such contracts, agreements, arrangements, and expenditures. Notwithstanding the provisions of any other law governing the expenditure of public funds, the General Accounting Office in the settlement of the accounts of the Administrator shall not disallow credit for nor withhold funds because of any expenditure, not in violation of any regulation which the Secretary of the Interior may have prescribed, which the Administrator shall determine to have been necessary to carry out the provisions of this act."

SEC. 2. Section 5 (a) of the said act is hereby amended by inserting before the period at the end of the first sentence the words "and for the disposition of electric energy to Federal agencies."

SEC. 3. Section 6 of the said act is hereby amended by changing the period at the end of the first sentence to a semicolon and adding the following: "and such rates and charges shall also be applicable to dispositions of electric energy to Federal agencies."

SEC. 4. Section 9 (a) of the said act is hereby amended by changing the period to a comma and adding: "and in the maintenance of such accounts, appropriate obligations shall be established for annual and sick leave of absence as earned. The Administrator shall, after the close of each fiscal year, obtain an independent commercial-type audit of such accounts. The forms, systems, and procedures prescribed by the Comptroller General for the Administrator's appropriation and fund accounting shall be in accordance with the requirements of the Federal Water Power Act with respect to accounts of electric operations of public utilities and the regulations of the Federal Power Commission pursuant thereto."

SEC. 5. Section 2 (a) of the said act is hereby amended by striking the language inserted by section 1 of the act of March 6, 1940 (54 Stat. 47); and section 10 of the said act is hereby amended to read as follows:

"(a) The Secretary of the Interior shall appoint, without regard to the civil-service laws, an Assistant Administrator, chief engineer, and general counsel and shall fix the compensation of each in accordance with the Classification Act of 1923, as amended. The Assistant Administrator shall perform the duties and exercise the powers of the Administrator, in the event of the absence or sickness of the Administrator until such absence or sickness shall cease, and in the event of a vacancy in the office of Administrator, until a successor is appointed.

"(b) The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are authorized to appoint, subject to the civil-service laws, such officers and employees as may be necessary to carry out the purposes of this act, the appointment of whom is not otherwise provided for, and to fix their compensation in acordance with the

Classification Act of 1923, as amended: *Provided, however,* That to the extent that the civil-service laws, Classification Act, and other laws or regulations governing the employment or payment of employees of the United States are inconsistent with agreements made by the Administrator with representatives of laborers, mechanics, and workmen employed in connection with the construction work or the operation and maintenance of electric facilities, the said act, laws, and regulations shall not apply to matters covered by such agreements; but in connection with the selection, promotion, or retention of any employee, no political test or qualifications shall be permitted or given consideration, but all such actions shall be taken on the basis of the employee's merit and efficiency: *Provided, further,* That so long as any such contract provides that employees performing services for the Administrator pursuant thereto shall be entitled to the benefits of the Social Security Act, such services shall be deemed to be 'employment' within the meaning of the Social Security Act and sections 1400 through 1432 of the Internal Revenue Code, and such employees, if they otherwise would be so classified, shall not be deemed to be employees within the meaning of the Act of May 22, 1920 (41 Stat. 614), and all acts amendatory thereof or supplementary thereto, and so long as any such contract provides that employees performing services for the Administrator pursuant thereto shall be entitled to unemployment compensation benefits, such services shall be deemed to be 'employment' within the meaning of sections 1600 through 1611 of the Internal Revenue Code if contributions upon the basis of the compensation due for such services are required to be paid under a State unemployment compensation act, and consent hereby is given to the States to require the Administrator to make payments to State unemployment compensation funds for services performed for him under any such contract; the Administrator is authorized to comply with the provisions of the Social Security Act, the Internal Revenue Code, and any applicable State unemployment compensation act on behalf of the United States as the employer of individuals whose service constitutes employment under such act, code, and laws by reason of this section. The Administrator is further authorized to employ physicians, under agreement and without regard to civil-service laws or regulations, to make physical examinations of employees or prospective employees who are or may become laborers, mechanics, and workmen engaged on construction work or the operation and maintenance of electrical facilities. The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are also authorized to appoint, without regard to the civil-service laws, such experts as may be necessary for carying out the functions entrusted to them under this act and to fix the compensation of each of such experts without regard to the Classification Act of 1923, as amended, but at not to exceed $7,500 per annum.

"(c) The Administrator may accept and utilize such voluntary and uncompensated services and with the consent of the agency concerned may utilize such officers, employees, or equipment of any agency of the Federal, State, or local governments which he finds helpful in carrying out the purposes of this act; in connection with the utilization of such services, reasonable payments may be allowed for necessary travel and other expenses."

SEC. 6. Section 12 of the said act is hereby amended to read as follows:

"(a) The Administrator is hereby authorized to determine, settle, compromise, and pay claims and demands against the United States which are not in excess of $1,000 and are presented to the Administrator in writing within one year from the date of accrual thereof, for any losses, injuries, or damages to persons or property, or for the death of persons, resulting from acts or omissions of employees acting within the scope of their employment pursuant to this act. The Administrator is also authorized to determine, compromise, and settle any claims and demands of the United States for any losses, injuries, or damages to property under the Administrator's control, against other persons or public or private corporations. The Administrator's determination, compromise, settlement, or payment of any of the claims referred to in this subsection shall be final and conclusive upon all officers of the Government, notwithstanding the provisions of any other act to the contrary. When claims presented to the Administrator under this subsection arise, in whole or in part, out of any damage done to private property, the Administrator may repair all or any part of such damage in lieu of making such payments.

"(b) The Administrator may, in the name of the United States, bring such suits at law or in equity as in his judgment may be necessary to carry out the purposes of this act; and he shall be represented in the prosecution and defense of all litigation, including condemnation proceedings, affecting the status of operation of the Bonneville project by his attorneys: *Provided, however,* That such attorneys shall supply the Attorney General with copies of the pleadings in all such cases and that the handling of litigation which, in the Attorney General's opinion, involves interpretation volves interpretation of the Constitution of the United States or which involves appearance in any United States circuit court of appeals or the United States Supreme Court shall be subject to the Attorney General's direction or supervision. The Administrator may compromise and make final settlement of such litigation and pay the amount due under any compromise or judgment. Complaints in condemnation proceedings permitted by section 2 (c) and 2 (d) of this act shall be signed, verified, and filed by the Administrator."

With the following committee amendments:

Page 2, line 1, change the semicolon to a period and strike the balance of the line and all of lines 2 through 12.

Page 3, strike lines 24 and 25; pages 4 and 5, strike the entire page; page 6, strike lines 1 through 9; and substitute the following in lieu thereof:

"(b) The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are authorized to appoint, subject to the civil-service laws, such officers and employees as may be necessary to carry out the purposes of this act, the appointment of whom is not otherwise provided for, and to fix their compensation in accordance with the Classification Act of 1923, as amended. The Administrator may employ laborers, mechanics, and workmen in connection with construction work or the operation and maintenance of electrical facilities (hereinafter called "laborers, mechanics, and workmen") subject to the civil-service laws, and fix their compensation without regard to the Classification Act of 1923, as amended, and any other laws, rules, or regulations relating to the payment of employees of the United States except the act of May 29, 1930 (46 Stat. 468), as amended, to the extent that it otherwise is applicable. The Administrator is further authorized to employ physicians, under agreement and without regard to the civil-service laws or regulations, to make physical examinations of employees or prospective employees who are or may become laborers, mechanics, and workmen. The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are also authorized to appoint, without regard to the civil-service laws, such experts as may be necessary for carrying out the functions entrusted to them under this act and to fix the compensation of each of such experts without regard to the Classification Act of 1923, as amended, but at not to exceed $7,500 per annum."

Page 8, add a new section, to be designated section 7, as follows:

"SEC. 7. (a) Section 1426 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"'(j) Certain Employees of Bonneville Power Administrator: The term "employment" shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator, but shall not include any service performed by such a laborer, mechanic, or workman, to whom the act of May 29, 1930 (46 Stat. 468), as amended, applies. The term "wages" means, with respect to service which constitutes employment by reason of this subsection, such amount of remuneration as is determined (subject to the provisions of this section) by the Administrator be paid for such service. The Administrator is authorized and directed to comply with the provisions of the internal revenue laws on behalf of the United States as the employer of individuals whose service constitutes employment by reason of this subsection.'

"(b) Section 209 of the Social Security Act, as amended, is amended by adding at the end thereof the following new subsection:

"'(p) (1) The term "employment" shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator, but shall not include any service performed by such a laborer, mechanic, or workman to whom the act of May 29, 1930 (46 Stat. 468), as amended, applies.

"'(2) The Social Security Board shall not make determinations as to whether an individual has performed services which are employment by reason of this subsection, the periods of such services, the amounts of remuneration for such services which constitutes "wages" under the provisiuons of this section, or the periods in which or for which such wages were paid, but shall accept the determinations with respect thereto of the Administrator, and such agents as he may designate, as evidenced by returns filed by the Administrator as an employer pursuant to section 1426 (j) of the Internal Revenue Code and certifications made pursuant to this subsection. Such determinations shall be final and conclusive.

"'(3) The Administrator is authorized and directed, upon written request of the Social Security Board, to make certification to it with respect to any matter determinable for the Board by the Administrator under this subsection, which the Board finds necessary in administering this title.'

"(c) Section 1606 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"'(e) The legislature of any State may, with respect to service to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Bonneville Power Administrator (hereinafter called the Administrator), require the Administrator, who, for the purposes of this subsection, is desig-

nated an instrumentality of the United States, and any such employee, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Board under section 1603 and to comply otherwise with such law. Such permission is subject to the conditions imposed by subsection (b) of this section upon permission to State legislatures to require contributions from instrumentalities of the United States. The Administrator is authorized and directed to comply with the provisions of any applicable State unemployment compensation law on behalf of the United States as the employee of individuals whose service constitutes employment under such law by reason of this subsection.'

"(d) Section 1607 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"'(m) Certain employees of Bonneville Power Administrator: The term "employment" shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator. The term "wages" means, with respect to service which constitutes employment by reason of this subsection, such amount of remuneration as is determined (subject to the provisions of this section) by the Administrator to be paid for such service. The Administrator is authorized and directed to comply with the provisions of the internal revenue laws on behalf of the United States as the employer of individuals whose service constitutes employment by reason of this subsection.'"

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

AMENDING THE BONNEVILLE PROJECT ACT

The Clerk called the bill (H. R. 2690) to amend the Bonneville Project Act.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That section 2 (f) of the act of August 20, 1937 (50 Stat. 731), as amended by the act of March 6, 1940 (54 Stat. 47), is hereby amended to read as follows:

"Subject only to the provisions of this act, the Administrator is authorized to enter into such contracts, agreements, and arrangements, including the amendment, modification, adjustment, or cancellation thereof and the compromise or final settlement of any claim arising thereunder, and to make such expenditures, upon such terms and conditions and in such manner as he may deem necessary; and the Secretary of the Interior may prescribe by regulation the Administrator's procedure for authorizing or approving such contracts, agreements, arrangements, and expenditures. Notwithstanding the provisions of any other law governing the expenditure of public funds, the General Accounting Office in the settlement of the accounts of the Administrator shall not disallow credit for nor withhold funds because of any expenditure, not in violation of any regulation which the Secretary of the Interior may have prescribed, which the Administrator shall determine to have been necessary to carry out the provisions of this act."

SEC. 2. Section 5 (a) of the said act is hereby amended by inserting before the period at the end of the first sentence the words "and for the disposition of electric energy to Federal agencies."

SEC. 3. Section 6 of the said act is hereby amended by changing the period at the end of the first sentence to a semicolon and adding the following: "and such rates and charges shall also be applicable to dispositions of electric energy to Federal agencies."

SEC. 4. Section 9 (a) of the said act is hereby amended by changing the period to a comma and adding: "and in the maintenance of such accounts, appropriate obligations shall be established for annual and sick leave of absence as earned. The Administrator shall, after the close of each fiscal year, obtain an independent commercial-type audit of such accounts. The forms, systems, and procedures prescribed by the Comptroller General for the Administrator's appropriation and fund accounting shall be in accordance with the requirements of the Federal Water Power Act with respect to accounts of electric operations of public utilities and the regulations of the Federal Power Commission pursuant thereto."

SEC. 5. Section 2 (a) of the said act is hereby amended by striking the language inserted by section 1 of the act of March 6, 1940 (54 Stat. 47); and section 10 of the said act is hereby amended to read as follows:

"(a) The Secretary of the Interior shall appoint, without regard to the civil-service laws, an Assistant Administrator, chief engineer, and general counsel and shall fix the compensation of each in accordance with the Classification Act of 1923, as amended. The Assistant Administrator shall perform the duties and exercise the powers of the Administrator, in the event of the absence or sickness of the Administrator until such absence or sickness shall cease, and in the event of a vacancy in the office of Administrator, until a successor is appointed.

"(b) The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are authorized to appoint, subject to the civil-service laws, such officers and employees as may be necessary to carry out the purposes of this act, the appointment of whom is not otherwise provided for, and to fix their compensation in acordance with the

Classification Act of 1923, as amended: *Provided, however,* That to the extent that the civil-service laws, Classification Act, and other laws or regulations governing the employment or payment of employees of the United States are inconsistent with agreements made by the Administrator with representatives of laborers, mechanics, and workmen employed in connection with the construction work or the operation and maintenance of electric facilities, the said act, laws, and regulations shall not apply to matters covered by such agreements; but in connection with the selection, promotion, or retention of any employee, no political test or qualifications shall be permitted or given consideration, but all such actions shall be taken on the basis of the employee's merit and efficiency: *Provided, further,* That so long as any such contract provides that employees performing services for the Administrator pursuant thereto shall be entitled to the benefits of the Social Security Act, such services shall be deemed to be 'employment' within the meaning of the Social Security Act and sections 1400 through 1432 of the Internal Revenue Code, and such employees, if they otherwise would be so classified, shall not be deemed to be employees within the meaning of the Act of May 22, 1920 (41 Stat. 614), and all acts amendatory thereof or supplementary thereto, and so long as any such contract provides that employees performing services for the Administrator pursuant thereto shall be entitled to unemployment compensation benefits, such services shall be deemed to be 'employment' within the meaning of sections 1600 through 1611 of the Internal Revenue Code if contributions upon the basis of the compensation due for such services are required to be paid under a State unemployment compensation act, and consent hereby is given to the States to require the Administrator to make payments to State unemployment compensation funds for services performed for him under any such contract; the Administrator is authorized to comply with the provisions of the Social Security Act, the Internal Revenue Code, and any applicable State unemployment compensation act on behalf of the United States as the employer of individuals whose service constitutes employment under such act, code, and laws by reason of this section. The Administrator is further authorized to employ physicians, under agreement and without regard to civil-service laws or regulations, to make physical examinations of employees or prospective employees who are or may become laborers, mechanics, and workmen engaged on construction work or the operation and maintenance of electrical facilities. The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are also authorized to appoint, without regard to the civil-service laws, such experts as may be necessary for carying out the functions entrusted to them under this act and to fix the compensation of each of such experts without regard to the Classification Act of 1923, as amended, but at not to exceed $7,500 per annum.

"(c) The Administrator may accept and utilize such voluntary and uncompensated services and with the consent of the agency concerned may utilize such officers, employees, or equipment of any agency of the Federal, State, or local governments which he finds helpful in carrying out the purposes of this act; in connection with the utilization of such services, reasonable payments may be allowed for necessary travel and other expenses."

SEC. 6. Section 12 of the said act is hereby amended to read as follows:

"(a) The Administrator is hereby authorized to determine, settle, compromise, and pay claims and demands against the United States which are not in excess of $1,000 and are presented to the Administrator in writing within one year from the date of accrual thereof, for any losses, injuries, or damages to persons or property, or for the death of persons, resulting from acts or omissions of employees acting within the scope of their employment pursuant to this act. The Administrator is also authorized to determine, compromise, and settle any claims and demands of the United States for any losses, injuries, or damages to property under the Administrator's control, against other persons or public or private corporations. The Administrator's determination, compromise, settlement, or payment of any of the claims referred to in this subsection shall be final and conclusive upon all officers of the Government, notwithstanding the provisions of any other act to the contrary. When claims presented to the Administrator under this subsection arise, in whole or in part, out of any damage done to private property, the Administrator may repair all or any part of such damage in lieu of making such payments.

"(b) The Administrator may, in the name of the United States, bring such suits at law or in equity as in his judgment may be necessary to carry out the purposes of this act; and he shall be represented in the prosecution and defense of all litigation, including condemnation proceedings, affecting the status of operation of the Bonneville project by his attorneys: *Provided, however,* That such attorneys shall supply the Attorney General with copies of the pleadings in all such cases and that the handling of litigation which, in the Attorney General's opinion, involves interpretation volves interpretation of the Constitution of the United States or which involves appearance in any United States circuit court of appeals or the United States Supreme Court shall be subject to the Attorney General's direction or supervision. The Administrator may compromise and make final settlement of such litigation and pay the amount due under any compromise or judgment. Complaints in condemnation proceedings permitted by section 2 (c) and 2 (d) of this act shall be signed, verified, and filed by the Administrator."

With the following committee amendments:

Page 2, line 1, change the semicolon to a period and strike the balance of the line and all of lines 2 through 12.

Page 3, strike lines 24 and 25; pages 4 and 5, strike the entire page; page 6, strike lines 1 through 9; and substitute the following in lieu thereof:

"(b) The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are authorized to appoint, subject to the civil-service laws, such officers and employees as may be necessary to carry out the purposes of this act, the appointment of whom is not otherwise provided for, and to fix their compensation in accordance with the Classification Act of 1923, as amended. The Administrator may employ laborers, mechanics, and workmen in connection with construction work or the operation and maintenance of electrical facilities (hereinafter called "laborers, mechanics, and workmen") subject to the civil-service laws, and fix their compensation without regard to the Classification Act of 1923, as amended, and any other laws, rules, or regulations relating to the payment of employees of the United States except the act of May 29, 1930 (46 Stat. 468), as amended, to the extent that it otherwise is applicable. The Administrator is further authorized to employ physicians, under agreement and without regard to the civil-service laws or regulations, to make physical examinations of employees or prospective employees who are or may become laborers, mechanics, and workmen. The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are also authorized to appoint, without regard to the civil-service laws, such experts as may be necessary for carrying out the functions entrusted to them under this act and to fix the compensation of each of such experts without regard to the Classification Act of 1923, as amended, but at not to exceed $7,500 per annum."

Page 8, add a new section, to be designated section 7, as follows:

"SEC. 7. (a) Section 1426 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"'(j) Certain Employees of Bonneville Power Administrator: The term "employment" shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator, but shall not include any service performed by such a laborer, mechanic, or workman, to whom the act of May 29, 1930 (46 Stat. 468), as amended, applies. The term "wages" means, with respect to service which constitutes employment by reason of this subsection, such amount of remuneration as is determined (subject to the provisions of this section) by the Administrator be paid for such service. The Administrator is authorized and directed to comply with the provisions of the internal revenue laws on behalf of the United States as the employer of individuals whose service constitutes employment by reason of this subsection.'

"(b) Section 209 of the Social Security Act, as amended, is amended by adding at the end thereof the following new subsection:

"'(p) (1) The term "employment" shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator, but shall not include any service performed by such a laborer, mechanic, or workman to whom the act of May 29, 1930 (46 Stat. 468), as amended, applies.

"'(2) The Social Security Board shall not make determinations as to whether an individual has performed services which are employment by reason of this subsection, the periods of such services, the amounts of remuneration for such services which constitutes "wages" under the provisiuons of this section, or the periods in which or for which such wages were paid, but shall accept the determinations with respect thereto of the Administrator, and such agents as he may designate, as evidenced by returns filed by the Administrator as an employer pursuant to section 1426 (j) of the Internal Revenue Code and certifications made pursuant to this subsection. Such determinations shall be final and conclusive.

"'(3) The Administrator is authorized and directed, upon written request of the Social Security Board, to make certification to it with respect to any matter determinable for the Board by the Administrator under this subsection, which the Board finds necessary in administering this title.'

"(c) Section 1606 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"'(e) The legislature of any State may, with respect to service to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Bonneville Power Administrator (hereinafter called the Administrator), require the Administrator, who, for the purposes of this subsection, is desig-

nated an instrumentality of the United States, and any such employee, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Board under section 1603 and to comply otherwise with such law. Such permission is subject to the conditions imposed by subsection (b) of this section upon permission to State legislatures to require contributions from instrumentalities of the United States. The Administrator is authorized and directed to comply with the provisions of any applicable State unemployment compensation law on behalf of the United States as the employee of individuals whose service constitutes employment under such law by reason of this subsection.'

"(d) Section 1607 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"'(m) Certain employees of Bonneville Power Administrator: The term "employment" shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator. The term "wages" means, with respect to service which constitutes employment by reason of this subsection, such amount of remuneration as is determined (subject to the provisions of this section) by the Administrator to be paid for such service. The Administrator is authorized and directed to comply with the provisions of the internal revenue laws on behalf of the United States as the employer of individuals whose service constitutes employment by reason of this subsection.'"

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Calendar No. 468

79TH CONGRESS, 1st Session | SENATE | REPORT No. 469

AMENDING THE BONNEVILLE PROJECT ACT

JULY 18 (legislative day, JULY 9), 1945.—Ordered to be printed

Mr. MAGNUSON, from the Committee on Commerce, submitted the following

REPORT

[To accompany H. R. 2690]

The Committee on Commerce, to whom was referred the bill (H. R. 2690) to amend the Bonneville Project Act, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The following letter from the Secretary of the Interior to Senator Bilbo, chairman of the subcommittee considering the bill, sets out the necessity for the legislation and the recommendations of the Department of the Interior. There also follows letter from the Attorney General, Hon. Tom C. Clark, stating the views of the Department of Justice.

DEPARTMENT OF THE INTERIOR,
Washington 25, D. C., July 17, 1945.

Hon. THEODORE G. BILBO,
Chairman, Subcommittee on Rivers and Harbors,
Senate Commerce Committee.

MY DEAR SENATOR BILBO: My attention has been directed to the question raised during your subcommittee's consideration of H. R. 2690 whether I approved the bill in the form in which it passed the House on July 3. My letter of June 18

to Chairman Mansfield of the House Rivers and Harbors Committee, in which I commented on the bill as it was introduced in the House, suggested several amendments which were agreeable to this Department and which eliminated most of the objections raised by other agencies of the Government. I was pleased to learn that the House had passed the bill incorporating these suggested amendments.

The Bonneville Power Administration is under my supervision and control as an office in the Department of the Interior. However, since the Bonneville Administration is a large-scale enterprise, with its headquarters fixed by statute in a region some 3,000 miles from Washington, and because of its nature, purpose, and functions, I have accorded the Bonneville Administrator very wide latitude in the operation and management of that project. I exercise supervision only where major policy considerations are involved. The methods of carrying out these policies are left to the Administrator himself. There is no lack of delegation of authority from me which prevents the Bonneville Administration from conducting its affairs in complete accordance with the requirements of good business practices. This is compatible with the nature of the Bonneville Administration and the regional character of its program.

However, there are certain deficiencies in the Bonneville Project Act which hamper the operations of the Bonneville Administration and, indeed, preclude it from operating in all respects in a businesslike manner. H. R. 2690 is designed solely to enable the Bonneville Administrator to employ more effective and businesslike methods of administration in carrying out his present responsibilities; namely, the marketing of power generated at Bonneville and Grand Coulee Dams on the Columbia River. H. R. 2690 is not intended to, and would not, change Bonneville's basic form of administration, affect its permanence, or extend the scope of its functions.

The enactment of H. R. 2690 would permit the Bonneville Power Administrator to attain more efficiently the objectives of Congress set forth in the Bonneville Project Act. It is my hope, therefore, that your subcommittee will give favorable consideration to the bill in its present form.

Sincerely yours,

HAROLD L. ICKES,
Secretary of the Interior.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C.

Hon. JOSIAH W. BAILEY,
Chairman, Committee on Commerce,
United States Senate, Washington, D. C.

MY DEAR SENATOR: I desire to call your attention to certain provisions of the bill (H. R. 2690) to amend the Bonneville Project Act.

The bill would amend the Bonneville Project Act in numerous respects, some quite fundamental, but I shall only comment upon those portions of the bill which concern the Department of Justice. Whether the bill should be enacted into law is a matter of legislative policy. There are certain features of the bill, however, which represent such a sharp departure from the present governmental procedure that I feel I should direct your attention to them and comment upon them. Under section 6 (b) the Administrator is authorized to bring such suits as he deems necessary to carry out the purpose of the act and he is to be represented in all litigation, including condemnation proceedings, by his attorneys, but the attorneys are required to supply the Attorney General with copies of the pleadings in all cases, and the handling of litigation which in the opinion of the Attorney General involves an interpretation of the Constitution or will involve appearances in any United States circuit court of appeals or the United States Supreme Court is subject to the Attorney General's direction or supervision. The Administrator may compromise any such litigation and pay the amount due under any compromise or judgment.

Insofar as litigation involving the functions of the Bonneville Power Administration is concerned, the enactment of the provisions in the bill with respect to the conduct of litigation by the attorneys for the Administrator would effect a repeal of numerous statutes under which the conduct and control of litigation to which the United States is a party has long been vested by the Congress in

the Attorney General or his subordinates. Among such statutes are the act of September 24, 1789, as amended (1 Stat. 92, sec. 771, R. S., 28 U. S. C. sec. 485), which authorizes the district attorneys to appear in all matters in which the United States is concerned; the act of June 22, 1870, as amended (16 Stat. 162, sec. 359, R. S., 5 U. S. C. 309), permitting the Attorney General to conduct any case in any court of the United States in which the United States is interested if he deems it for the best interests of the United States; the act of June 30, 1906 (34 Stat. 816, 5 U. S. C. sec. 310), which authorizes the Attorney General or any attorney appointed by him to participate in any proceeding which the district attorney is authorized by law to conduct, and the act of March 2, 1889 (25 Stat. 941, 40 U. S. C. sec. 256), under which all legal services connected with procuring titles to sites for public huildings are rendered by the United States district attorney. Further, section 5 of Executive Order No. 6166 of June 10, 1933, issued under authority of part 2, title IV, of the act of June 30, 1932 (ch. 314, 47 Stat. 382) which vested, in the broadest language, the prosecution and defense of claims against the United States and the conduct of all phases of litigation in the Department of Justice would be superseded by the bill as far as the litigation of the Bonneville Power Administration is concerned.

Whether approached from the viewpoint of the interests of the United States or the interests of the citizen, uniform conduct and disposition are essential in a matter so vital as litigation between the sovereign and the citizen. This uniformity is quite obviously not obtainable when the direction and control of litigation are placed in the hands of, and are dependent upon, the judgment and discretion of a multitude of officers. Were the practice provided in the bill to become general, duplication of personnel, unnecessary expense and dispersion of responsibility are likely to result. There is also a danger that at times inconsistent positions may be taken by different representatives of the Government in respect to the same question of law arising in different law suits. I am aware of no reason for making an exception in the case of the Bonneville Power Administration.

The provision in section 6 (b) of the bill which requires counsel for the Administrator to furnish the Attorney General with copies of pleadings in all litigation and places the direction or supervision of litigation involving constitutional questions or appearances in the circuit courts of appeal or the Supreme Court in the Attorney General if in the opinion of the latter such questions and appearances are involved, would not, I believe, eliminate the objections I have mentioned. It is not always apparent at the beginning of litigation that constitutional questions may be raised and nearly every suit instituted in a district court potentially involves an appearance in a circuit court of appeals and possibly even in the Supreme Court.

The authority granted to the Administrator by the bill to "compromise and make final settlement of such litigation" would probably make effective direction or supervision by the Attorney General impossible. Litigation cannot be conducted without compromise and settlement whether the litigation is pending in the trial or appellate court but with the unfettered power vested in the Administrator to compromise or settle, effective direction of the litigation in the appellate courts by the Attorney General would hardly be possible for no matter how urgent the need for determination of the legal or constitutional question might be, settlement before a determination by the court would prevent such a judicial determination.

It is further suggested that the following paragraph be added at the end of section 6 of the bill:

"Nothing herein shall be deemed to constitute a consent on the part of the United States to be sued on a claim sounding in tort, except insofar as is now provided by law."

I have been informed by the Director of the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

TOM C. CLARK,
Attorney General.

The purpose of the bill is explained fully in the report submitted by the House Committee on Rivers and Harbors, which follows, and which is made a part of this report.

[H. Rept. No. 777, 79th Cong., 1st sess.]

STATEMENT

The purpose of this bill is to permit the Bonneville Power Administrator to use better methods of administration in carrying out his present functions. It would not extend his authority in the power field and is concerned chiefly with the relationships of the Administrator with his employees and with other Federal agencies. They would enable the Administrator to employ business principles and methods in the operation of a business enterprise and would eliminate some hampering procedures designed primarily for agencies conducting governmental regulatory programs.

Bonneville Power Administration is located, and its activities and interests are centered, in the Pacific Northwest, 3,000 miles from Washington. The Department of the Interior has wisely recognized that such a regional agency must be as free as possible to deal with problems which are essentially local matters. That Department exercises supervision only where major policy considerations are involved and leaves the administration of the policies to the Bonneville Power Administrator. H. R. 2690 is based on the same principle.

Section 1 authorizes the Administrator to amend contracts, compromise contract claims, and make expenditures upon such terms and conditions and in such manner as he may determine.

Sections 2 and 3 are technical amendments to authorize the Administrator to dispose of energy to other Federal agencies and to do so at rates approved by the Federal Power Commission.

Section 4 makes the Administrator's cost accounts more accurate, relieves him from the necessity of maintaining duplicate records, and makes it mandatory for him to obtain an independent commercial-type audit each year.

Section 5 authorizes the Administrator to appoint laborers, mechanics, and workmen employed in connection with construction work or the operation and maintenance of electrical facilities, pursuant to the civil-service laws, but to fix their compensation without regard to laws relating to the payment of employees of the United States. It also requires the Administrator to fix the compensation of all other employees, with the exception of experts, pursuant to the Classification Act.

Section 6 grants the Administrator authority to determine, compromise, and pay tort claims, not in excess of $1,000, against the United States, and to settle and compromise claims of the United States arising out of damage to property under the control of the Administrator. The section also permits the Administrator to be represented in litigation by his own attorneys except in certain types of cases in which the litigation would be subject to the direction or supervision of the Attorney General.

Section 7 extends the retirement protection of the Social Security Act to all laborers, mechanics, and workmen employed in connection with construction work or the operation and maintenance of electrical facilities, who are not subject to the Civil Service Retirement Act, makes the unemployment compensation tax provisions of the Internal Revenue Code applicable to all such laborers, mechanics, and workmen, and grants the States permission to extend their unemployment compensation acts to include such employees.

A more detailed consideration of the provisions of the bill follows:

Section 1

Section 1 authorizes the Administrator to amend, modify, and cancel contracts. Strong contracts, containing provisions in favor of the United States sufficient to permit it to control situations when such control is necessary, should be required. At the same time Bonneville should have authority to relax the contracts when good business dictates that it do so. Now the Administration may modify a contract only if it is in the interest of the Government that it do so, which has been construed to mean not only that there must be a new legal consideration for the amendment, but also that the United States must derive some substantial benefit to warrant any change in the contract. The alternative of compelling the execution of weak contracts in order to avoid unjust results and hardship on purchasers does not further the interests of the Government. The Administrator's discretion in this respect is subject to the supervision and direction of the Secretary of the Interior, pursuant to section 2 (a) of the Bonneville Project Act, as amended by the act of March 6, 1940.

The section also permits the Administrator to compromise claims arising out of contracts he has executed. The Administrator is a responsible officer of the Government and is the one who is most familiar with the claim and the facts out of which it arose. The discretion to compromise and settle it should be a part of Bonneville's business operations. It should not be compelled to lose, or run the risk of losing, advantageous settlements because of the delays involved in sending offers back and forth across the continent for consideration by a number of agencies before acceptance is possible.

The bill permits the Administration to broaden its sources of supply and will result in greater competition by enabling the Administrator to make advance, progress, and similar payments. Small manufacturers often are precluded from bidding on contracts involving the purchase of expensive equipment because of their inability to finance their operations during the period involved in manufacturing. There would be no risk in making advance payments if an adequate performance bond were supplied. This could be of considerable importance in the development of industry in the Northwest. By making advance and partial payments against purchases of equipment, Bonneville can encourage and assist small industries producing such equipment to establish themselves in the Northwest.

While arguments can be marshaled to support the provision relieving the GAO of its obligation to hold certifying officers personally liable for expenditures which are ultimately held to be unauthorized, the committee does not deem it advisable to recommend that Congress approve that policy at the present time.

The authority granted by this section was granted to the TVA by the 1941 amendment to section 9 (b) of the TVA Act (55 Stat. 775).

Sections 2 and 3

The Bonneville Act speaks only of "sales" of electric energy. Technically there can be no sale from the Administrator to another Federal agency, as title to the energy is at all times in the United States. The dispositions authorized will be on the same basis as sales, namely, at rates approved by the Federal Power Commission.

This accords with the policy incorporated in recent bills and acts, including the Flood Control Act (Public Law 534, 78th Cong.) enacted last December.

Section 4

Section 4 authorizes the Administrator to make appropriate obligations of funds for sick and annual leave of absence as such leave is earned. It does not in any way change the leave laws so far as individual employees are concerned. Under the Federal Power Commission cost-accounting system, such leave is a proper charge against the work benefiting from the employee's services at the time the leave is earned. Under Treasury and Budget accounting such leave cannot be charged unless funds are obligated. The amendment permits the Administrator to follow proper cost-accounting practices under the Federal Power Commission system of accounts and eliminates the necessity of maintaining duplicate records for both systems.

Section 4 makes it mandatory for the Administrator to have an independent commercial-type audit undertaken each year. There will be no duplication between a regular voucher audit by the General Accounting Office and an independent commercial-type audit. The former will be concerned with the appropriation and fund accounts of the Administrator and will determine the legality of expenditures. The latter will be concerned with the utility cost accounts maintained by the Administrator pursuant to the system prescribed by the Federal Power Commission. Bonneville is essentially a business agency, the revenues of which are far in excess of its expenditures. Its financial transactions should be examined on a balance-sheet and profit-and-loss basis in the same manner as any similar commercial enterprise. Congress will be in a better position to appraise the appropriation estimates submitted to it each year. The Comptroller General has made no objection to this provision for an independent commercial audit, and the committee believes that such an audit of the business operations of Bonneville would be desirable.

The final sentence of the section eliminates any conflict between section 9 (a) of the Bonneville Project Act, which directs the Administrator to keep his accounts subject to the requirements of the Federal Water Power Act, and section 309 of the Budget and Accounting Act of 1921 (42 Stat. 25), which authorizes the General Accounting Office to establish forms, accounts, and procedures for administrative appropriation and fund accounting. It also relieves Bonneville from the necessity of making two different types of reports for the same operation. The figures in these reports do not and cannot agree because of the differences in the accounting systems on which the reports are based, one being the Federal Power Commission cost-accounting system and the other the General Accounting Office Budget and Treasury appropriation and fund-accounting system.

Section 5

Section 5 consolidates in a single section the various provisions relating to personnel matters. It extends the application of the Classification Act to a number of positions which are not now covered thereby. The only positions, the compensation of which will not be fixed pursuant to the Classification Act, will be those designated by

the Civil Service Commission as "expert." This exception is not a departure from the present act and is necessary for consulting and advisory services.

The Bonneville Act provides for two classes of personnel. The first class includes the Assistant Administrator, chief engineer, general counsel, attorneys, engineers, and other experts. Their compensation may be fixed without regard to the Classification Act and is subject only to a limitation of $7,500 per annum. The second class includes all other employees. Their compensation must be fixed pursuant to the Classification Act, and the limitation of $7,500 per annum does not apply.

The Civil Service Commission and the Bonneville Power Administration have been under the impression, since the project was first initiated, that the Bonneville Act placed most engineers and attorneys in the second class and required their compensation to be fixed pursuant to the Classification Act. The Comptroller General ruled last November that all engineers and attorneys are in the first class and that their salaries are to be fixed at such rates as the Administrator may determine, subject to the limitation of $7,500 per annum. Questions as to the applicability of the Mead-Ramspeck Act, providing for automatic salary increases, and as to the current pay bills now before Congress are raised. This section disposes of these problems and places the engineers and attorneys on an equal plane with the other employees by requiring that all employees, other than experts, be compensated pursuant to the Classification Act.

The present act compels a discrimination in the salaries paid the top administrative officials. The effect of the ruling of the Comptroller General above referred to, and of a recent decision of the Civil Service Commission that the positions of power manager and controller are not expert positions, has been to place such positions in the second class of personnel prescribed by the Bonneville Act. Their compensation must therefore be fixed pursuant to the Classification Act, which, on the basis of the duties of the positions, requires that $8,000, the minimum salary for grades P. and S. 8 and CAF–15, respectfully, be paid. However, three other top positions, the assistant administrator, chief engineer, and general counsel, are in the first class of personnel and are subject to the $7,500 limitation. The Controller was recently promoted to Assistant Administrator, and the promotion compelled the payment of a lower salary. This discrimination and the discrimination between the salaries of Bonneville officials and officials in the $8,000 grade performing similar services in other agencies should be eliminated.

Subsection (b) does not differ from the present act in providing for the appointment of laborers, mechanics, and workmen employed in connection with construction work or the operation and maintenance of electrical facilities pursuant to the civil-service laws. However, it will permit Bonneville to follow many of the labor practices customary in the area in the same manner as private utilities and contractors engaged in similar work. The Administration is operating a business enterprise, and it should be able to conform with labor practices common in that business. Its inability to do so places it in a most unfavorable light and causes unsatisfactory labor relations. Most of the difficulties relate directly or indirectly to the compensation received by employees. A few of these are overtime pay for work in

excess of 8 hours per day, overtime pay on holidays and Sundays, minimum blocks of pay for emergency and call work, and a night differential or its equivalent. The Administration will be able to meet these problems under the bill.

Bonneville also is authorized (1) to provide and pay for physical examinations of construction and operation and maintenance workers at the time of their employment, an essential requirement for health, accident protection, and even the hiring of workers under the current manpower shortage, and (2) to utilize voluntary services and pay travel and other expenses in connection therewith.

Section 6

Section 6 permits the Administrator to settle, compromise, and pay tort claims not in excess of $1,000 against the United States, arising out of activities of his employees within the scope of their employment. The only current authorization for the payment of these claims is the Small Claims Act (31 U. S. C. 215). That procedure is laborious and expensive to the Government. Bonneville's experience has disclosed that a year to a year and one-half usually elapses between the filing of a claim and the receipt of payment. Moreover, the Small Claims Act permits the payment of claims arising only out of damage to property and does not authorize the payment of claims for personal injuries or actual losses which do not result from damage to property.

The Administration also is authorized to settle and compromise claims for damages to Government property under its control. These claims have been averaging less than $50 each, yet they must now be sent back and forth from coast to coast and be processed by at least two agencies. Ability to dispose of these claims promptly will decrease administrative costs and result in collections otherwise unobtainable.

The amendment permits the Administrator to be represented in routine litigation by his own attorneys, but subjects litigation involving constitutional issues or appearances in the appellate courts of the United States to the supervision and control of the Attorney General. Business considerations must necessarily affect the institution and conduct of litigation just as they affect the conduct of Bonneville's other activities. The Administration is in the best position to determine how alternative methods of handling a case may affect its programs and customer relations. Inefficiency is a certain result from the present division of responsibility for litigation between the Department of Justice in Washington, D. C., its special attorneys and United States attorneys in Tacoma, Seattle, Spokane, and Portland, and the Administrator's officers in Portland. Instances of delay and lack of coordination were presented to the committee. Most of Bonneville's litigation is exceedingly small in dollar amount and is local in character. It can best be handled by Bonneville's attorneys. On the other hand, the Attorney General should have supervision over cases involving constitutional issues or an appearance in a Federal appellate court. The bill grants the Attorney General such authority.

The present act provides that the Administrator may, under the supervision of the Attorney General, bring such suits as may be necessary to carry out the purposes of the act, and that he shall be represented by the United States attorneys for the districts in which such

litigation may arise, or by such attorneys as the Attorney General may designate as authorized by law, in conjunction with the regularly employed attorneys of the Administrator.

A dispute has arisen between Bonneville and the Department of Justice over the meaning of this provision. The former contends that its attorneys are entitled to at least equal participation in the handling of litigation. The Department of Justice construes the act as placing complete control of litigation in it, Bonneville's attorneys to participate only to such extent as the Department of Justice deems desirable. The act should be clarified to dispel this confusion. The bill would do so on a basis consistent with the needs of the Administration to conduct local litigation as a part of its business activities. At the same time the Department of Justice would have responsibility for important cases involving constitutional issues or an appearance in a Federal appellate court.

Section 7

Retirement and unemployment compensation benefits are two more troublesome issues in the Administrator's labor relations. One group of construction and operation and maintenance employees is subject to civil-service retirement protection. Another group receives no retirement protection whatever. Neither group receives unemployment compensation benefits. Employees of private utilities and contractors who perform similar work receive social-security protection and are eligible for unemployment compensation benefits.

It would be unfair to those employees now under the Civil Service Retirement Act to transfer them to the less advantageous old age insurance plan under the Social Security Act. The section makes appropriate amendments to the Internal Revenue Code and Social Security Act to (1) leave under the Civil Service Retirement Act all laborers, mechanics, and workmen employed in connection with construction work or the operation and maintenance of electrical facilities who are now under that act, (2) extend social-security protection to all such employees who are not under the Civil Service Retirement Act and who have no retirement protection, (3) make the unemployment compensation tax provisions of the Internal Revenue Code applicable to all laborers, mechanics, and workmen employed in connection with construction work or the operation and maintenance of electrical facilities, and (4) grant the States permission to extend their unemployment compensation acts to include these employees.

Pursuant to paragraph 2 (a) of rule XIII, the following are the sections of the Bonneville Act which will be amended by the bill as it was introduced, stricken language being enclosed in brackets and added language being italicized.

ACT OF AUGUST 20, 1937 (50 STAT. 731), AS AMENDED BY THE ACT OF MARCH 6, 1940 (54 STAT. 47)

SEC. 2. (f) [Subject to the provisions of this Act, the Administrator is authorized, in the name of the United States, to negotiate and enter into such contracts, agreements, and arrangements as he shall find necessary or appropriate to carry out the purposes of this Act.] *Subject only to the provisions of this Act, the Administrator is authorized to enter into such contracts, agreements, and arrangements, including the amendment, modification, adjustment, or cancellation thereof and the compromise or final settlement of any claim arising thereunder, and to make such expenditures, upon such terms and conditions and in such manner as he may deem*

necessary; and the Secretary of the Interior may prescribe by regulation the Administrator's procedure for authorizing or approving such contracts, agreements, arrangements, and expenditures. Notwithstanding the provisions of any other law governing the expenditure of public funds, the General Accounting Office in the settlement of the accounts of the Administrator shall not disallow credit for nor withhold funds because of any expenditure, not in violation of any regulation which the Secretary of the Interior may have prescribed, which the Administrator shall determine to have been necessary to carry out the provisions of this Act.

SEC. 5. (a) Subject to the provisions of this Act and to such rate schedules as the Federal Power Commission may approve, as hereinafter provided, the Administrator shall negotiate and enter into contracts for the sale at wholesale of electric energy, either for resale or direct consumption, to public bodies and cooperatives and to private agencies and persons *and for the disposition of electric energy to Federal agencies*. Contracts for the sale of electric energy to any private person or agency other than a privately owned public utility engaged in selling electric energy to the general public, shall contain a provision forbidding such private purchaser to resell any of such electric energy so purchased to any private utility or agency engaged in the sale of electric energy to the general public, and requiring the immediate canceling of such contract of sale in the event of violation of such provision. Contracts entered into under this subsection shall be binding in accordance with the terms thereof and shall be effective for such period or periods, including renewals or extensions, as may be provided therein, not exceeding in the aggregate twenty years from the respective dates of the making of such contracts. Contracts entered into under this subsection shall contain (1) such provisions as the Administrator and purchaser agree upon for the equitable adjustment of rates at appropriate intervals, not less frequently than once in every five years, and (2) in the case of a contract with any purchaser engaged in the business of selling electric energy to the general public, the contract shall provide that the Administrator may cancel such contract upon five years' notice in writing if in the judgment of the Administrator any part of the electric energy purchased under such contract is likely to be needed to satisfy the requirement of the said public bodies or cooperatives referred to in this Act, and that such cancellation may be with respect to all or any part of the electric energy so purchased under said contract to the end that the preferential rights and priorities accorded public bodies and cooperatives under this Act shall at all times be preserved. Contracts entered into with any utility engaged in the sale of electric energy to the general public shall contain such terms and conditions, including among other things stipulations concerning resale and resale rates by any such utility, as the Administrator may deem necessary, desirable, or appropriate to effectuate the purposes of this Act and to insure that resale by such utility to the ultimate consumer shall be at rates which are reasonable and nondiscriminatory. Such contract shall also require such utility to keep on file in the office of the Administrator a schedule of all its rates and charges to the public for electric energy and such alterations and changes therein as may be put into effect by such utility.

SEC. 6. Schedules of rates and charges for electric energy produced at the Bonneville project and sold to purchasers as in this Act provided shall be prepared by the Administrator and become effective upon confirmation and approval thereof by the Federal Power Commission [.]; *and such rates and charges shall also be applicable to disposition of electric energy to Federal agencies.* Subject to confirmation and approval by the Federal Power Commission, such rate schedules may be modified from time to time by the Administrator, and shall be fixed and established with a view to encouraging the widest possible diversified use of electric energy. The said rate schedules may provide for uniform rates or rates uniform throughout prescribed transmission areas in order to extend the benefits of an integrated transmission system and encourage the equitable distribution of the electric energy developed at the Bonneville project.

SEC. 9. (1) The Administrator, subject to the requirements of the Federal Water Power Act, shall keep complete and accurate accounts of operations, including all funds expended and received in connection with transmission and sale of electric energy generated at the Bonneville project [.], *and in the maintenance of such accounts, appropriate obligations shall be established for annual and sick leave of absence as earned. The Administrator shall, after the close of each fiscal year, obtain an independent commercial type audit of such accounts. The forms, systems, and procedures prescribed by the Comptroller General for the Administrator's appropriation and fund accounting shall be in accordance with the requirements of the Federal Water Power Act with respect to accounts of electric operations*

of public utilities and the regulations of the Federal Power Commission pursuant thereto.

SEC. 2. (a) The electric energy generated in the operation of the said Bonneville project shall be disposed of by the said Administrator as hereinafter provided. The Administrator shall be appointed by the Secretary of the Interior; shall be responsible to said Secretary of the Interior; shall receive a salary at the rate of $10,000 per year; and shall maintain his principal office at a place selected by him in the vicinity of the Bonneville project. [The Secretary of the Interior shall also appoint, without regard to the civil-service laws, an Assistant Administrator, chief engineer, and general counsel and shall fix the compensation of each at not exceeding $7,500 per annum. The Assistant Administrator shall perform the duties and exercise the powers of the Administrator, in the event of the absence or sickness of the Administrator until such absence or sickness shall cease, and, in the event of a vacancy in the office of Administrator until a successor is appointed.] The Administrator shall, as hereinafter provided, make all arrangements for the sale and disposition of electric energy generated at Bonneville project not required for the operation of the dam and locks at such project and the navigation facilities employed in connection therewith. He shall act in consultation with an advisory board composed of a representative designated by the Secretary of War, a representative designated by the Secretary of the Interior, a representative designated by the Federal Power Commission, and a representative designated by the Secretary of Agriculture. The form of administration herein established for the Bonneville project is intended to be provisional pending the establishment of a permanent administration for Bonneville and other projects in the Columbia River Basin. The Secretary of War shall install and maintain additional machinery, equipment, and facilities for the generation of electric energy at the Bonneville project when in the judgment of the Administrator such additional generating facilities are desirable to meet actual or potential market requirements for such electric energy. The Secretary of War shall schedule the operations of the several electrical generating units and appurtenant equipment of the Bonneville project in accordance with the requirements of the Administrator. The Secretary of War shall provide and maintain for the use of the Administrator at said Bonneville project adequate station space and equipment, including such switches, switchboards, instruments, and dispatching facilities as may be required by the Administrator for proper reception, handling, and dispatching of the electric energy produced at the said project, together with transformers and other equipment required by the Administrator for the transmission of such energy from that place at suitable voltage to the markets which the Administrator desires to serve. The office of the Administrator of the Bonneville project is hereby constituted an office in the Department of the Interior and shall be under the jurisdiction and control of the Secretary of the Interior. All functions vested in the Administrator of the Bonneville project under this Act may be exercised by the Secretary of the Interior and, subject to his supervision and direction, by the Administrator and other personnel of the project.

SEC. 10. [The Administrator, the Secretary of War, and the Federal Power Commission, respectively, shall appoint such attorneys, engineers, and other experts as may be necessary for carrying out the functions entrusted to them under this Act, without regard to the provisions of the civil-service laws and shall fix the compensation of each of such attorneys, engineers, and other experts at not to exceed $7,500 per annum; and they may, subject to the civil-service laws, appoint such other officers and employees as may be necessary to carry out such functions and fix their salaries in accordance with the Classification Act of 1923 as amended.]

(a) The Secretary of the Interior shall appoint, without regard to the civil-service laws, an Assistant Administrator, chief engineer, and general counsel and shall fix the compensation of each in accordance with the Classification Act of 1923, as amended. The Assistant Administrator shall perform the duties and exercise the powers of the Administrator, in the event of the absence or sickness of the Administrator until such absence or sickness shall cease, and in the event of a vacancy in the office of Administrator, until a successor is appointed.

(b) The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are authorized to appoint, subject to the civil-service laws, such officers and employees as may be necessary to carry out the purposes of this Act, the appointment of whom is not otherwise provided for, and to fix their compensation in accordance with the Classification Act of 1923, as amended: Provided, however, That to the extent that the civil-service laws, Classification Act, and other laws or regulations governing the employment or payment of employees of the United States are inconsistent with agreements made by the Administrator with representatives of laborers,

mechanics, and workmen employed in connection with the construction work or the operation and maintenance of electric facilities, the said Act, laws, and regulations shall not apply to matters covered by such agreements; but in connection with the selection, promotion, or retention of any employee, no political test or qualifications shall be permitted or given consideration, but all such actions shall be taken on the basis of the employee's merit and efficiency: Provided, further, That so long as any such contract provides that employees performing services for the Administrator pursuant thereto shall be entitled to the benefits of the Social Security Act, such services shall be deemed to be "employment" within the meaning of the Social Security Act and sections 1400 through 1432 of the Internal Revenue Code, and such employees, if they otherwise would be so classified, shall not be deemed to be employees within the meaning of the Act of May 22, 1920 (41 Stat. 614), and all Acts amendatory thereof or supplementary thereto, and so long as any such contract provides that employees prrforming services for the Administrator pursuant thereto shall be entitled to unemployment compensation benefits, such services shall be deemed to be "employment" within the meaning of sections 1600 through 1611 of the Internal Revenue Code if contributions upon the basis of the compensation for such services are required to be paid under a State unemployment compensation act, and consent hereby is given to the States to require the Administrator to make payments to State unemployment compensation funds for services performed for him under any such contract; the Administrator is authorized to comply with the provisions of the Social Security Act, the Internal Revenue Code, and any applicable State unemployment compensation act on behalf of the United States as the employer of individuals whose service constitutes employment under such act, code, and laws by reason of this section. The Administrator is further authorized to employ physicians, under agreement and without regard to civil-service laws or regulations, to make physical examinations of employees or prospective employees who are or may become laborers, mechanics, and workmen engaged on construction work or the operation and maintenance of electrical facilities. The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are also authorized to appoint, without regard to the civil-service laws, such experts as may be necessary for carrying out the functions entrusted to them under this Act and to fix the compensation of each of such experts without regard to the Classification Act of 1923, as amended, but at not to exceed $7,500 per annum.

(c) The Administrator may accept and utilize such voluntary and uncompensated services and with the consent of the agency concerned may utilize such officers, employees, or equipment of any agency of the Federal, State, or local governments which he finds helpful in carrying out the purposes of this Act; in connection with the utilization of such services, reasonable payments may be allowed for necessary travel and other expenses.

SEC. 12. [The Administrator may, in the name of the United States, under the supervision of the Attorney General, bring such suits at law or in equity as in his judgment may be necessary to carry out the purposes of this Act; and he shall be represented in the prosecution and defense of all litigation affecting the status or operation of Bonneville project by the United States attorneys for the districts, respectively, in which such litigation may arise, or by such attorney or attorneys as the Attorney General may designate as authorized by law, in conjunction with the regularly employed attorneys of the Administrator.]

(a) The Administrator is hereby authorized to determine, settle, compromise, and pay claims and demands against the United States which are not in excess of $1,000 and are presented to the Administrator in writing within one year from the date of accrual thereof, for any losses, injuries, or damages to persons or property, or for the death of persons, resulting from acts or omissions of employees acting within the scope of their employment pursuant to this Act. The Administrator is also authorized to determine, compromise, and settle any claims and demands of the United States for any losses, injuries, or damages to property under the Administrator's control, against other persons or public or private corporations. The Administrator's determination, compromise, settlement, or payment of any of the claims referred to in this subsection shall be final and conclusive upon all officers of the Government, notwithstanding the provisions of any other Act to the contrary. When claims presented to the Administrator under this subsection arise, in whole or in part, out of any damage done to private property, the Administrator may repair all or any part of such damage in lieu of making such payments.

(b) The Administrator may, in the name of the United States, bring such suits at law or in equity as in his judgment may be necessary to carry out the purposes of this Act; and he shall be represented in the prosecution and defense of all litigation, including condemnation proceedings, affecting the status or operation of the Bonneville project by his attorneys: Provided, however, That such attorneys shall supply the

Attorney General with copies of the pleadings in all such cases and that the handling of litigation which, in the Attorney General's opinion, involves interpretation of the Constitution of the United States or which involves appearance in any United States circuit court of appeals or the United States Supreme Court shall be subject to the Attorney General's direction or supervision. The Administrator may compromise and make final settlement of such litigation and pay the amount due under any compromise or judgment. Complaints in condemnation proceedings permitted by section 2 (c) and 2 (d) of this Act shall be signed, verified, and filed by the Administrator.

The following are the departmental reports on the bills:

THE SECRETARY OF THE INTERIOR,
Washington, D. C., June 18, 1945.

Hon. JOSEPH J. MANSFIELD,
Chairman, Committee on Rivers and Harbors,
House of Representatives.

MY DEAR MR. MANSFIELD: Your letter of March 22 requests a report from the Department of the Interior on H. R. 2690 and H. R. 2693, duplicate bills to amend the Bonneville Project Act.

I heartily favor the purposes of these bills and recommend that one or the other of them be enacted, with the amendments hereinafter suggested.

The Bonneville Project Act, by its terms, established only a provisional form of administration pending the creation of a permanent administration for Bonneville and other projects in the Columbia River Basin. These bills do not change the basic form of administration or affect its permanence. There is no extension of the scope of the functions of the Bonneville Power Administrator in the public power field. The bills merely authorize the Administrator to employ better methods of administration with which to carry out his present functions.

The Bonneville Power Administration is a regional agency. Its activities and interests are centered in the Pacific Northwest in which it is, by statute, required to maintain its headquarters. Such an agency should be as free as possible to administer problems which are essentially local in character. This Department has recognized that fact and has given the Bonneville Power Administration a degree of autonomy which, while somewhat unusual in governmental administration, is nevertheless compatible with the nature of the agency and the regional character of its programs and functions. The Department of the Interior exercises supervision only with respect to matters of major policy. The details of administration are handled by the Bonneville Power Administrator.

Furthermore, the Bonneville Power Administration is not engaged in a governmental regulatory program. It operates a business enterprise from which the Government derives a return of no small proportions. Government procedure was not designed for such an agency, and in many instances it has hindered the operations of the Administrator to an unwarranted extent. The bills under consideration recognize these characteristics of the Bonneville Power Administration and will facilitate its operations as a regional and business agency.

Section 1 would authorize the Administrator to amend contracts. It is a normal business practice for one party to insert in a contract all the provisions in his favor to which the other party will consent. If there develops a situation which was not anticipated, the party in whose favor the provision runs will often modify the contract or waive its application. In other words, a party will insist upon a strong contract to grant him control of a situation if such control becomes necessary, but he will modify or waive a contractual provision where it proves too restrictive and he is not substantially affected. The Bonneville Power Administrator should require a strong contract to protect fully the interests of the United States, but he also should be able to relax it when the control is unnecessary or when good business dictates that he do so. However, as a general matter, an officer of the United States cannot modify a Government contract. The alternative of compelling the Administrator to execute a comparatively weak contract so as to avoid unjust results is inimical to the interests of the Government. The bills would enable the Administrator to operate with much the same flexibility as a private utility or business, but would by no means give him an unlimited discretion, as they require him to conform to the procedural regulations which the Secretary of the Interior prescribes. In addition, he is subject generally to the supervision and direction of the Secretary of the Interior pursuant to section 2 (a) of the Bonneville Project Act, as amended by the act of March 6, 1940.

This section would permit the Administrator to compromise claims arising out of contracts which he has executed. Now such claims may be compromised only by two or three officers of the Government, and the extent of their respective jurisdictions is not clear. An offer to compromise even the smallest claim which the Government asserts must be referred to one of these officials, and delays are inevitable. A prompt settlement and disposal of a claim by or against the Administrator, one of the chief reasons to compromise such a claim, is made impossible if the offer must be sent back and forth across the continent for consideration by a number of agencies before acceptance is possible. The Administrator is a responsible officer of the Government and is the one who is the most familiar with the claim and the facts out of which it arose. He should have the discretion to compromise and settle it as a part of his normal business operations.

The final sentence of section 1 would relieve the General Accounting Office of its obligation to hold certifying officers liable in the event the Comptroller General believes that the Administrator has exceeded his powers under the Bonneville Act or has not complied with some general statute relating to the expenditure of Government funds. In view of the objection raised against this provision (p. 2, lines 4–12, inclusive) by the General Accounting Office, and in further view of the advice of the Bureau of the Budget that the provision would not be in accord with the program of the President, I recommend its deletion.

Sections 2 and 3 are technical amendments authorizing the Administrator to dispose of electric energy to other Federal agencies (technically there can be no sale by the Administrator to such agencies as title to the energy is at all times in the United States) and to do so at rates approved by the Federal Power Commission as is the case with all other sales.

Section 4 would authorize the obligation of funds for sick and annual leave of absence, as such leave is earned. The amendment would improve the accuracy of the cost accounts of the Administrator and would remove the necessity for maintaining duplicate cost accounts for the Federal Power Commission on the one hand, and the Bureau of the Budget and the Department of Treasury on the other.

This section would further empower the Administrator to have an independent commercial-type audit undertaken. There would be no duplication of the audit by the General Accounting Office. Both a Government-type audit and an independent commercial-type audit are needed; the former to determine the legality of expenditures, and the latter to permit, upon the basis of an independent certificate, a comparison of the activities and the financial statements of the Administrator with those of private utilities.

The final sentence of the section would eliminate any conflict between section 9 (a) of the Bonneville Project Act and section 309 of the Budget and Accounting Act of 1921 (42 Stat. 25) and any necessity for maintaining duplicate records to comply with both acts.

Section 5 would consolidate in a single section the various provisions relating to personnel matters. It would extend the application of the Classification Act to a number of positions which are not now covered thereby. The only administrative positions, the compensation of which would not be fixed pursuant to the Classification Act, would be those designated by the Civil Service Commission as "expert." This exception, concerning which there is no change from the present act, is necessary for consulting and advisory services.

The effect of this change is to withdraw the authority of the Administrator and Secretary to fix the salaries of certain employees, subject only to a maximum limit of $7,500 per annum, and to substitute in lieu thereof the requirement that their compensation be fixed pursuant to the Classification Act. Under a recent ruling of the Civil Service Commission the positions of power manager and controller can be classified as P. and S. 8 and CAF–15, respectively, with base salaries of $8,000. This is in accord with the normal practice in other agencies of classifying top administrative positions in the $8,000 grade. However, three other top positions, the Assistant Administrator, chief engineer, and general counsel, are now subject to the $7,500 maximum. The amendment would remove this anomaly by requiring all such salaries to be fixed pursuant to the Classification Act. It would also remove the discrimination between the Administrator's employees and employees holding similar positions in other agencies.

The activities of the Administrator, because of the field in which he operates, are constantly being compared with those of private utilities and private contractors. With respect to labor practices, the Administrator suffers by such a comparison. He operates and maintains electrical facilities and occasionally undertakes construction on force account, and he should be able to follow the same labor practices as do private utilities and contractors in the same work. When the Government

operates a business activity, it should attempt to conform to the best labor practices which are customary in that activity.

Objections have been raised, however, against some of the provisions of subsection (b) of this section. I have been informed that the Civil Service Commission has objected to the provisions which would permit the employment of certain classes of laborers, mechanics, and workmen without regard to the civil-service laws, and that representatives of the employees concerned have concurred in this objection. In order to remove the grounds for this objection, I recommend that subsection (b) be revised in accordance with the enclosed redraft. This redraft would provide that the employees in question should be appointed pursuant to the civil-service laws, while their compensation might be fixed independently of the Classification Act in order to accomplish the objective of permitting conformity with local labor conditions and practices.

Several departments and agencies have also taken exception to the provisions of subsection (b) which would grant social security and unemployment compensation benefits on the basis of collective bargaining agreements. They recommend that such coverage be made mandatory by the statute, that employees now under the Civil Service Retirement Act be not transferred to the old-age insurance system of the Social Security Act, and that any provisions of law which concern social security or unemployment compensation benefits be written in the form of amendments to the Internal Revenue Code and the Social Security Act.

To meet these objections, the provisions in question have been omitted from the enclosed redraft of subsection (b), and a new section 7 containing substitute provisions has been prepared. This new section would amend the Internal Revenue Code and the Social Security Act to provide for social-security protection of laborers, mechanics, and workmen engaged in construction, operation, or maintenance work, if not subject to the Civil Service Retirement Act, and would grant unemployment-compensation benefits to these employees. It would likewise resolve the fears of employees' representatives that some employees might lose their right to participate in the benefits of the Civil Service Retirement Act. I recommend that this proposed section 7, a draft of which is enclosed, be added to the bills.

Section 6 would permit the Administrator to settle, compromise, and pay tort claims not in excess of $1,000 against the United States arising out of activities of his employees within the scope of their employment. The only present provision for the payment of such claims is the Small Claims Act (31 U. S. C. 215). That procedure is laborious and expensive, and its inadequacy to meet the needs of a business agency, the programs of which demand prompt action and satisfactory public relations, is disclosed by the year to a year and a half which usually elapses between the filing of a claim and the receipt of payment. The Small Claims Act is not adequate to grant reasonably proper protection to the public because it is too limited in scope. It does not authorize the payment of claims for personal injuries or actual losses not resulting from damage to property.

The Administrator also would be given authority to settle and compromise claims for damages to Government property under his control. He now has no authority to compromise such claims, and they must be referred to the Department of Justice even though they have been averaging less than $50 each in amount. The delay involved in shuffling such claims back and forth from one coast to the other and the unjustifiable expense incurred in having these small claims processed by at least two agencies instead of one would be eliminated by these bills.

The amendment would permit the Administrator to be represented in routine litigation by his own attorneys, but would subject litigation involving constitutional issues or appearances in the appellate courts of the United States to the supervision and control of the Attorney General. Business considerations, best known to the Administrator, must necessarily affect the institution and conduct of litigation just as they affect the conduct of his other activities. The Administrator is in the best position to determine how alternative methods of handling a case may affect his programs and customer relations. He should not be required to delegate a part of his functions, such as the conduct of his litigation, to other agencies, since by statute he has the basic responsibility for making the Government-owned power facilities in the Pacific Northwest pay their way. Delays and confusion cannot be avoided, despite the efforts of all parties for cooperation, as long as responsibility for so important a phase of management as litigation is divided between the Department of Justice in Washington, D. C., its special attorneys, and United States attorneys in Tacoma, Seattle, Spokane, and Portland, and the Administrator's officers in Portland.

The Attorney General should continue to exercise supervision over important litigation, just as this Department exercises supervision when policy matters of national importance are involved. The amendment would give the Attorney General control of such litigation, yet would leave the Administrator free to conduct the local litigation which the nature of his activities demands.

I am certain that the legislation embodied in these bills, with the amendments recommended in this report, would enable the Bonneville Power Administrator to carry on his existing duties more efficiently and to attain more rapidly the objectives of Congress in the Bonneville Project Act.

The Director of the Bureau of the Budget has advised me that, except for the objection to part of section 1 heretofore discussed, there would be no objection to the submission of this report.

Sincerely yours,

HAROLD L. ICKES, *Secretary of the Interior.*

1. Amendment to section 5 of H. R. 2690 and H. R. 2693 by which subsection (b) of section 10 of the Bonneville Act will be amended to read as follows:

"(b) The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are authorized to appoint, subject to the civil-service laws, such officers and employees as may be necessary to carry out the purposes of this Act, the appointment of whom is not otherwise provided for, and to fix their compensation in accordance with the Classification Act of 1923, as amended. The Administrator may employ laborers, mechanics, and workmen in connection with construction work or the operation and maintenance of electrical facilities (hereinafter called 'laborers, mechanics, and workmen') subject to the civil-service laws, and fix their compensation without regard to the Classification Act of 1923, as amended, and any other laws, rules, or regulations relating to the payment of employees of the United States except the Act of May 29, 1930 (46 Stat. 468), as amended, to the extent that it otherwise is applicable. The Administrator is further authorized to employ physicians, under agreement and without regard to the civil-service laws or regulations, to make physical examinations of employees or prospective employees who are or may become laborers, mechanics, and workmen. The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are also authorized to appoint, without regard to the civil-service laws, such experts as may be necessary for carrying out the functions entrusted to them under this Act and to fix the compensation of each of such experts without regard to the Classification Act of 1923, as amended, but at not to exceed $7,500 per annum."

2. Amendment to H. R. 2690 and H. R. 2693 by adding a new section, to be designated section 7, to read as follows:

"SEC. 7 (a). Section 1426 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"'(j) CERTAIN EMPLOYEES OF BONNEVILLE POWER ADMINISTRATOR.—The term "employment" shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator, but shall not include any service performed by such a laborer, mechanic, or workman, to whom the Act of May 29, 1930 (46 Stat. 468), as amended, applies. The term "wages" means, with respect to service which constitutes employment by reason of this subsection, such amount of remuneration as is determined (subject to the provisions of this section) by the Administrator to be paid for such service. The Administrator is authorized and directed to comply with the provisions of the internal revenue laws on behalf of the United States as the employer of individuals whose service constitutes employment by reason of this subsection.'

"(b) Section 209 of the Social Security Act, as amended, is amended by adding at the end thereof the following new subsection:

"'(p) (1) The term "employment" shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator, but shall not include any service performed by such a laborer, mechanic, or workman, to whom the Act of May 29, 1930 (46 Stat. 468), as amended, applies.

"'(2) The Social Security Board shall not make determinations as to whether an individual has performed services which are employment by reason of this subsection, the periods of such services, the amounts of remuneration for such

services which constitutes "wages" under the provisions of this section, or the periods in which or for which such wages were paid, but shall accept the determinations with respect thereto of the Administrator, and such agents as he may designate, as evidenced by returns filed by the Administrator as an employer pursuant to section 1426 (j) of the Internal Revenue Code and certifications made pursuant to this subsection. Such determinations shall be final and conclusive.

"'(3) The Administrator is authorized and directed, upon written request of the Social Security Board, to make certification to it with respect to any matter determinable for the Board by the Administrator under this subsection, which the Board finds necessary in administering this title.'"

"(c) Section 1606 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"'(e) The legislature of any State may, with respect to service to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Bonneville Power Administrator (hereinafter called the Administrator), require the Administrator, who for the purposes of this subsection is designated an instrumentality of the United States, and any such employee, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Board under section 1603 and to comply otherwise with such law. Such permission is subject to the conditions imposed by subsection (b) of this section upon permission to State legislatures to require contributions from instrumentalities of the United States. The Administrator is authorized and directed to comply with the provisions of any applicable State unemployment compensation law on behalf of the United States as the employer of individuals whose service constitutes employment under such law by reason of this subsection.'

"(d) Section 1607 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"'(m) CERTAIN EMPLOYEES OF BONNEVILLE POWER ADMINISTRATOR.—The term "employment" shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator. The term "wages" means, with respect to service which constitutes employment by reason of this subsection, such amount of remuneration as is determined (subject to the provisions of this section) by the Administrator to be paid for such service. The Administrator is authorized and directed to comply with the provisions of the internal revenue laws on behalf of the United States as the employer of individuals whose service constitutes employment by reason of this subsection.'"

DEPARTMENT OF JUSTICE,
Washington, D. C., June 15, 1945.

Hon. JOSEPH J. MANSFIELD,
Chairman, Committee on Rivers and Harbors,
House of Representatives, Washington, D. C.

MY DEAR MR. CONGRESSMAN: This will refer to your request for my views with respect to H. R. 2690 and H. R. 2693, bills to amend the Bonneville Project Act. These bills are identical and my reference and comment are applicable to each of them. The bill authorizes the Administrator to enter into and compromise, cancel, amend, or modify contracts and agreements and to make expenditures he deems necessary without regard to other provisions of law regarding expenditures of public funds. The bill further authorizes the appointment by the Secretary of the Interior of an Assistant Administrator, chief engineer, and general counsel. The Administrator, the Secretary of War, and the Federal Power Commission are authorized to appoint, subject to the civil-service laws, such officers or employees as may be necessary to carry out the purposes of the act. The Administrator is authorized to compromise and pay any claims and demands against the United States for injuries resulting from acts or omissions of employees of the Bonneville Power Administration, providing such claims are presented within 1 year and do not exceed $1,000. The Administrator is also empowered to compromise and settle any claims and demands asserted by the Administration against other persons or public or private corporations, such compromise being final and conclusive upon all officers of the Government.

The Administrator is authorized to bring such suits as he deems necessary to carry out the purpose of the act and he is to be represented in all litigation, including condemnation proceedings, by his attorneys, but the attorneys are required to supply the Attorney General with copies of the pleadings in all cases, and the handling of litigation which in the opinion of the Attorney General involves an interpretation of the Constitution or will involve appearances in any United States circuit court of appeals or the United States Supreme Court is subject to the Attorney General's direction or supervision. The Administrator may compromise any such litigation and pay the amount due under any compromise or judgment. The bill also contains certain provisions with respect to the disposition of electric energy to Federal agencies and the rates applicable thereto as well as other provisions administrative in their nature.

Whether the bill should be enacted into law is a matter of legislative policy. There are certain features of the bill, however, which represent such a sharp departure from the present governmental procedure that I feel I should direct your attention to them and comment upon them.

Insofar as litigation involving the functions of the Bonneville Power Administration is concerned, the enactment of the provisions in the bill with respect to the conduct of litigation by the attorneys for the Administrator would effect a repeal of numerous statutes under which the conduct and control of litigation to which the United States is a party has long been vested by the Congress in the Attorney General or his subordinates. Among such statutes are the act of September 24, 1789, as amended (1 Stat. 92, sec. 771, R. S., 28 U. S. C. 485), which authorizes the district attorneys to appear in all matters in which the United States is concerned; the act of June 22, 1870, as amended (16 Stat. 162, sec. 359, R. S., 5 U. S. C. 309), permitting the Attorney General to conduct any case in any court of the United States in which the United States is interested if he deems it for the best interests of the United States; the act of June 30, 1906 (34 Stat. 816, 5 U. S. C. 310), which authorizes the Attorney General or any attorney appointed by him to participate in any proceeding which the district attorney is authorized by law to conduct; and the act of March 2, 1889 (25 Stat. 941, 40 U. S. C. 256) under which all legal services connected with procuring titles to sites for public buildings are rendered by the United States district attorney. Further, section 5 of Executive Order No. 6166 of June 10, 1933, issued under authority of part 2, title IV of the act of June 30, 1932 (ch. 314, 47 Stat. 382), which vested, in the broadest language, the prosecution and defense of claims against the United States and the conduct of all phases of litigation in the Department of Justice would be superseded by the bill as far as the litigation of the Bonneville Power Administration is concerned.

Whether approached from the viewpoint of the interests of the United States or the interests of the citizen, uniform conduct and disposition are essential in a matter so vital as litigation between the sovereign and the citizen. This uniformity is quite obviously not obtainable when the direction and control of litigation are placed in the hands of and are dependent upon the judgment and discretion of a multitude of officers. The Administrator of the Bonneville Power Administration in the management and control of the officers of the Administration is in effect an officer of the United States since the powers and functions exercised by the Administration are the powers and functions of the United States. The bill authorizes the Administrator to sue or defend "in the name of the United States" and the United States would be bound by the result of the litigation. Were the practice provided in the bill to become general the United States would in all probability be found advocating contradictory positions in litigation presenting identical questions. Moreover, the grant of such broad powers in respect to litigation to the Administrator would undoubtedly be urged as a precedent for the grant of similar powers to other agencies with the ultimate result, if the practice were adopted, of excessive duplication of personnel and expense and a dispersion of responsibility which could only be injurious to the interests of the United States.

I am aware of no reason based upon either the geographical location of the Bonneville Power Administration or the nature of its functions which would justify the risk of such consequences as I have discussed, particularly when both the Congress and the President have so generally placed the conduct and control of the litigation of the United States under the Attorney General and the Department of Justice since the inception of the Government.

Section 6 (b) of the bill requires counsel for the Administrator to furnish the Attorney General with copies of pleadings in all litigation and places the direction

or supervision of litigation involving constitutional questions or appearances in the circuit courts of appeal or the Supreme Court in the Attorney General if in the opinion of the latter such questions or appearances are involved. This provision would not, I believe, eliminate the objections I have mentioned. It is not always apparent at the beginning of litigation that constitutional questions may be raised and nearly every suit instituted in a district court potentially involves an appearance in a circuit court of appeals and possibly even in the Supreme Court. The ambiguity in the words "direction or supervision" might present vexatious questions as to handling even the types of cases intended as between the Attorney General and counsel for the Administrator.

The authority granted to the Administrator by the bill to "compromise and make final settlement of such litigation" would probably make effective direction or supervision by the Attorney General impossible. Litigation cannot be conducted without compromise and settlement whether the litigation is pending in the trial or appellate court, but with the unfettered power vested in the Administrator to compromise or settle, effective direction of the litigation in the appellate courts by the Attorney General would hardly be possible for, no matter how urgent the need for determination of the legal or constitutional question might be, settlement before a determination by the court would prevent such a judicial determination.

Section 1 of the bill removes the Administrator from the auditing control of the General Accounting Office and authorizes the Administrator to make any expenditures necessary to carry out the provisions of the Bonneville Project Act not in violation of any regulation of the Secretary of the Interior, "notwithstanding the provisions of any other law governing the expenditure of public funds."

The Congress has usually required the expenditures of the Executive Departments and agencies to be audited by the General Accounting Office, and this provision in the bill with respect to the expenditure of funds might be construed to render section 355 of the Revised Statutes (40 U. S. C. 255) inapplicable to the acquisitions of lands by the Administration. Section 355 of the Revised Statutes provides that no public funds shall be expended for any lands acquired for the purpose of erecting thereon public buildings or structures of any kind whatever until the title thereto shall have been approved by the Attorney General. The transfer of the function of passing on the validity of title to lands acquired by the United States to an official other than the Attorney General is likewise believed to be an unwarranted deviation from a general, long-established and manifestly sound practice.

Under the provisions of the joint resolution of September 11, 1841 (5 Stat. 468) and of section 355 of the Revised Statutes, as amended (40 U. S. C. 255) the duty of determining the validity of titles to land acquired by the Government has for more than a century been vested in the Attorney General with respect to the vast majority of acquisitions. Section 355 was amended on October 9, 1940 (54 Stat. 1083) in a number of respects, and particularly so as to permit the Attorney General to approve title to "low value lands" subject to such infirmities as in his opinion might, without jeopardizing the interests of the United States, be left for removal by condemnation or other appropriate proceedings if and when necessary. This amendment has proved of great advantage, especially during the period of emergency and war, in saving time and expense to the Government, as well as in permitting speedy payments to landowners. Further, under the Second War Powers Act (56 Stat. 171) designated agencies of the Government are authorized to enter and erect improvements upon land prior to the approval of title by the Attorney General. However, this is emergency legislation intended to apply only during the present emergency. The acquisition of land under the bill does not appear to be of an emergency character justifying any deviation from the general, long-established and sound policy of requiring all titles to Government acquired land to be approved by the Attorney General.

Another advantage of the long-standing policy of examination of title in the Department of Justice has been that the agency of the Government acquiring the land has the independent checking of the title by a disinterested agency. While some relaxation of this process has occurred during the war period, I raise the question whether in ordinary times when more care and attention can be given, it is not a wise policy that this long standing practice be continued. The personnel of the Department of Justice assigned to the acquisition of land by purchase and to the conduct of condemnation cases has developed a trained and expert organization in these specialized fields of law. The existing staff is already in the

field and will continue to conduct condemnation cases and examine titles for other agencies of the Government. The conduct by the Administration of its own condemnation proceedings, and possibly the examination of titles for acquisition by purchase could only result in a duplication of effort and an increase in cost to the Government since the handling of such matters would require little, if any, additional personnel by the Department of Justice.

It is further suggested that the following paragraph be added at the end of section 6 of the bill:

"(c) Nothing herein shall be deemed to constitute a consent on the part of the United States to be sued on a claim sounding in tort, except insofar as is now provided by law."

I have been informed by the Director of the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

FRANCIS BIDDLE, *Attorney General.*

DEPARTMENT OF LABOR,
Washington, May 5, 1945.

Hon. J. J. MANSFIELD,
Chairman, Committee on Rivers and Harbors,
House of Representatives, Washington, D. C.

DEAR CONGRESSMAN MANSFIELD: You have requested the opinion of this Department on the advisability of enacting the provisions of H. R. 2690 and H. R. 2693, duplicate bills to amend the Bonneville Project Act.

These bills would confer upon the Bonneville Power Administrator certain powers in connection with the administration of the Bonneville project, including the power to make, amend, and cancel contracts, to compromise and settle tort and contract claims under the general supervision of the Interior Department, to make expenditures in accordance with Interior Department regulations without the advance approval of the Comptroller General, to obtain commercial-type audits of project accounts, and to conduct routine litigation and be represented by his own attorneys. Provisions are also included which deal with conditions of employment of laborers, mechanics, and workmen employed in connection with construction work or the operation and maintenance of electric facilities. I shall confine my comments to these provisions.

The proviso in section 5 (b), beginning at page 4, line 5, and ending at page 6, line 2, would render the Classification Act of 1923, as amended, and any other Federal laws governing employment and payment of employees of the United States, inapplicable to laborers, mechanics, and workmen employed by the Administrator in connection with construction work, or operation or maintenance of electric facilities, to the extent that the act is in conflict with provisions of collective bargaining agreements between the Administrator and the representatives of such laborers, mechanics, and workmen. Political tests for the employment, retention or promotion of employees would, however, be prohibited. Stipulations in such collective bargaining agreements that employees covered by the agreements shall be entitled to the benefits of the Social Security Act would be given effect by the provision in the bills that where such collective bargaining agreements so provide, services rendered by employees pursuant to the agreements shall be deemed employment within the meaning of sections 1400 through 1432 of the Internal Revenue Code, and that such employees shall not be deemed employees for purposes of the act of May 20, 1920, as amended. A comparable provision would give effect to collective bargaining agreements stipulating that employees employed pursuant thereto shall be entitled to unemployment compensation, by bringing their services within the meaning of "employment" as defined for purposes of sections 1600 through 1611 of the Internal Revenue Code, if contributions upon the basis of the compensation due for such services are required to be paid under a State unemployment compensation act. The Administrator would be authorized to comply with the provisions of the Social Security Act, the Internal Revenue Code, and any applicable State unemployment compensation law on behalf of the United States as the employer of individuals whose services constitute employment under such laws by virtue of this section. He would also be permitted to employ physicians, under agreement and without regard to civil-service laws, to examine persons employed or about to be employed as laborers, mechanics, and workmen on construction, maintenance, or operation of electric facilities.

It is my understanding that the Department of the Interior, under whose supervision the Bonneville project is administered, is of the opinion that the necessity of conforming with civil-service laws and other laws or regulations governing employment or payment of employees of the United States in the employment of laborers, mechanics, and workmen in construction work and the operation and maintenance of facilities places the project at a disadvantage in comparison with privately operated utilities, from the point of view of procurement and utilization of labor of this character. The inquiries I have made support this view. It may also be noted in this connection that the Tennessee Valley Authority, which is an example of successful Government operation of a public utility, is not bound by civil-service laws in the employment of personnel, including laborers and mechanics. I would, accordingly, recommend the enactment of the above-summarized provisions of sections 5 (b) of the proposed bills, which would bring the Bonneville Project Act into closer conformity with the comparable provisions of the Tennessee Valley Authority Act.

I would, however, propose an amendment by way of addition to section 5 (b), in substantially the following language to be inserted between the semicolon on line 14, page 4, and the clause which now follows:

"and such laborers, mechanics, and workmen shall be paid not less than the prevailing rates of wages, in the same manner as if the work upon which they are engaged had been let by contract;".

Such an amendment would, I believe, be desirable and consistent with the changes in the status of these employees which the enactment of section 5 (b) would bring about.

The Bureau of the Budget advises that it would have no objection to the submission of this report.

Very truly yours,

FRANCES PERKINS.

FEDERAL SECURITY AGENCY,
Washington, June 13, 1945.

Hon. JOSEPH J. MANSFIELD,
Chairman, Committee on Rivers and Harbors,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: Further reference is made to your letter of March 22, 1945, addressed to the Social Security Board, requesting an expression of its views regarding H. R. 2690 and H. R. 2693, identical bills to amend the Bonneville Project Act.

The provisions of the bills with which this Agency is concerned would, if any agreement between the Administrator of the Bonneville project and representatives of "laborers, mechanics, and workmen employed in connection with the construction work or the operation and maintenance of electric facilities" should provide that employees performing services pursuant to such agreement are entitled to the benefits of the Social Security Act, make such service "employment" within the meaning of the Social Security Act and the Federal Insurance Contribution Act. Likewise, if such an agreement should provide for unemployment compensation benefits and if contributions with respect to the compensation due for such services should be required of the Administrator under a State unemployment compensation act, such service would be "employment" under the Federal Unemployment Tax Act. If any service should be "employment" under the Social Security Act the persons performing it would not be employees within the meaning of the Civil Service Retirement Act.

This Agency has, as a long-range policy, urged the extension of social security coverage to employment areas not subject to the Social Security Act. We believe, however, that coverage should generally be on a compulsory rather than a voluntary basis. To make this right dependent upon the result of a collective bargaining agreement seems neither equitable nor administratively feasible.

We recommend that the bills be amended to include all employees of the Administrator within the coverage of the Social Security Act. Since the authors of the bills apparently contemplated that a higher level of retirement benefits under the civil service retirement system would apply to some of the employees, a supplementary system providing additional benefits for such employees could be superimposed upon the broad basis of the social security system.

If this should not be acceptable, then consideration might be given to extending the benefits of the Social Security Act to all those employees of the Administrator who would not be included in the civil service retirement system without limiting

such extended coverage to persons in the class of laborers, mechanics, and workmen. Specifically, we believe that some difficulty might be experienced in determining the limits of such a class as that suggested in the bills, especially with respect to persons in supervisory positions although probably most of the latter would be covered under the civil service retirement system. On the other hand, we believe it would be practicable to draw a line between those persons covered under such system and those not so covered.

Regardless of the extent to which old-age and survivors insurance system is made applicable to employees of the Administrator, however, it seems to us highly desirable that the method of extension be that of specific amendment of the Social Security Act. Such a procedure has been followed in making other extensions of coverage and it preserves the advantages of codification of the law.

Under the unemployment compensation provisions of the bills coverage would be extended only to those employees who were able to obtain it through collective bargaining and whose services were performed within the jurisdiction of States which would require the Administrator to make contributions to their unemployment compensation funds. The bills give consent to the States to require the Administrator to contribute with respect to service performed by him under such an agreement. The coverage would not be compulsory and the bills contain no specific provisions regarding the term for which any coverage effected would exist. Again, it is our opinion that coverage should be compulsory. Furthermore, it seems administratively impractical to provide for such coverage on any but a long-range basis.

Employment in four States—Oregon, Washington, Idaho, and Montana—might now or in the near future be involved in the operations of the project. In some of these coverage might be automatically extended by the consent to State taxation contained in the bills because of provisions in the laws of such States covering service for Federal instrumentalities to the extent permitted by the Congress; although it is by no means clear that the States would consider the Administrator to be an "instrumentality" within the meaning of their laws.

We suggest that permission to the States to effect the coverage desired should be patterned on the present section 1606 (b) of the Internal Revenue Code applicable to certain Federal instrumentalities, that the Administration be designated as an "instrumentality" of the United States for this purpose, and that the Administrator be directed to comply with applicable State unemployment compensation laws.

The Bureau of the Budget advises that there is no objection to the submission of this report to your committee.

Sincerely yours,

WATSON B. MILLER,
Acting Administrator.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, April 26, 1945.

Hon. JOSEPH J. MANSFIELD,
Chairman, Committee on Rivers and Harbors,
House of Representatives.

MY DEAR MR. CHAIRMAN: Further reference is made to your letter of March 22, 1945, acknowledged March 23, requesting a report on H. R. 2690 and H. R. 2693, Seventy-ninth Congress, duplicate bills entitled "A bill to amend the Bonneville Project Act."

The general purpose of the proposed legislation appears to be to broaden the authority of the Administrator of the Bonneville project so as to enable him to conduct the business of the project with a freedom similar to that which has been conferred on public corporations carrying on similar or comparable activities. I am not disposed to disagree with such purpose, in view of the fact that the activities of the Bonneville project are chiefly of a commercial or nongovernmental character. However, it is believed that some of the proposed amendments are undesirable or questionable in that, to a considerable extent, they would free the Administrator from requirements and restrictions usually and properly applicable to the conduct of Government business and the safeguarding of public funds.

The final sentence of section 1 of the bills reads:

"* * * Notwithstanding the provisions of any other law governing the expenditure of public funds, the General Accounting Office in the settlement of the accounts of the Administrator shall not disallow credit for nor withhold funds because of any expenditure, not in violation of any regulation which the Secretary

of the Interior may have prescribed, which the Administrator shall determine to have been necessary to carry out the provisions of this Act."

Similar authority has been granted the Board of Directors of the Tennessee Valley Authority by the act of November 21, 1941 (55 Stat. 775), under which this Office has been observing and recording the activities of the Board to determine whether such authority is necessary and in the interest of the Government or whether some modification thereof may be desirable. But I do not believe that such authority should be extended to other Government agencies at this time or that the General Accounting Office should be expressly prohibited by statute from withholding funds, or disallowing credit in the accounts of accountable officers by reason of expenditures considered to have been improper. It is recommended, therefore, that the said final sentence of section 1, quoted above, be eliminated.

In section 5 of the pending bills, amending section 10 of the act, it is provided, in part:

"* * * *Provided, however,* That to the extent that the civil-service laws, Classification Act, and other laws or regulations governing the employment or payment of employees of the United States are inconsistent with agreements made by the Administrator with representatives of laborers, mechanics, and workmen employed in connection with the construction work or the operation and maintenance of electric facilities, the said Act, laws, and regulations shall not apply to matters covered by such agreements; * * * *Provided, further,* That so long as any such contract provides that employees performing services for the Administrator pursuant thereto shall be entitled to the benefits of the Social Security Act, such services shall be deemed to be 'employment' within the meaning of the Social Security Act and sections 1400 through 1432 of the Internal Revenue Code, and such employees, if they otherwise would be so classified, shall not be deemed to be employees within the meaning of the Act of May 22, 1920 (41 Stat. 614), and all Acts amendatory thereof or supplementary thereto and so long as any such contract provides that employees performing services for the Administrator pursuant thereto shall be entitled to unemployment compensation benefits, such services shall be deemed to be 'employment' within the meaning of sections 1600 through 1611 of the Internal Revenue Code if contributions upon the basis of the compensation due for such services are required to be paid under a State unemployment compensation act, and consent hereby is given to the States to require the Administrator to make payments to State unemployment compensation funds for services performed for him under any such contract; the Administrator is authorized to comply with the provisions of the Social Security Act, the Internal Revenue Code, and any applicable State unemployment compensation act on behalf of the United States as the employer of individuals whose service constitutes employment under such act, code, and laws by reason of this section. * * *"

The quoted provision would be a new departure in Federal legislation and would set a precedent of far-reaching consequences in Government employment. Administrative collective bargaining with employee representatives would be substituted for legislative control of rates of compensation and other Government employee relations. It may be observed that the Tennessee Valley Authority Act contains no such provision. (See 16 U. S. C. 831b.)

Section 6 of the bills, amending section 12 of the act, provides in part:

"(b) The Administrator may, in the name of the United States, bring such suits at law or in equity as in his judgment may be necessary to carry out the purposes of this Act; and he shall be represented in the prosecution and defense of all litigation, including condemnation proceedings, affecting the status or operation of the Bonneville project by his attorneys: *Provided, however,* That such attorneys shall supply the Attorney General with copies of the pleadings in all such cases and that the handling of litigation which, in the Attorney General's opinion, involves interpretation of the Constitution of the United States or which involves appearance in any United States circuit court of appeals or the United States Supreme Court shall be subject to the Attorney General's direction or supervision. The Administrator may compromise and make final settlement of such litigation and pay the amount due under any compromise or judgment. * * *"

The quoted provision that the Administrator shall be represented by his attorneys in all litigation, together with the provisions relating to the settlement of claims (see sec. 1 and subsec. (a) in sec. 6 of the subject bills), would result largely in a duplication in the Department of the Interior of the regular, established functions of the Department of Justice and the General Accounting Office with

respect to defending, prosecuting, and settling suits and claims by and against the Government. It may be that the nature of the contemplated activities of the Bonneville project would justify some such duplication of these functions.

It is noted, too, that the above-quoted subsection (b) of section 6 of the bill would authorize the Administrator to pay judgments. This would be contrary to the established general procedure of reporting judgments to the Congress for appropriations, thus keeping such matters under legislative scrutiny.

Other than as indicated above, I have no recommendations to make with respect to enactment of the bills.

Sincerely yours,

LINDSAY C. WARREN,
Comptroller General of the United States.

UNITED STATES CIVIL SERVICE COMMISSION,
Washington, D. C., June 15, 1945.

Hon. J. J. MANSFIELD,
Chairman, Committee on Rivers and Harbors,
House of Representatives.

DEAR MR. MANSFIELD: Further reference is made to your letter of March 22, requesting a report of the Commission's views regarding H. R. 2690 and H. R. 2693, duplicate bills to amend the Bonneville Project Act.

The following personnel provisions appear in these bills:

"SEC. 5. Section 2 (a) of the said Act is hereby amended by striking the language inserted by section 1 of the Act of March 6, 1940 (54 Stat. 47); and section 10 of the said Act is hereby amended to read as follows:

"'(a) The Secretary of the Interior shall appoint, without regard to the civil-service laws, an Assistant Administrator, chief engineer, and general counsel and shall fix the compensation of each in accordance with the Classification Act of 1923, as amended. The Assistant Administrator shall perform the duties and exercise the powers of the Administrator, in the event of the absence or sickness of the Administrator until such absence or sickness shall cease, and in the event of a vacancy in the office of Administrator, until a successor is appointed.

"'(b) The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are authorized to appoint, subject to the civil-service laws, such officers and employees as may be necessary to carry out the purposes of this Act, the appointment of whom is not otherwise provided for, and to fix their compensation in accordance with the Classification Act of 1923, as amended: *Provided, however*, That to the extent that the civil-service laws, Classification Act, and other laws or regulations governing the employment or payment of employees of the United States are inconsistent with agreements made by the Administrator with representatives of laborers, mechanics, and workmen employed in connection with the construction work or the operation and maintenance of electric facilities, the said Act, laws, and regulations shall not apply to matters covered by such agreements; but in connection with the selection, promotion, or retention of any employee, no political test or qualifications shall be permitted or given consideration, but all such actions shall be taken on the basis of the employee's merit and efficiency: *Provided further*, That so long as any such contract provides that employees performing services for the Administrator pursuant thereto shall be entitled to the benefits of the Social Security Act, such services shall be deemed to be "employment" within the meaning of the Social Security Act and sections 1400 through 1432 of the Internal Revenue Code, and such employees, if they otherwise would be so classified, shall not be deemed to be employees within the meaning of the Act of May 22, 1920 (41 Stat. 614), and all Acts amendatory thereof or supplementary thereto, and so long as any such contract provides that employees performing services for the Administrator pursuant thereto shall be entitled to unemployment compensation benefits, such services shall be deemed to be "employment" within the meaning of sections 1600 through 1611 of the Internal Revenue Code if contributions upon the basis of the compensation due for such services are required to be paid under a State unemployment compensation act, and consent hereby is given to the States to require the Administrator to make payments to State unemployment compensation funds for services performed for him under any such contract; the Administrator is authorized to comply with the provisions of the Social Security Act, the Internal Revenue Code, and any applicable State unemployment compensation act on behalf of the United States as the employer of individuals whose service constitutes employment under such Act,

code, and laws by reason of this section. The Administrator is further authorized to employ physicians, under agreement and without regard to civil-service laws or regulations, to make physical examinations of employees or prospective employees who are or may become laborers, mechanics, and workmen engaged on construction work or the operation and maintenance of electrical facilities. The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are also authorized to appoint, without regard to the civil-service laws, such experts as may be necessary for carrying out the functions entrusted to them under this Act and to fix the compensation of each of such experts without regard to the Classification Act of 1923, as amended, but at not to exceed $7,500 per annum.

" '(c) The Administrator may accept and utilize such voluntary and uncompensated services and with the consent of the agency concerned may utilize such officers, employees, or equipment of any agency of the Federal, State, or local governments which he finds helpful in carrying out the purposes of this Act; in connection with the utilization of such services, reasonable payments may be allowed for necessary travel and other expenses.' "

With regard to section 5 (a), the only change this amendment would make in existing law would be to require that the compensation of the Assistant Administrator, chief engineer, and general counsel be fixed in accordance with the Classification Act of 1923, as amended. The law at present requires that the compensation of each be fixed at not exceeding $7,500 per annum. The Commission sees no objection to this change.

The first proviso of section 5 (b) would change the methods and conditions of employment and payment of laborers, mechanics, and workmen employed in connection with the construction work or the operation and maintenance of electric facilities. At present the employment of these workmen is subject to civil-service requirements, and their payment is governed by the laws and decisions of the Comptroller General which govern employments paid from appropriated Federal funds. The proposed change would permit these matters to be governed by agreements with representatives of the employees.

It is understood that the principal reason for the proposed change is the belief of the Bonneville Administration that it should be able to follow pay procedures and practices which are followed by private utility companies under agreements with unions. Private power companies, for example, are able to pay double rates when employees are called back for emergency service, and pay premium rates for Sunday and holiday work even when those days occur during a regular tour of duty, which is not permissible in the Federal service without specific statutory authority.

If it is considered desirable to afford the Bonneville Administration discretion to compete with private utility companies with regard to pay of workmen, the Commission believes it would be preferable to accomplish this by a provision relating to pay alone, without excepting their employment from civil-service requirements. No reason appears for excepting the employment of such workers from competition under the Civil Service Act. If favorable consideration is to be given to the exception from pay requirements, it could be accomplished by substituting the following language for the first proviso to section 5 (b):

"The Administrator may fix the compensation of laborers, mechanics, and workmen employed in connection with construction work or the operation and maintenance of electrical facilities (hereinafter called 'laborers, mechanics, and workmen') in accordance with the practices of comparable industries in the locality."

The second proviso of section 5 (b) would permit the employees concerned to be removed from the purview of the Civil Service Retirement Act and become subject to the retirement and unemployment compensation provisions of the social-security system. It is doubtful that the employees would consider it advantageous to be removed from the coverage of the Civil Service Retirement Act.

Section 5 would also authorize the employment of physicians by agreement without regard to civil-service laws or regulations, to make physical examinations of such employees and prospective employees. The employment of physicians for this purpose would probably not be full time or extensive. When such employments are subject to civil-service requirements, it is customary, when it is

found to be impracticable to recruit for the positions through civil-service procedures, to except them from competition through inclusion in schedule A or B of the Civil Service Rules by Executive order. As a rule, it is believed preferable not to make a statutory exception. However, the Commission does not feel required to object strongly to this particular provision.

The exception of experts from civil-service requirements is already contained in the Bonneville Project Act. Although the Commission believes that such statutory exceptions are undesirable, this exception would not constitute a change in existing law.

In accordance with established procedure the Commission has been informed by the Bureau of the Budget that there would be no objection to the presentation of this report to your committee.

By direction of the Commission:

Sincerely yours,

HARRY B. MITCHELL, *President.*

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AMENDMENT OF THE BONNEVILLE PROJECT ACT

Mr. CORDON. Mr. President, I ask unanimous consent for the present consideration of Calendar No. 468, House bill 2690, to amend the Bonneville Project Act.

Mr. HILL. Mr. President, I not only have no objection to the bill, but I very much hope it may be passed.

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

There being no objection, the bill (H. R. 2690) to amend the Bonneville Project Act, was considered, ordered to a third reading, read the third time, and passed.

[PUBLIC LAW 201—79TH CONGRESS]

[CHAPTER 433—1ST SESSION]

[H. R. 2690]

AN ACT

To amend the Bonneville Project Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 (f) of the Act of August 20, 1937 (50 Stat. 731), as amended by the Act of March 6, 1940 (54 Stat. 47), is hereby amended to read as follows:

"Subject only to the provisions of this Act, the Administrator is authorized to enter into such contracts, agreements, and arrangements, including the amendment, modification, adjustment, or cancelation thereof and the compromise or final settlement of any claim arising thereunder, and to make such expenditures, upon such terms and conditions and in such manner as he may deem necessary."

SEC. 2. Section 5 (a) of the said Act is hereby amended by inserting before the period at the end of the first sentence the words "and for the disposition of electric energy to Federal agencies".

SEC. 3. Section 6 of the said Act is hereby amended by changing the period at the end of the first sentence to a semicolon and adding the following: "and such rates and charges shall also be applicable to dispositions of electric energy to Federal agencies."

SEC. 4. Section 9 (a) of the said Act is hereby amended by changing the period to a comma and adding: "and in the maintenance of such accounts, appropriate obligations shall be established for annual and sick leave of absence as earned. The Administrator shall, after the close of each fiscal year, obtain an independent commercial-type audit of such accounts. The forms, systems, and procedures prescribed by the Comptroller General for the Administrator's appropriation and fund accounting shall be in accordance with the requirements of the Federal Water Power Act with respect to accounts of electric operations of public utilities and the regulations of the Federal Power Commission pursuant thereto."

SEC. 5. Section 2 (a) of the said Act is hereby amended by striking the language inserted by section 1 of the Act of March 6, 1940 (54 Stat. 47); and section 10 of the said Act is hereby amended to read as follows:

"(a) The Secretary of the Interior shall appoint, without regard to the civil-service laws, an Assistant Administrator, chief engineer, and general counsel and shall fix the compensation of each in accordance with the Classification Act of 1923, as amended. The Assistant Administrator shall perform the duties and exercise the powers of the Administrator, in the event of the absence or sickness of the Administrator until such absence or sickness shall cease and in the event of a vacancy in the office of Administrator until a successor is appointed.

"(b) The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are authorized to appoint, subject

to the civil-service laws, such officers and employees as may be necessary to carry out the purposes of this Act, the appointment of whom is not otherwise provided for, and to fix their compensation in accordance with the Classification Act of 1923, as amended. The Administrator may employ laborers, mechanics, and workmen in connection with construction work or the operation and maintenance of electrical facilities (hereinafter called 'laborers, mechanics, and workmen'), subject to the civil-service laws, and fix their compensation without regard to the Classification Act of 1923, as amended, and any other laws, rules, or regulations relating to the payment of employees of the United States except the Act of May 29, 1930 (46 Stat. 468), as amended, to the extent that it otherwise is applicable. The Administrator is further authorized to employ physicians, under agreement and without regard to civil-service laws or regulations, to make physical examinations of employees or prospective employees who are or may become laborers, mechanics, and workmen. The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are also authorized to appoint, without regard to the civil-service laws, such experts as may be necessary for carrying out the functions entrusted to them under this Act and to fix the compensation of each of such experts without regard to the Classification Act of 1923, as amended, but at not to exceed $7,500 per annum.

"(c) The Administrator may accept and utilize such voluntary and uncompensated services and with the consent of the agency concerned may utilize such officers, employees, or equipment of any agency of the Federal, State, or local governments which he finds helpful in carrying out the purposes of this Act; in connection with the utilization of such services, reasonable payments may be allowed for necessary travel and other expenses."

SEC. 6. Section 12 of the said Act is hereby amended to read as follows:

"(a) The Administrator is hereby authorized to determine, settle, compromise, and pay claims and demands against the United States which are not in excess of $1,000 and are presented to the Administrator in writing within one year from the date of accrual thereof, for any losses, injuries, or damages to persons or property, or for the death of persons, resulting from acts or omissions of employees acting within the scope of their employment pursuant to this Act. The Administrator is also authorized to determine, compromise, and settle any claims and demands of the United States for any losses, injuries, or damages to property under the Administrator's control, against other persons or public or private corporations. The Administrator's determination, compromise, settlement, or payment of any of the claims referred to in this subsection shall be final and conclusive upon all officers of the Government, notwithstanding the provisions of any other Act to the contrary. When claims presented to the Administrator under this subsection arise, in whole or in part, out of any damage done to private property, the Administrator may repair all or any part of such damage in lieu of making such payments.

"(b) The Administrator may, in the name of the United States, bring such suits at law or in equity as in his judgment may be necessary to carry out the purposes of this Act; and he shall be represented

in the prosecution and defense of all litigation, including condemnation proceedings, affecting the status or operation of the Bonneville project by his attorneys: *Provided, however*, That such attorneys shall supply the Attorney General with copies of the pleadings in all such cases and that the handling of litigation which, in the Attorney General's opinion, involves interpretation of the Constitution of the United States or which involves appearance in any United States circuit court of appeals or the United States Supreme Court shall be subject to the Attorney General's direction or supervision. The Administrator may compromise and make final settlement of such litigation and pay the amount due under any compromise or judgment. Complaints in condemnation proceedings permitted by section 2 (c) and 2 (d) of this Act shall be signed, verified, and filed by the Administrator."

SEC. 7. (a) Section 1426 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"(j) CERTAIN EMPLOYEES OF BONNEVILLE POWER ADMINISTRATOR.—The term 'employment' shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator, but shall not include any service performed by such a laborer, mechanic, or workman, to whom the Act of May 29, 1930 (46 Stat. 468), as amended, applies. The term 'wages' means, with respect to service which constitutes employment by reason of this subsection, such amount of remuneration as is determined (subject to the provisions of this section) by the Administrator to be paid for such service. The Administrator is authorized and directed to comply with the provisions of the internal revenue laws on behalf of the United States as the employer of individuals whose service constitutes employment by reason of this subsection."

(b) Section 209 of the Social Security Act, as amended, is amended by adding at the end thereof the following new subsection:

"(p) (1) The term 'employment' shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator, but shall not include any service performed by such a laborer, mechanic, or workman, to whom the Act of May 29, 1930 (46 Stat. 468), as amended, applies.

"(2) The Social Security Board shall not make determinations as to whether an individual has performed services which are employment by reason of this subsection, the periods of such services, the amounts of remuneration for such services which constitutes 'wages' under the provisions of this section, or the periods in which or for which such wages were paid, but shall accept the determinations with respect thereto of the Administrator, and such agents as he may designate, as evidenced by returns filed by the Administrator as an employer

pursuant to section 1426 (j) of the Internal Revenue Code and certifications made pursuant to this subsection. Such determinations shall be final and conclusive.

"(3) The Administrator is authorized and directed, upon written request of the Social Security Board, to make certification to it with respect to any matter determinable for the Board by the Administrator under this subsection, which the Board finds necessary in administering this title."

(c) Section 1606 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"(e) The legislature of any State may, with respect to service to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Bonneville Power Administrator (hereinafter called the Administrator), require the Administrator, who for the purposes of this subsection is designated an instrumentality of the United States, and any such employee, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Board under section 1603 and to comply otherwise with such law. Such permission is subject to the conditions imposed by subsection (b) of this section upon permission to State legislatures to require contributions from instrumentalities of the United States. The Administrator is authorized and directed to comply with the provisions of any applicable State unemployment compensation law on behalf of the United States as the employer of individuals whose service constitutes employment under such law by reason of this subsection."

(d) Section 1607 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"(m) CERTAIN EMPLOYEES OF BONNEVILLE POWER ADMINISTRATOR.—The term 'employment' shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee performing service for the Administrator. The term 'wages' means, with respect to service which constitutes employment by reason of this subsection, such amount of remuneration as is determined (subject to the provisions of this section) by the Administrator to be paid for such service. The Administrator is authorized and directed to comply with the provisions of the internal revenue laws on behalf of the United States as the employer of individuals whose service constitutes employment by reason of this subsection."

Approved October 23, 1945.

79TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 1106

THE REVENUE BILL OF 1945

OCTOBER 9, 1945.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DOUGHTON of North Carolina, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H. R. 4309]

The Committee on Ways and Means, to whom was referred the bill (H. R. 4309) to reduce taxation and for other purposes, having had the same under consideration, report it back to the House without amendment and unanimously recommend that the bill do pass.

GENERAL STATEMENT

The bill has been designed to aid both individuals and businesses in the difficult period of transition from war to peace. To accomplish this your committee believes that it is necessary to reduce the high wartime tax rates to provide incentives for business to expand and to increase consumer purchasing power. Certain expenditures necessary after the end of a war, however, will keep Federal revenue requirements at a high level during 1946 if a large deficit is to be avoided. Federal expenditures for the fiscal year 1946 have been estimated by the Bureau of the Budget at 66.4 billion dollars and the deficit for fiscal year 1946 at 30.4 billion dollars. Federal expenditures for calendar year 1946 are expected to be much lower, but it is anticipated that the deficit will still be sizable. In view of the probable extent of the deficit in 1946 it is necessary to limit the over-all reduction in taxes. Your committee believes that with only a limited tax reduction possible in 1946, moderate tax relief for all groups would be preferable to the complete elimination of a few wartime taxes affecting only a relatively small number of taxpayers.

SUMMARY OF CHANGES IN EXISTING LAW

The bill makes the following changes in existing law:

Individual income taxes

1. The present surtax exemptions are made applicable to the normal tax. Accordingly the normal tax exemption of $500 for each income recipient is eliminated, and there are allowed in its place exemptions

of $500 each for the taxpayer, his spouse, and each of his dependents. This change will be effective on and after January 1, 1946.

2. The rate applicable to each surtax bracket is reduced by four percentage points effective on and after January 1, 1946. The combined normal tax and surtax starting rate thus becomes 19 percent instead of the present 23 percent.

3. The surtax rates are further revised, effective January 1, 1946, so that generally the reduction of normal tax and surtax combined for any taxpayer will not be less than 10 percent.

Corporate taxes

1. The excess-profits tax rate is set at 60 percent for the calendar year 1946. The present excess-profits tax net rate is 85½ percent.

2. The entire excess-profits tax is repealed, effective December 31, 1946.

3. The corporate surtax rate is reduced 4 percentage points as of January 1, 1946. This results in a minimum combined corporate normal and surtax rate of 21 percent in place of the present 25 percent and a maximum combined rate of 36 percent in place of the present 40 percent.

4. The capital stock tax is repealed beginning with the capital stock tax payable on July 31, 1946. The declared-value excess-profits tax beginning with the related year is also repealed.

Excise taxes

1. The excise "war tax rates" are reduced to the 1942 rates effective July 1, 1946. These are the "war tax rates" imposed by title III of the Revenue Act of 1943 to be effective until 6 months after the termination of hostilities as proclaimed by the President or specified in a concurrent resolution of Congress.

2. Tax refunds, to the extent of the excise tax rate reductions, are to be made on all floor stocks of distilled spirits, wines, and fermented malt liquors, held for sale or use in production on July 1, 1946, on which the wartime excise tax rates had been paid. Similar refunds are to be made with respect to the reduction in the manufacturers' excise tax on electric light bulbs.

3. The tax on the use of motor vehicles and boats is repealed, effective July 1, 1946.

Employment taxes

1. Employment taxes for the old-age and survivors insurance program are continued through 1946 at the present rate of 1 percent on wages paid by employers and 1 percent on wages received by employees, instead of increasing in 1946, as provided by present law, to 2½ percent for each of these groups.

Summary of Estimated Revenue Effect of Tax Reductions

The estimated tax liabilities and reductions under the committee bill are shown in table I. Total tax liabilities under the committee bill for 1946 are estimated at $27,140,000,000—$5,350,000,000 less than the estimate for existing law in 1946. Of this $5,350,000,000 reduction, $2,627,000,000 is attributable to reductions in individual income taxes; $1,888,000,000 to reductions in corporate taxes; $535,000,000 to the return of certain excise taxes to their 1942 rates; $140,000,000 to the repeal of the tax on the use of motor vehicles and

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General Discussion of Recommended Employment Tax Legislation

Under your committee bill employment taxes levied on employers and employees, to finance the old-age and survivors insurance program, are continued through 1946 at the present rates of 1 percent on wages paid by employers and 1 percent on wages received by

employees. Present law provides that the rates on each of these groups be increased to 2½ percent effective January 1, 1946.

Your committee at the present time, with the aid of a group of experts, is studying the social-security program, particularly with reference to its financing. It is believed that it would be desirable to await the completion of this study before making any changes in employment tax rates.

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TITLE IV—SOCIAL SECURITY TAXES

SECTION 401. AUTOMATIC INCREASE IN 1946 RATE NOT TO APPLY

This section postpones the increase in the rates of the taxes imposed by the Federal Insurance Contributions Act (subchapter A of chapter 9 of the code). Under existing law, the rate of the income tax on employees imposed by section 1400 increases from 1 to 2½ percent on January 1, 1946; and the rate of the excise tax on employers of one or more employees imposed by section 1410 also increases from 1 to 2½ percent on such date. In the case of each such tax the amendment provides that the 1 percent rate shall remain in force through the calendar year 1946, and that the 2½ percent rate shall be applicable to wages paid and received during the calendar years 1947 and 1948.

Union Calendar No. 325

79TH CONGRESS
1ST SESSION

H. R. 4309

[Report No. 1106]

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 1945

Mr. DOUGHTON of North Carolina introduced the following bill; which was referred to the Committee on Ways and Means

OCTOBER 9, 1945

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To reduce taxation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) SHORT TITLE.—This Act may be cited as the "Revenue Act of 1945".

(b) ACT AMENDATORY OF INTERNAL REVENUE CODE.—Except as otherwise expressly provided, wherever in this Act an amendment is expressed in terms of an amendment to a chapter, subchapter, title, supplement, section, subsection, subdivision, paragraph, subparagraph, or clause, the reference shall be considered to be made to a provision of the Internal Revenue Code.

person shall be entitled to refund under subsection (a) unless he has in his possession such evidence of the inventories with respect to which he has made the reimbursements described in subsection (a) as the regulations under subsection (a) prescribe.

"(c) All provisions of law, including penalties, applicable in respect of the tax imposed under section 3406 (a) (10) shall, insofar as applicable and not inconsistent with this section, be applicable in respect of the refunds provided for in this section to the same extent as if such refunds constituted refunds of such taxes."

SEC. 305. CONTINUATION OF POWER OF SECRETARY OF THE TREASURY TO AUTHORIZE GOVERNMENT EXEMPTION FROM CERTAIN EXCISE TAXES.

Section 307 (c) of the Revenue Act of 1943 (relating to power of Secretary with respect to Government exemption from certain excise taxes) is amended by striking out the last sentence thereof.

TITLE IV—SOCIAL SECURITY TAXES

SEC. 401. AUTOMATIC INCREASE IN 1946 RATE NOT TO APPLY.

(a) Clauses (1) and (2) of section 1400 of the Federal Insurance Contributions Act (Internal Revenue Code, sec. 1400) are amended to read as follows:

"(1) With respect to wages received during the

calendar years 1939, 1940, 1941, 1942, 1943, 1944, 1945, and 1946, the rate shall be 1 per centum.

"(2) With respect to wages received during the calendar years 1947 and 1948, the rate shall be 2½ per centum."

(b) Clauses (1) and (2) of section 1410 of such Act (Internal Revenue Code, sec. 1410) are amended to read as follows:

"(1) With respect to wages paid during the calendar years 1939, 1940, 1941, 1942, 1943, 1944, 1945, and 1946, the rate shall be 1 per centum.

"(2) With respect to wages paid during the calendar years 1947 and 1948, the rate shall be 2½ per centum."

Union Calendar No. 325

79TH CONGRESS
1ST SESSION

H. R. 4309

[Report No. 1106]

A BILL

To reduce taxation, and for other purposes.

By Mr. DOUGHTON of North Carolina

OCTOBER 9, 1945
Referred to the Committee on Ways and Means

OCTOBER 9, 1945
Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Union Calendar No. 325

79TH CONGRESS
1ST SESSION

H. R. 4309

[Report No. 1106]

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 1945

Mr. DOUGHTON of North Carolina introduced the following bill; which was referred to the Committee on Ways and Means

OCTOBER 9, 1945

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To reduce taxation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) SHORT TITLE.—This Act may be cited as the "Revenue Act of 1945".

(b) ACT AMENDATORY OF INTERNAL REVENUE CODE.—Except as otherwise expressly provided, wherever in this Act an amendment is expressed in terms of an amendment to a chapter, subchapter, title, supplement, section, subsection, subdivision, paragraph, subparagraph, or clause, the reference shall be considered to be made to a provision of the Internal Revenue Code.

person shall be entitled to refund under subsection (a) unless he has in his possession such evidence of the inventories with respect to which he has made the reimbursements described in subsection (a) as the regulations under subsection (a) prescribe.

"(c) All provisions of law, including penalties, applicable in respect of the tax imposed under section 3406 (a) (10) shall, insofar as applicable and not inconsistent with this section, be applicable in respect of the refunds provided for in this section to the same extent as if such refunds constituted refunds of such taxes."

SEC. 305. CONTINUATION OF POWER OF SECRETARY OF THE TREASURY TO AUTHORIZE GOVERNMENT EXEMPTION FROM CERTAIN EXCISE TAXES.

Section 307 (c) of the Revenue Act of 1943 (relating to power of Secretary with respect to Government exemption from certain excise taxes) is amended by striking out the last sentence thereof.

TITLE IV—SOCIAL SECURITY TAXES

SEC. 401. AUTOMATIC INCREASE IN 1946 RATE NOT TO APPLY.

(a) Clauses (1) and (2) of section 1400 of the Federal Insurance Contributions Act (Internal Revenue Code, sec. 1400) are amended to read as follows:

"(1) With respect to wages received during the

calendar years 1939, 1940, 1941, 1942, 1943, 1944, 1945, and 1946, the rate shall be 1 per centum.

"(2) With respect to wages received during the calendar years 1947 and 1948, the rate shall be 2½ per centum."

(b) Clauses (1) and (2) of section 1410 of such Act (Internal Revenue Code, sec. 1410) are amended to read as follows:

"(1) With respect to wages paid during the calendar years 1939, 1940, 1941, 1942, 1943, 1944, 1945, and 1946, the rate shall be 1 per centum.

"(2) With respect to wages paid during the calendar years 1947 and 1948, the rate shall be 2½ per centum."

Union Calendar No. 325

79TH CONGRESS
1ST SESSION

H. R. 4309

[Report No. 1106]

A BILL

To reduce taxation, and for other purposes.

By Mr. DOUGHTON of North Carolina

OCTOBER 9, 1945
Referred to the Committee on Ways and Means

OCTOBER 9, 1945
Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Calendar No. 658

79TH CONGRESS, 1st Session | SENATE | REPORT No. 655

THE REVENUE BILL OF 1945

OCTOBER 23 (legislative day, OCTOBER 22), 1945.—Ordered to be printed

Mr. GEORGE, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 4309]

The Committee on Finance, to whom was referred the bill (H. R. 4309) to reduce taxation, and for other purposes, having had the same under consideration, report favorably thereon, with certain amendments, and, as amended, recommend that the bill do pass.

GENERAL STATEMENT

This bill has been designed to aid both individuals and businesses in the difficult period of transition from war to peace. Your committee concurs with the Ways and Means Committee of the House in believing that to accomplish this objective it is necessary to reduce the high wartime tax rates in order to provide incentives for business to expand and to increase consumer purchasing power. Certain expenditures necessary after the end of a war, however, will keep Federal revenue requirements at a high level during 1946 if a large deficit is to be avoided. Federal expenditures for the fiscal year 1946 have been estimated by the Bureau of the Budget at 66.4 billion dollars and the deficit for fiscal year 1946 at 30.4 billion dollars. Although Federal expenditures for the calendar year 1946 are expected to be much lower, it is anticipated that the deficit will still be sizable. In view of the probable extent of the deficit in 1946 it is necessary to limit the over-all reduction in taxes. Your committee believes that with only a limited tax reduction possible in 1946, attention should be directed toward removing or reducing those taxes which especially hamper the process of reconverting our economy from a war to a peacetime basis.

SUMMARY OF CHANGES IN EXISTING LAW

H. R. 4309, with the amendments proposed by your committee, makes the following changes in existing law:

Individual income taxes

1. Your committee concurs with the House in making present surtax exemptions applicable to the normal tax. Accordingly the

normal tax exemption of $500 for each income recipient is replaced by exemptions of $500 each for the taxpayer, his spouse, and each of his dependents. This change will be effective on and after January 1, 1946.

2. The rate applicable to each surtax bracket is reduced by three percentage points effective on and after January 1, 1946.

3. The combined normal tax and surtax as computed under the proposed exemptions and rates is reduced further by 5 percent of the tax. Thus the combined normal tax and surtax rates begin, in effect, with a starting rate of 19 percent and reach a top rate of 86.45 percent. However, the present combined limit on normal tax and surtax of 90 percent of net income is reduced to 85.5 percent.

Application of individual income taxes to members of the armed forces

1. All compensation received during any taxable year, beginning after December 31, 1940, and before the termination of the war, for service in the military or naval forces of the United States by an individual below the grade of a commissioned officer is excluded from income. All enlisted personnel would have no income-tax liability with respect to service pay, and would be relieved of filing returns, with respect to such pay.

2. The bill extends the time for paying taxes attributable to service pay of commissioned officers; the tax if so deferred, to be paid in 12 equal quarterly installments, without interest.

3. Similar extension of time for payment is provided in the case of taxes attributable to preservice earned income for 1940 or 1941, which became due after the taxpayer's entry into the service.

Corporate taxes

1. The excess-profits tax is repealed, effective January 1, 1946.

2. The 2-year carry-back of the unused excess-profits credit is extended for 1 year beyond the date of the repeal of the excess-profits tax. Thus an unused excess-profits credit arising in 1946 may b carried back to reduce the excess-profits taxes of 1944 or 1945.

3. A new schedule of corporate normal tax and surtax rates and brackets is provided for small corporations with incomes under $60,000, effective on and after January 1, 1946. The rates and brackets are as follows:

Income	Normal tax rate on income in bracket	Surtax rate on income in bracket	Combined normal tax and surtax rate on income in bracket
	Percent	*Percent*	*Percent*
Not over $10,000	15	5	20
Over $10,000 but not over $20,000	18	9	27
Over $20,000 but not over $25,000	19	10	29
Over $25,000 but not over $60,000	29	22	51

4. Your committee concurs with the House in repealing the capital stock tax beginning with the tax payable on July 31, 1946, and the declared-value excess-profits tax beginning with the related taxable year.

Excise taxes

1. With respect to the excise "war tax rates" your committee leaves untouched the provisions of existing law which provide that such

rates will be reduced to the 1942 levels approximately 6 months after the termination of hostilities as proclaimed by the President or as specified in a concurrent resolution of Congress. However, when these excises are thus reduced, tax refunds to the extent of the excise tax rate reductions are to be made on floor stocks of distilled spirits, wines, fermented malt liquors, and electric-light bulbs.

2. Your committee concurs with the House in repealing the tax on the use of motor vehicles and boats, effective July 1, 1946.

Employment taxes

1. Your committee concurs with the House in continuing the employment taxes for the old-age and survivors insurance program through 1946 at the present rate of 1 percent on wages paid by employers and 1 percent on wages received by employees, instead of increasing the rates in 1946, as provided by present law, to 2½ percent for each of these groups.

Summary of Estimated Revenue Effect of Tax Reductions

Estimated tax liabilities for 1946 and 1947 under the present law, the House bill and your committee's bill are shown in table 1. The tax-liability reductions in 1946 and 1947 from present law arising from the House bill and from your committee's bill are shown in table 2. Total tax liabilities under your committee's bill for 1946 are estimated at $26,857,000,000—$5,633,000,000 less than under existing law, and $283,000,000 less than under the House bill.

If general economic conditions remain the same in 1947 as estimated for 1946, there would be no further tax reductions arising from your committee's bill. However, the tax liabilities under the House bill would be further decreased by $1,902,000,000. Thus, if the total reductions in tax liabilities in 1946 and 1947 are considered, the reduction under the House bill for the 2 years exceeds that under your committee's bill by $1,336,000,000. This does not take into consideration the possible automatic reduction in excise taxes under existing law in 1946 or 1947.

Of the $5,633,000,000 tax reduction arising from your committee's bill in 1946, $2,644,000,000 is attributable to reductions in the individual income taxes; $2,555,000,000, to the repeal of the excess-profits tax; $294,000,000 to the reduction of other corporate taxes; and $140,000,000 to the repeal of the use tax on motor vehicles and boats.

The additional loss in 1946 under your committee's bill over that of the House bill can be largely accounted for by the fact that your committee's bill repeals the excess-profits tax in 1946 whereas the House bill merely reduces the rate. If this were the only difference in the two bills, the loss under your committee's bill in 1946 would exceed that of the House bill by $1,255,000,000. However, nearly $1,000,000,000 of this amount is offset under your committee's bill by smaller reductions in other corporate taxes and by not reducing wartime excise tax rates. Tax liability losses in 1946 attributable to the individual income tax are approximately the same under your committee's bill and the House bill.

The reduction in tax liabilities in the House bill in 1947 exceeds that of the bill of your committee by $1,619,000,000. This can be accounted for largely by the repeal of the excess-profits tax in 1947 under the House bill and by the full-year effect of the reduction in wartime excise tax rates.

General Discussion of Recommended Employment Tax Legislation

Your committee concurs with the House in continuing employment taxes for the old-age and survivors insurance program through 1946 at the present rates of 1 percent on wages paid by employers and 1 percent on wages received by employees, instead of increasing the rates in 1946, as provided by present law, to 2½ percent for each of these groups.

It is believed that it is desirable to study further the financing of the old-age and survivors insurance program before making any changes in employment tax rates.

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TITLE IV—SOCIAL SECURITY TAXES

SECTION 401. AUTOMATIC INCREASE IN 1946 RATE NOT TO APPLY

This section, which is the same as section 401 of the House bill, postpones the increase in the rates of the taxes imposed by the Federal Insurance Contributions Act (subchapter A of chapter 9 of the code). Under existing law, the rate of the income tax on employees imposed by section 1400 increases from 1 to 2½ percent on January 1, 1946, and the rate of the excise tax on employers of one or more employees imposed by section 1410 also increases from 1 to 2½ percent on such date. In the case of each such tax the amendment provides that the 1-percent rate shall remain in force through the calendar year 1946, and that the 2½-percent rate shall be applicable to wages paid and received during the calendar years 1947 and 1948.

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[PUBLIC LAW 214—79TH CONGRESS]

[CHAPTER 453—1ST SESSION]

[H. R. 4309]

AN ACT

To reduce taxation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) SHORT TITLE.—This Act may be cited as the "Revenue Act of 1945".

(b) ACT AMENDATORY OF INTERNAL REVENUE CODE.—Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to or repeal of a chapter, subchapter, title, supplement, section, subsection, subdivision, paragraph, subparagraph, or clause, the reference shall be considered to be made to a provision of the Internal Revenue Code.

(c) MEANING OF TERMS USED.—Except as otherwise expressly provided, terms used in this Act shall have the same meaning as when used in the Internal Revenue Code.

TITLE I—INCOME AND EXCESS PROFITS TAX

Part I—Individual Income Taxes

SEC. 101. REDUCTION IN NORMAL TAX AND SURTAX ON INDIVIDUALS.

(a) REDUCTION IN NORMAL TAX ON INDIVIDUALS.—Section 11 (relating to the normal tax on individuals) is amended to read as follows:

"SEC. 11. NORMAL TAX ON INDIVIDUALS.

"There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax determined by computing a tentative normal tax of 3 per centum of the amount of the net income in excess of the credits against net income provided in section 25, and by reducing such tentative normal tax by 5 per centum thereof. For alternative tax which may be elected if adjusted gross income is less than $5,000, see Supplement T."

(b) REDUCTION IN SURTAX ON INDIVIDUALS.—Section 12 (b) (relating to the rate of surtax on individuals) is amended to read as follows:

"(b) RATES OF SURTAX.—There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax determined by computing a tentative surtax under the following table, and by reducing such tentative surtax by 5 per centum thereof:

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TITLE IV—SOCIAL SECURITY TAXES

SEC. 401. AUTOMATIC INCREASE IN 1946 RATE NOT TO APPLY.

(a) Clauses (1) and (2) of section 1400 of the Federal Insurance Contributions Act (Internal Revenue Code, sec. 1400) are amended to read as follows:

"(1) With respect to wages received during the calendar years 1939, 1940, 1941, 1942, 1943, 1944, 1945, and 1946, the rate shall be 1 per centum.

"(2) With respect to wages received during the calendar years 1947 and 1948, the rate shall be 2½ per centum."

(b) Clauses (1) and (2) of section 1410 of such Act (Internal Revenue Code, sec. 1410) are amended to read as follows:

"(1) With respect to wages paid during the calendar years 1939, 1940, 1941, 1942, 1943, 1944, 1945, and 1946, the rate shall be 1 per centum.

"(2) With respect to wages paid during the calendar years 1947 and 1948, the rate shall be 2½ per centum."

Approved November 8, 1945, 5:17 p.m.

79TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 1203

GRANTING CERTAIN PRIVILEGES AND IMMUNITIES TO INTERNATIONAL ORGANIZATIONS AND THEIR EMPLOYEES

NOVEMBER 12, 1945.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DOUGHTON of North Carolina, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H. R. 4489]

The Committee on Ways and Means, to whom was referred the bill (H. R. 4489) to extend certain privileges, exemptions, and immunities to international organizations and to the officers and employees thereof, and for other purposes, having considered the same, report favorably thereon with an amendment correcting a clerical error and recommend that the bill do pass.

In considering the bill, the committee heard testimony from the Honorable Dean Acheson, Under Secretary of State, who explained fully the needs for the legislation, and Mr. Robert W. Wales, tax legislative counsel, Treasury Department. There was also inserted in the hearings a letter from the Director, Bureau of the Budget, to the Department of State, authorizing the latter to report favorably upon the bill.

PURPOSE OF THE LEGISLATION

The basic purpose of H. R. 4489 is to confer upon international organizations and officials and employees thereof, privileges and immunities of a governmental nature. The term "international organization" as used in the bill and generally in this report is specifically limited to public international organizations, i. e., those which are composed of governments as members—and of these, to those of which the United States is a member and which shall have been designated by the President by Executive order as being entitled to enjoy the benefits of the bill. Thus there are excluded from these benefits organizations of a private nature or public international organizations to which the United States does not belong. Furthermore, as a practical matter, the bill will not be applicable to public

international organizations to which the United States does belong but which do business entirely outside of the United States and which will therefore have no need for protection under this legislation. Finally, provision is made for the withdrawal of the benefits of the bill from organizations which may have abused such benefits or for other reasons which presumably would include the cessation of activities of a particular organization.

At the present time the Federal Government enjoys within the United States certain well-established privileges and immunities such as exemption from suit without its consent and certain specific tax immunities, as for example, exemption from social-security taxes. Under provisions of law and the comity of nations, furthermore, governments have traditionally granted to each other, and to the officials of each other, certain specific privileges, exemptions, and immunities with respect to these and other matters. However, in cases where this Government associates itself with one or more foreign governments in an international organization, there exists at the present time no law of the United States whereby this country can extend privileges of a governmental character with respect to international organizations or their officials in this country. It is to fill this need that this bill has been presented. As was pointed out by the Department of State, the self-interest of this Government in legislation of this character is twofold since such legislation will not only protect the official character of public international organizations located in this country but it will also tend to strengthen the position of international organizations of which the United States is a member when they are located or carry on activities in other countries.

While the need for such legislation has existed for some time, the problem has become of pressing importance only in the last few years in connection with the increased activities of the United States in relation to international organizations. Provisions have been made with respect to the problem of privileges and immunities in the international conferences in connection with the creation of UNRRA, the International Monetary Fund and International Bank, the Food and Agriculture Organization of the United Nations, and others. The increased importance of the Pan American Union and its expanded activities, will also require the extension of privileges and immunities to this organization which has long had its headquarters in the United States. Finally, the probability that the United Nations Organization may establish its headquarters in this country, and the practical certainty in any case that it would carry on certain activities in this country, makes it essential to adopt this type of legislation promptly. The committee considers that the passage of this legislation is essential to implement our participation in this Organization.

The committee has been advised by the Department of State that, while this Government has not sought the establishment of the headquarters of the United Nations in the United States, nevertheless the Government would welcome its coming here if a majority of the United Nations should so desire. The committee believes that whatever decision may be made with respect to this matter, the question of extension of privileges and immunities by this Government should not be permitted to embarrass the United States in the meetings of the Preparatory Commission and the General Assembly when the question of the headquarters of the United Nations is dis-

cussed. Since the readiness of the United States to extend privileges and immunities may well be a condition precedent to the establishment of the headquarters in this country, the United States should be well prepared with respect to this point. While the exact nature of the terms under which the headquarters would be established in this country may cover matters beyond the scope of this legislation, the committee understands that such other matters would in all probability be almost entirely of a local nature. The committee understands that the provisions of the bill will satisfy in full the requirements of other international organizations conducting activities in the United States.

In this regard the committee is informed that the provisions of the bill are standard in the light of available precedents. The committee has had before it a copy of the agreement between the Government of Switzerland and the League of Nations in connection with the establishment of the headquarters of the League in that country, and has also been furnished with copies of the Diplomatic Privileges (Extension) Act, 1944 whereby the British Government was authorized by its Parliament to extend privileges and immunities to international organizations. Both of these constitute important precedents for the legislation now before us and the British legislation is substantially similar in conception and content to the legislation under consideration. The committee has been advised that other governments, notably the Governments of Canada and the Netherlands, have taken action on the same problem in connection with activities of international organizations in their territories.

SUMMARY AND DISCUSSION OF PROVISIONS OF THE BILL

Section 1 of the bill defines the term "international organizations" for the purposes of the legislation in the restrictive sense discussed above and also provides for the revocation of the privileges from any organization in the event of the abuse of the privileges or for any other reason. This is a basic provision to which the committee has given careful study. The committee believes that the interests of the United States are adequately protected by the restrictions which have been created. The broad powers granted to the President will permit prompt action in connection with any abuse of the privileges and immunities granted hereunder or presumably for other reasons such as the conduct of improper activities by international organizations in the United States.

Section 2 sets forth certain general exemptions which would be extended to international organizations including immunity from suit, search, and confiscation, and inviolability of archives. With respect to the specific matters of customs duties and internal revenue taxes, imposed upon or by reason of importation, and procedures for collection and enforcement of these duties and taxes, the privileges, exemptions, and immunities extended international organizations are those accorded foreign governments under similar circumstances. Likewise with respect to the registration of foreign agents and the treatment of official communications, international organizations are put on the same basis as foreign governments.

Section 3 provides exemption from customs duties and internal revenue taxes, imposed upon or by reason of importation, with respect

to the baggage and effects of alien officers and employees of international organizations, aliens designated by foreign governments to serve as their representatives in or to such organizations, and the families, suites, or servants of such officers, employees, or representatives. In order to receive the exemption, baggage and effects must be imported in connection with the arrival of the owner in this country.

Section 4 provides for amendments of the Internal Revenue Code in order to extend exemptions from Federal taxation to international organizations and their officers and employees.

International organizations are put on the same basis as foreign governments with respect to the exemption of income from sources within the United States. This provision is made effective for taxable years beginning after December 31, 1943.

Likewise, for taxable years beginning after December 31, 1943, exemption from income tax is extended to alien officers and employees of international organizations but not to American citizens. In this respect the exemption is similar to the exemption now provided for employees of a foreign government. However, there is no requirement that the services performed by the employee of an international organization shall be similar to those performed by Federal employees abroad, nor that an equivalent exemption shall be extended Federal employees. Provision with respect to reciprocity by foreign governments is made in section 9 of the bill. The exemption is limited to wages, fees, or salary received as compensation for official services to such international organizations so that the beneficiaries of the exemption are not relieved by the bill from taxes on income derived from commercial activities in the United States, speculation in securities, or other sources within the United States.

International organizations and all of their employees, including United States citizens as well as aliens, are exempted from social-security taxes and the collection of tax at the source on wages. International organizations and their employees are thus placed in precisely the same position with respect to these taxes as the United States Government and foreign governments.

International organizations are also exempted from the Federal communications taxes and taxes on transportation of persons and property but neither they nor their officers and employees are exempted from any Federal excise or tax not specifically referred to in the bill.

Section 3797 (a) of the code is amended to include a definition of international organizations similar to the definition in section 1 of the bill. Thus such an organization must be a public international organization of which the United States is a member and designated by the President by Executive order as being entitled to the privileges, exemptions, and immunities provided for international organizations. In the event that the President withdraws such designation, the international organization and its officers and employees would cease to be entitled to the tax exemptions provided by the bill.

Section 5 amends the Social Security Act to remove from covered employment services performed in the employ of an international organization, paralleling the employment-tax exemptions accorded by section 4. Provisions are made for refunding taxes collected prior to the effective date, January 1, 1946, of the exemptions and for excepting services rendered prior to that date.

Section 6 provides that international organizations shall be exempt from all property taxes imposed by or under the authority of any act of Congress, including such as are applicable to the District of Columbia, and also that they shall have the same exemptions from State and local taxes as does the United States Government. Since these exemptions are not extended to individuals, administrative difficulties in connection with local sales taxes will be kept to a minimum.

Section 7 provides that alien officers and employees of international organizations and representatives of foreign governments therein shall enjoy the same privileges as officials of foreign governments in respect of laws regulating entering into and departure from the United States, alien registration and fingerprinting, registration of foreign agents, and selective training and service. The immigration laws are amended accordingly and, under section 7 (d) and 8 (b), the same procedure for deportation is made applicable to alien officers and employees of international organizations as in the case of officials of foreign governments.

Under section 7 (b), all officials of international organizations, including American citizens, and representatives of foreign governments therein, would be granted immunity from suit and legal process for acts performed in their official capacity. It should be noted that under this provision and section 8 (c) there would not be extended full diplomatic immunity from judicial process as in the case of diplomatic officers.

Section 8 (a) provides the procedure for notification to and acceptance by the Secretary of State of the persons to be entitled to the benefits of the legislation. Section 8 (c) provides that no person shall by reason of the provisions of the legislation, receive diplomatic status or be entitled to any of the privileges incident thereto except as set forth in the bill.

Section 9 provides that the benefits of the legislation shall be granted notwithstanding the fact that similar privileges and immunities granted by the United States to a foreign government may be conditioned upon the extension of reciprocity by that government. This provision is included to make it clear that the privileges and immunities may be extended to international organizations even though such organizations are not in a position to accord similar treatment to the United States; in substance the effect is to state that the reciprocity provisions which are contained in certain laws providing for privileges and immunities to foreign governments would not be applicable in this situation. However, this section also provides that the Secretary of State shall not be precluded from withdrawing privileges and immunities from nationals of any foreign country which fails to provide corresponding privileges to the citizens of the United States; this is an important sanction in which the committee places considerable importance.

The committee has ascertained that consideration was given in the preparation of the bill to the possibility of limiting the extension of the benefits thereunder to only a given class of officials of international organizations. The Department of State has informed the committee that it was found extremely difficult to specify a basis for differentiation between different classes of employees, and therefore no distinction along this line has been provided. In practice, however, it will be found that in the lower grades, recruitment will to a large extent be made from nationals of the country in which a given

international organization is located and therefore, and since most of the privileges and immunities do not apply to citizens of this country, the problem presented is largely academic in connection with the establishment of offices of international organizations in the United States.

In general, as stated at the beginning of this report, the privileges and immunities provided in this legislation are similar to those granted by the United States to foreign governments and their officials. However, this legislation has the advantage of setting forth in one place all of the specific privileges which international organizations will enjoy. The committee has ascertained [from the Department of State] that the privileges to which international organizations and their officials will be entitled are somewhat more limited than those which are extended by the United States to foreign governments. This is particularly true with respect of the following matters: (1) The exemption from customs duties to officers and employees of international organizations is limited to baggage and effects imported in connection with the arrival of the owner whereas the exemption enjoyed by diplomatic officials is considerably broader; (2) foreign governments and diplomatic officials enjoy substantially broader exemptions from excise taxes than those which would be extended to international organizations under this bill; (3) the immunity from suit to be extended to officers and employees of international organizations is limited to immunity for acts performed by them in their official capacity whereas diplomatic officers enjoy full immunity from legal processes in this country.

The committee is satisfied that this legislation has been prepared with great care, that it will safeguard the interests of the United States while enabling this country to fulfill its commitments in connection with its membership in international organizations, and that it should therefore pass.

The following letters from the Secretary of the Treasury and the Director of the Bureau of the Budget set forth their views with regard to this bill:

NOVEMBER 2, 1945.

Hon. ROBERT L. DOUGHTON,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to H. R. 4489, "a bill to extend certain privileges, exemptions, and immunities to international organizations and to the officers and employees thereof, and for other purposes," which we are informed your committee will consider early next week.

The State Department has asked that this Department make known to you our views with respect to the provisions in the bill which would grant to international organizations and their officials and employees exemptions from internal-revenue taxes and customs duties substantially similar to those granted under existing law to foreign governments and their employees serving in this country. Those provisions were drafted by representatives of the State Department in collaboration with the Treasury and are entirely satisfactory to us. Accordingly, insofar as those provisions are concerned, enactment of the bill is recommended.

Since time has not permitted submission of this report to the Bureau of the Budget, we cannot advise you of the relationship of the bill to the program of the President.

Very truly yours,

FRED M. VINSON,
Secretary of the Treasury.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington 25, D. C., November 6, 1945.

The honorable the SECRETARY OF STATE.

MY DEAR MR. SECRETARY: Reference is made to the draft of bill prepared by the State Department to extend certain privileges, exemptions, and immunities to international organizations and to the officers and employees thereof, and for other purposes, which is subsequently introduced in a modified form as H. R. 4489.

In reply, you are advised that there would be no objection to the submission by the State Department of a report favorable to the enactment of the bill.

Very truly yours,

HAROLD D. SMITH, *Director.*

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE

SEC. 116. * * *

(c) INCOME OF FOREIGN GOVERNMENTS *AND OF INTERNATIONAL ORGANIZATIONS.*—The income of foreign governments *or international organizations* received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments *or by international organizations*, or from interest on deposits in banks in the United States [of] *or* moneys belonging to such foreign governments *or international organizations*, or from any other source within the United States.

* * * * * * *

(h) Compensation of Employees of Foreign Governments or of the Commonwealth of the Philippines.—

(1) RULE FOR EXCLUSION.—Wages, fees, or salary of [an] *any* employee of a foreign government *or of an international organization* or of the Commonwealth of the Philippines (including a consular or other officer, or a nondiplomatic [representative)] *representative*), received as compensation for official services to such [government] *government, international organization*, or such Commonwealth—

(A) If such employee is not a citizen of the United States, or is a citizen of the Commonwealth of the Philippines (whether or not a citizen of the United States); and

(B) [If] *If, in the case of an employee of a foreign government or of the Commonwealth of the Philippines*, the services are of a character similar to those performed by employees of the Government of the United States in foreign countries or in the Commonwealth of the Philippines, as the case may be; and

(C) [If the foreign government, or the Commonwealth of the Philippines, whose employee is claiming exemption] *If, in the case of an employee of a foreign government or the Commonwealth of the Philippines, the foreign government or the Commonwealth* grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country or such Commonwealth, as the case may be.

* * * * * * *

SEC. 1426. * * *

(b) EMPLOYMENT.—The term "employment" means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—

(1) Agricultural labor (as defined in subsection (h) of this section);
(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;
(3) Casual labor not in the course of the employer's trade or business;
(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;
(5) Service performed on or in connection with a vessel not an American vessel by an employee, if the employee is employed on and in connection with such vessel when outside the United States;
(6) Service performed in the employ of the United States Government, or of an instrumentality of the United States which is (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 1410 by virtue of any other provision of law;
(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 1410:
(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation;
(9) Service performed by an individual as an employee or employee representative as defined in section 1532;
(10) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101, if—
(i) the remuneration for such service does not exceed $45, or
(ii) such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association, or
(iii) such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;
(B) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1);
(C) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (i) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (ii) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;
(D) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (i) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (ii) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual;
(E) Service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under section 101, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed $45 (exclusive of room, board, and tuition);
(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);
(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law;

(14) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except (A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (B) service performed on or in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States); [or]

(15) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or [distribution.] *distribution; or*

(16) Service performed in the employ of an international organization.

* * * * * * *

SEC. 1607. * * *

(c) *Employment.*—The term "employment" means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him, irrespective of the citizenship or residence of either, except—

(1) Agricultural labor (as defined in subsection (l));

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(3) Casual labor not in the course of the employer's trade or business;

(4) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(5) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States which is (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 1600 by virtue of any other provision of law;

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 1600;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(9) Service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act;

(10) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101, if—

(i) the remuneration for such service does not exceed $45, or

(ii) such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association, or

(iii) such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;

(B) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1);

(C) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (i) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (ii) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(D) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (i) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (ii) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual;

(E) Service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under section 101, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed $45 (exclusive of room, board, and tuition);

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law;

(14) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission; [or]

(15) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or [distribution.] *distribution; or*

(16) Service performed in the employ of an international organization.

* * * * * * *

SEC. 1621. * * *

(a) WAGES.—The term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

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(5) for services by a citizen or resident of the United States for a foreign government *or an international organization* or for the government of the Commonwealth of the Philippines, or

* * * * * * *

SEC. 3466. * * *

(a) No tax shall be imposed under section 3465 upon any payment received for services or facilities furnished to any State, Territory of the United States, or political subdivision thereof, or the District of Columbia, *or an international organization*, or any corporation created by Act of Congress to act in matters of relief under the treaty of Geneva of August 22, 1864.

* * * * * * *

SEC. 3469. * * *

(f) EXEMPTIONS.—

(1) Governmental exemption.—The tax imposed by this section shall not apply to the payment for transportation or facilities furnished to any State, Territory of the United States, or political subdivision thereof, or the District of Columbia, *or an international organization*, or any corporation created by Act of Congress to act in matters of relief under the treaty of Geneva of August 22, 1864.

* * * * * * *

SEC. 3475. * * *

(b) EXEMPTION OF GOVERNMENT TRANSPORTATION.—The tax imposed under this section shall not apply to (1) amounts paid for the transportation of property to or from the government of a State, Territory of the United States, or political subdivision thereof, or the District of Columbia, *or an international organization*, or any corporation created by Act of Congress to act in matters of relief under the treaty of Geneva of August 22, 1864, (2) amounts paid to the Post Office Department for the transportation of property, or (3) amounts paid by or to the War Shipping Administration for the transportation of property by water from one point in the United States to another, except between points on the Great Lakes.

* * * * * * *

SEC. 3797. * * *

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) PERSON.—The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, company, or corporation.

(2) PARTNERSHIP AND PARTNER.—The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) CORPORATION.—The term "corporation" includes associations, joint-stock companies, and insurance companies.

(4) DOMESTIC.—The term "domestic" when applied to a corporation or a partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

(5) FOREIGN.—The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) FIDUCIARY.—The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) STOCK.—The term "stock" includes the share in an association, joint-stock company, or insurance company.

(8) SHAREHOLDER.—The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(9) UNITED STATES.—The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(10) STATE.—The word "State" shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(12) COMMISSIONER.—The term "Commissioner" means the Commissioner of Internal Revenue.

(13) COLLECTOR.—The term "collector" means collector of internal revenue.

(14) TAXPAYER.—The term "taxpayer" means any person subject to a tax imposed by this title.

(15) MILITARY OR NAVAL FORCES OF THE UNITED STATES.—The term "military or naval forces of the United States" includes the Marine Corps, the Coast Guard, the Army Nurse Corps, Female, the Women's Army Auxiliary Corps, the Navy Nurse Corps, Female, and the Women's Reserve branch of the Naval Reserve.

(16) WITHHOLDING AGENT.—The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 143 or 144.

(17) HUSBAND AND WIFE.—As used in sections 22 (k), 23 (u), 171, and the last sentence of section 25 (b) (3) if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such sections, the term "wife" shall be read "former wife" and the term "husband" shall be read "former husband"; and, if the payments described in such sections are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of such sections, the term "husband" shall be read "wife" and the term "wife" shall be read "husband".

(18) INTERNATIONAL ORGANIZATIONS.—The term "international organizations" means public international organizations of which the United States is a member and which are designated by the President by executive order as being entitled to enjoy privileges, exemptions, and immunities.

SOCIAL SECURITY ACT

SEC. 209. * * *

(b) The term "employment" means any service performed after December 31, 1936, and prior to January 1, 1940, which was employment as defined in section 210 (b) of the Social Security Act prior to January 1, 1940 (except service performed by an individual after he attained the age of sixty-five if performed prior to January 1, 1939), and any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—

(1) Agricultural labor (as defined in subsection (l) of this section);

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(3) Casual labor not in the course of the employer's trade or business;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed or in connection with a vessel not an American vessel by an employee, if the employee is employed on and in connection with such vessel when outside the United States;

(6) Service performed in the employ of the United States Government, or of an instrumentality of the United States which is (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 1410 of the Internal Revenue Code by virtue of any other provision of law;

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 1410 of the Internal Revenue Code;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(9) Service performed by an individual as an employee or employee representative as defined in section 1532 of the Internal Revenue Code;

(10) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101 of the Internal Revenue Code, if—

(i) the remuneration for such service does not exceed $45, or

(ii) such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association, or

(iii) such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;

(B) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1) of the Internal Revenue Code;

(C) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (i) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (ii) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(D) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (i) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (ii) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual;

(E) Service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under section 101 of the Internal Revenue Code, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed $45 (exclusive of room, board, and tuition);

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law;

(14) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except (A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (B) service performed on or in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States); [or]

(15) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or [distribution.] *distribution; or*

(16) Service performed in the employ of an international organization.

IMMIGRATION ACT OF 1924

DEFINITION OF "IMMIGRANT"

SEC. 3. When used in this Act the term "immigrant" means any alien departing from any place outside the United States destined for the United States, except (1) an accredited official of a foreign government recognized by the Government of the United States, his family, attendants, servants, and employees, (2) an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure, (3) an alien in continuous transit through the United States, (4) an alien lawfully admitted to the United States who later goes in transit from one part of the United States to another through foreign contiguous territory, (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman, and (6) an alien entitled to enter the United States solely to carry on trade between the United States and the foreign state of which he is a national under and in pursuance of the provisions of a treaty of commerce and navigation, and his wife, and his unmarried children under twenty-one years of age, if accompanying or following to join him[.] *(7) An alien officer or employee of an international organization, his family, attendants, servants, and employees.*

* * * * * * *

SEC. 15. The admission to the United States of an alien excepted from the class of immigrants by clause (1), (2), (3), (4), (5), [or (6)], *(6), or (7)* of section 3, or declared to be a nonquota immigrant by subdivision (e) of section 4, shall be for such time and under such conditions as may be by regulations prescribed (including, when deemed necessary for the classes mentioned in clause (2), (3), (4), or (6) of section 3 and subdivision (c) of section 4, the giving of bond with sufficient surety, in such sum and containing such conditions as may be by regulations prescribed) to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States: *Provided*, That no alien who has been, or who may hereafter be, admitted into the United States under clause (1) *or (7)* of section 3, as an official for a foreign government, or as a member of the family of such official, *or as an officer or employee of an international organization, or as a member of the family of such officer or employee*, shall be required to depart from the United States without the approval of the Secretary of State.

O

GRANTING PRIVILEGES TO INTERNATIONAL ORGANIZATIONS

Mr. ROBERTSON of Virginia. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H. R. 4489) to extend certain privileges, exemptions, and immunities to international organizations and to the officers and employees thereof, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Virginia?

Mr. MICHENER. Reserving the right to object, Mr. Speaker, in order that the bill may be explained, I understand it is a unanimous report and that all the members of the committee, both Republicans and Democrats, feel that it is an emergency matter and should be disposed of now.

Mr. ROBERTSON of Virginia. The gentleman from Michigan is correct. This is an emergency bill which was unanimously reported by the Committee on Ways and Means. It has the approval of the State Department and the Treasury Department. The purpose of the bill is to treat the employees of international organizations of which the United States is a member on a par with employees of embassies and legations. This is done primarily to take care of the employees who will come to this country in the event this country is selected as the headquarters of the United Nations Organization. There has been a preliminary vote that this be the country in which those headquarters shall be located. Naturally we hope very much that that will be confirmed when the general assembly of the United Nations organization meets. The State Department has called to our attention that other members of the United Nations Organization have taken similar action, and it is very important for us to take this action.

Mr. STEFAN. Mr. Speaker, will the gentleman yield?

Mr. MICHENER. I yield to the gentleman from Nebraska.

Mr. STEFAN. Does this involve appropriations?

Mr. ROBERTSON of Virginia. This does not involve any appropriation. It merely states that when an employee of some organization of which we are a member—and we cannot become a member except by Congressional action—desires to come into this country to serve his nation, he may bring his household effects and other goods into this country free of our tariff laws, just as does an ambassador and the employees of any embassy or legation.

Mr. BROWN of Ohio. Mr. Speaker, will the gentleman yield?

Mr. MICHENER. I yield to the gentleman from Ohio.

Mr. BROWN of Ohio. Does this bill amend the Immigration Act?

Mr. ROBERTSON of Virginia. This has no bearing at all on the right of an alien to come in and acquire citizenship. That is covered by something that is entirely separate. Under existing law, all employees of foreign nations sent here to serve their countries have the right to come in on a temporary visa and stay until their duties are discharged. This has no bearing on anything except our tariff laws and other restrictions.

Mr. BROWN of Ohio. But it does amend the Immigration Act, does it not?

Mr. KNUTSON. No.

Mr. BROWN of Ohio. According to section 3, line 14, page 9, of the bill, it does amend the Immigration Act.

Mr. KNUTSON. It does not affect immigration.

Mr. ROBERTSON of Virginia. It does not affect immigration. It just carries out the general policy of our Government with respect to letting employees of other nations come into this country.

Mr. COOPER. Mr. Speaker, will the gentleman yield?

Mr. MICHENER. I yield to the gentleman from Tennessee.

Mr. COOPER. I am sure the gentleman will agree, as will all members of the Committee on Ways and Means, that this was unanimously recommended by all the departments of the Government having anything to do with this subject matter, and it was unanimously reported by the Committee on Ways and Means. As so well stated by the gentleman from Virginia, all it does is to provide the employees and personnel necessary for the discharge of the duties of the United Nations Organization and similar international organizations, where the members are the governments, somewhat similar treatment to that accorded ambassadors and the employees of embassies and legations.

In fact, it is not quite as broad as the general application now in the case of embassies and legations. I think it also ought to be pointed out that we are all hoping that the headquarters of the United Nations Organization established at the San Francisco Conference will be located here in the United States. Preliminary action has been taken to approve that. The action of the general assembly in confirmation of that will be necessary. Now, if we are to hope to have the United Nations Organization's headquarters to be located in the United States, it will be absolutely essential for this type of legislation to be passed. Other countries seeking the headquarters of the United Nations Organization have already taken similar action so that it is of importance that we take this type of action. I would also like to emphasize that in passing this legislation we still do not go quite as far as the situation now exists in reference to embassies and legations.

Mr. MICHENER. Mr. Speaker, I yield to my colleague the gentleman from Minnesota [Mr. KNUTSON].

Mr. KNUTSON. May I say to my colleagues on this side of the aisle that the passage of this legislation is a prerequisite to securing the United Nation's central headquarters in the United States. They are not going to come here unless we grant the privilege to all the countries that are members of the Organization to bring in such employees from those countries as are deemed necessary to the functioning of the group.

Mr. ROBERTSON of Virginia. The gentleman from Minnesota is absolutely right. What he says and what the gentleman from Tennessee [Mr. COOPER] has said is more fully set forth and amplified on page 6 of the report.

Mr. BROWN of Ohio. Mr. Speaker, reserving the right to object, I would like to ask a question. The gentleman from Tennessee stated that the admission of these citizens of foreign countries would be limited to those necessary to the conduct of the work of this International Organization. I refer the gentleman to page 9 of the bill which amends the Immigration Act so as to permit the admission of an alien officer or employee of an international organization, his family, attendants, servants, and employees. I can find no restriction in the bill on the number of attendants, servants, and employees that that individual might have. I am wondering if there is any restriction.

Mr. ROBERTSON of Virginia. I would remind my distinguished colleague from Ohio of the fact that there is no restriction upon that class of employees who come to the United States now to work in embassies and legations. We point out on page 6 of the report, as follows:

> The committee has ascertained [from the Department of State] that the privileges to which international organizations and their officials will be entitled are somewhat more limited than those which are extended by the United States to foreign governments. This is particularly true with respect of the following matters: (1) The exemption from customs duties to officers and employees of international organizations is limited to baggage and effects imported in connection with the arrival of the owner whereas the exemption enjoyed by diplomatic officials is considerably broader; (2) foreign governments and diplomatic officials enjoy substantially broader exemptions from excise taxes than those which would be extended to international organizations under this bill; (3) the immunity from suit to be extended to officers and employees of international organizations is limited to immunity for acts performed by them in their official capacity whereas diplomatic officers enjoy full immunity from legal processes in this country.

It was also brought to our attention that the act passed by the British Parliament is far more liberal than this act. We limited this as much as we could safely do and still permit the proper entry of employees of the international organization.

Mr. BROWN of Ohio. But there is no limitation on the part of dependents or employees or servants that any of these individuals can bring in?

Mr. ROBERTSON of Virginia. Technically, no; practically, yes. They have to support everybody they bring over here, and I do not believe they will bring many more than they will actually use.

Mr. BROWN of Ohio. Let me ask one other question, if I may. This bill is not limited to the United Nations Organization, is it?

Mr. ROBERTSON of Virginia. No; but it is limited to an international organization of which we are a member, and we cannot be a member without an act of Congress.

Mr. BROWN of Ohio. It would cover any international organization?

Mr. ROBERTSON of Virginia. It has to be international. It has to be public and not private; the Congress has to vote us into it.

Mr. BROWN of Ohio. It has to be an international organization that the Congress of the United States has approved; is that right?

Mr ROBERTSON of Virginia. That is right, it has to be voted on by Congress, on which you and I have the privilege of voting.

Mr. JENKINS. Mr. Speaker, will the gentleman yield?

Mr. ROBERTSON of Virginia. I yield.

Mr. JENKINS. With reference to the admission of these persons under the immigration laws, they are not admitted for the purpose of citizenship. They will only become temporary employees, and only admitted to work, and to do exactly what this bill provides they should do. It does not involve the question of quota limitations whatever. They are not admitted for citizenship purposes.

Mr. ROBERTSON of Virginia. That is correct.

Mr. RANKIN. Mr. Speaker, will the gentleman yield?

Mr. ROBERTSON of Virginia. I yield.

Mr. RANKIN. And that applies only so long as they are in the service of their country?

Mr. JENKINS. They are subject to the same deportation regulations as anybody else who is admitted.

Mr. ROBERTSON of Virginia. If they leave that foreign service we could deport them.

Mr. RANKIN. This bill does not interfere with State laws in any way?

Mr. ROBERTSON of Virginia. None whatever.

Mr. JENKINS. If the gentleman will yield further, there may be some question as to how this matter was referred to the Ways and Means Committee. In addition to the tariff regulations, it also has to do with social security. Many of these individuals who come in to work for this organization want to have some social-security regulations of their own. It is supposed that this will be a gigantic organization and that many Americans will find employment with it. Those Americans will have to leave the service of our Government and go to work under that organization. Consequently, they should be protected, from the standpoint of social security. That is another reason why this bill came to our committee.

Mr. ROBERTSON of Virginia. The gentleman is absolutely right.

The SPEAKER. Is there objection to the request of the gentleman from Virginia?

There being no objection, the Clerk read the bill, as follows:

> *Be it enacted, etc.*, That for the purposes of this act the term "international organizations" shall include only public international organizations of which the United States is a member and which shall have been designated by the President through appropriate Executive order or orders as being entitled to enjoy the privileges, exemptions, and immunities herein provided: *Provided*, That the President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke any such des-

ignation, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this act.

SEC. 2. International organizations shall enjoy the status, immunities, exemptions, and privileges set forth in this section, as follows:

(a) International organizations shall, to the extent consistent with the instrument creating them, possess the capacity—

(i) to contract;

(ii) to acquire and dispose of real and personal property;

(iii) to institute legal proceedings.

(b) International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy immunity from suit and every form of judicial process except to the extent that they may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract.

(c) Property and assets of international organizations, wherever located and by whomsoever held, shall be immune from search, unless such immunity be expressly waived, and from confiscation. The archives of international organizations shall be inviolable.

(d) Insofar as concerns customs duties and internal-revenue taxes imposed upon or by reason of importation, and the procedures in connection therewith; the registration of foreign agents; and the treatment of official communications, the privileges, exemptions, and immunities to which international organizations shall be entitled shall be those accorded under similar circumstances to foreign governments.

SEC. 3. Pursuant to regulations prescribed by the Commissioner of Customs with the approval of the Secretary of the Treasury, the baggage and effects of alien officers and employees of international organizations, or of aliens designated by foreign governments to serve as their representatives in or to such organizations, or of the families, suites, and servants of such officers, employees, or representatives shall be admitted (when imported in connection with the arrival of the owner) free of customs duties and free of internal-revenue taxes imposed upon or by reason of importation.

SEC. 4. The Internal Revenue Code is hereby amended as follows:

(a) Effective with respect to taxable year beginning after December 31, 1943, section 116 (c), relating to the exclusion from gross income of income of foreign governments, is amended to read as follows:

"(c) Income of foreign governments and of international organizations: The income of foreign governments or international organizations received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments or by international organizations, or from interest on deposits in banks in the United States or moneys belonging to such foreign governments or international organizations, or from any other source within the United States."

(b) Effective with respect to taxable years beginning after December 31, 1943, section 116 (h) (1), relating to the exclusion from gross income of amounts paid employees of foreign governments, is amended to read as follows:

"(1) Rule for exclusion: Wages, fees, or salary of any employee of a foreign government or of an international organization or of the Commonwealth of the Philippines (including a consular or other officer, or a nondiplomatic representative), received as compensation for official services to such government, international organization, or such Commonwealth—

"(A) If such employee is not a citizen of the United States, or is a citizen of the Commonwealth of the Philippines (whether or not a citizen of the United States); and

"(B) If, in the case of an employee of a foreign government or of the Commonwealth of the Philippines, the services are of a character similar to those performed by employees of the Government of the United States in foreign countries or in the Commonwealth of the Philippines, as the case may be; and

"(C) If, in the case of an employee of a foreign government or the Commonwealth of the Philippines, the foreign government or the Commonwealth grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country or such Commonwealth, as the case may be."

(c) Effective January 1, 1946, section 1426 (b), defining the term "employment" for the purposes of the Federal Insurance Contributions Act, is amended (1) by striking out the word "or" at the end of subparagraph (14), (2) by striking out the period at the end of subparagraph (15) and inserting in lieu thereof a semicolon and the word "or", and (3) by inserting at the end of the subsection the following new subparagraph:

"(16) Service performed in the employ of an international organization."

(d) Effective January 1, 1946, section 1607 (c), defining the term "employment" for the purposes of the Federal Unemployment Tax Act, is amended (1) by striking out the word "or" at the end of subparagraph (14), (2) by striking out the period at the end of subparagraph (15) and inserting in lieu thereof a semicolon and the word "or", and (3) by inserting at the end of the subsection the following new subparagraph:

"(16) Service performed in the employ of an international organization."

(e) Section 1621 (a) (5), relating to the definition of "wages" for the purpose of collection of income tax at the source, is amended by inserting after the words "foreign government" the words "or an international organization."

(f) Section 3466 (a), relating to exemption from communications taxes is amended by inserting immediately after the words "the District of Columbia" a comma and the words "or an international organization."

(g) Section 3469 (f) (1), relating to exemption from the tax on transportation of persons, is amended by inserting immediately after the words "the District of Columbia" a comma and the words "or an international organization."

(h) Section 3475 (b) (1), relating to exemption from the tax on transportation of property, is amended by inserting immediately after the words "the District of Columbia" a comma and the words "or an international organization."

(i) Section 3797 (a), relating to definitions, is amended by adding at the end thereof a new paragraph as follows:

"(18) International organizations: The term 'international organizations' means public international organizations of which the United States is a member and which are designated by the President by Executive order as being entitled to enjoy privileges, exemptions, and immunities."

SEC. 5. (a) Effective January 1, 1946, section 209 (b) of the Social Security Act, defining the term "employment" for the purposes of title II of the act, is amended (1) by striking out the word "or" at the end of subparagraph (14), (2) by striking out the period at the end of subparagraph (15) and inserting in lieu thereof a semicolon and the word "or", and (3) by inserting at the end of the subsection the following new subparagraph:

"(16) Service performed in the employ of an international organization."

(b) No tax shall be collected under title VIII or IX of the Social Security Act or under the Federal Insurance Contributions Act or the Federal Unemployment Tax Act, with respect to services rendered prior to January 1, 1946, which are described in subparagraph (16) of sections 1426 (b) and 1607 (c) of the Internal Revenue Code, as amended, and any such tax heretofore collected (including penalty and interest with respect thereto, if any) shall be refunded in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax. No interest shall be allowed or paid on the amount of any such refund. No payment shall be made under title II of the Social Security Act with respect to services rendered prior to January 1, 1946, which are described in subparagraph (16) of section 209 (b) of such act, as amended.

SEC. 6. International organizations shall be exempt from all property taxes imposed by, or under the authority of, any act of Congress, including such acts as are applicable solely to the District of Columbia or the Territories; and shall be entitled to the same exemptions and immunities from State or local taxes as is the United States Government.

SEC. 7. (a) Persons designated by foreign governments to serve as their representatives in or to international organizations and the officers and employees of such organizations, and members of the immediate families of such representatives, officers, and employes residing with them, other than nationals of the United States, shall, insofar as concerns laws regulating entry into and departure from the United States, alien registration and fingerprinting, the registration of foreign agents, and selective training and service, be entitled to the same privileges, exemptions, and immunities as are accorded under similar circumstances to officers and employees, respectively, of foreign governments, and members of their families.

(b) Representatives of foreign governments in or to international organizations and officers and employees of such organizations shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as such representatives, officers, or employees except insofar as such immunity may be waived by the foreign government or international organization concerned.

(c) Section 3 of the Immigration Act approved May 26, 1924, as amended (U. S. C., title 8, sec. 203), is hereby amended by striking out the period at the end thereof and substituting the following language:

"(7) An alien officer or employee of an international organization, his family, attendants, servants, and employees."

(d) Section 15 of the Immigration Act approved May 26, 1924, as amended (U. S. C., title 8, sec. 215), is hereby amended to read as follows:

"SEC. 15. The admission to the United States of an alien excepted from the class of immigrants by clause (1), (2), (3), (4), (5), (6), or (7) of section 3, or declared to be a nonquota immigrant by subdivision (e) of section 4, shall be for such time and under such conditions as may be by regulations prescribed (including, when deemed necessary for the classes mentioned in clause (2), (3), (4), or (6) of section 3 and subdivision (e) of section 4, the giving of bond with sufficient surety, in such sum and containing such conditions as may be by regulations prescribed) to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States: *Provided*, That no alien who has been, or who may hereafter be, admitted into the United States under clause (1) or (7) of section 3, as an official of a foreign government, or as a member of the family of such official, or as an officer or employee of an international organization, or as a member of the family of such officer or employee, shall be required to depart from the United States without the approval of the Secretary of State."

SEC. 8. (a) No person shall be entitled to the benefits of this act unless he (1) shall have been duly notified to and accepted by the Secretary of State as a representative,

officer, or employee; or (2) shall have been designated by the Secretary of State, prior to formal notification and acceptance, as a prospective representative, officer, or employee; or (3) is a member of the family or suite, or servant, of one of the foregoing accepted or designated representatives, officers, or employees.

(b) Should the Secretary of State determine that the continued presence in the United States of any person entitled to the benefits of this act is not desirable, he shall so inform the foreign government or international organization concerned, as the case may be, and after such person shall have had a reasonable length of time, to be determined by the Secretary of State, to depart from the United States, he shall cease to be entitled to such benefits.

(c) No person shall, by reason of the provisions of this act, be considered as receiving diplomatic status or as receiving any of the privileges incident thereto other than such as are specifically set forth herein.

SEC. 9. The privileges, exemptions, and immunities of international organizations and of their officers and employees, and members of their immediate families residing with them, provided for in this act, shall be granted notwithstanding the fact that the similar privileges, exemptions, and immunities granted to a foreign government, its officers, or employees, may be conditioned upon the existence of reciprocity by that foreign government: *Provided*, That nothing contained in this act shall be construed as precluding the Secretary of State from withdrawing the privileges, exemptions, and immunities herein provided from persons who are nationals of any foreign country on the ground that such country is failing to accord corresponding privileges, exemptions, and immunities to citizens of the United States.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GRANTING PRIVILEGES TO INTERNATIONAL ORGANIZATIONS

Mr. ROBERTSON of Virginia. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H. R. 4489) to extend certain privileges, exemptions, and immunities to international organizations and to the officers and employees thereof, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Virginia?

Mr. MICHENER. Reserving the right to object, Mr. Speaker, in order that the bill may be explained, I understand it is a unanimous report and that all the members of the committee, both Republicans and Democrats, feel that it is an emergency matter and should be disposed of now.

Mr. ROBERTSON of Virginia. The gentleman from Michigan is correct. This is an emergency bill which was unanimously reported by the Committee on Ways and Means. It has the approval of the State Department and the Treasury Department. The purpose of the bill is to treat the employees of international organizations of which the United States is a member on a par with employees of embassies and legations. This is done primarily to take care of the employees who will come to this country in the event this country is selected as the headquarters of the United Nations Organization. There has been a preliminary vote that this be the country in which those headquarters shall be located. Naturally we hope very much that that will be confirmed when the general assembly of the United Nations organization meets. The State Department has called to our attention that other members of the United Nations Organization have taken similar action, and it is very important for us to take this action.

Mr. STEFAN. Mr. Speaker, will the gentleman yield?

Mr. MICHENER. I yield to the gentleman from Nebraska.

Mr. STEFAN. Does this involve appropriations?

Mr. ROBERTSON of Virginia. This does not involve any appropriation. It merely states that when an employee of some organization of which we are a member—and we cannot become a member except by Congressional action—desires to come into this country to serve his nation, he may bring his household effects and other goods into this country free of our tariff laws, just as does an ambassador and the employees of any embassy or legation.

Mr. BROWN of Ohio. Mr. Speaker, will the gentleman yield?

Mr. MICHENER. I yield to the gentleman from Ohio.

Mr. BROWN of Ohio. Does this bill amend the Immigration Act?

Mr. ROBERTSON of Virginia. This has no bearing at all on the right of an alien to come in and acquire citizenship. That is covered by something that is entirely separate. Under existing law, all employees of foreign nations sent here to serve their countries have the right to come in on a temporary visa and stay until their duties are discharged. This has no bearing on anything except our tariff laws and other restrictions.

Mr. BROWN of Ohio. But it does amend the Immigration Act, does it not?

Mr. KNUTSON. No.

Mr. BROWN of Ohio. According to section 3, line 14, page 9, of the bill, it does amend the Immigration Act.

Mr. KNUTSON. It does not affect immigration.

Mr. ROBERTSON of Virginia. It does not affect immigration. It just carries out the general policy of our Government with respect to letting employees of other nations come into this country.

Mr. COOPER. Mr. Speaker, will the gentleman yield?

Mr. MICHENER. I yield to the gentleman from Tennessee.

Mr. COOPER. I am sure the gentleman will agree, as will all members of the Committee on Ways and Means, that this was unanimously recommended by all the departments of the Government having anything to do with this subject matter, and it was unanimously reported by the Committee on Ways and Means. As so well stated by the gentleman from Virginia, all it does is to provide the employees and personnel necessary for the discharge of the duties of the United Nations Organization and similar international organizations, where the members are the governments, somewhat similar treatment to that accorded ambassadors and the employees of embassies and legations.

In fact, it is not quite as broad as the general application now in the case of embassies and legations. I think it also ought to be pointed out that we are all hoping that the headquarters of the United Nations Organization established at the San Francisco Conference will be located here in the United States. Preliminary action has been taken to approve that. The action of the general assembly in confirmation of that will be necessary. Now, if we are to hope to have the United Nations Organization's headquarters to be located in the United States, it will be absolutely essential for this type of legislation to be passed. Other countries seeking the headquarters of the United Nations Organization have already taken similar action so that it is of importance that we take this type of action. I would also like to emphasize that in passing this legislation we still do not go quite as far as the situation now exists in reference to embassies and legations.

Mr. MICHENER. Mr. Speaker, I yield to my colleague the gentleman from Minnesota [Mr. KNUTSON].

Mr. KNUTSON. May I say to my colleagues on this side of the aisle that the passage of this legislation is a prerequisite to securing the United Nation's central headquarters in the United States. They are not going to come here unless we grant the privilege to all the countries that are members of the Organization to bring in such employees from those countries as are deemed necessary to the functioning of the group.

Mr. ROBERTSON of Virginia. The gentleman from Minnesota is absolutely right. What he says and what the gentleman from Tennessee [Mr. COOPER] has said is more fully set forth and amplified on page 6 of the report.

Mr. BROWN of Ohio. Mr. Speaker, reserving the right to object, I would like to ask a question. The gentleman from Tennessee stated that the admission of these citizens of foreign countries would be limited to those necessary to the conduct of the work of this International Organization. I refer the gentleman to page 9 of the bill which amends the Immigration Act so as to permit the admission of an alien officer or employee of an international organization, his family, attendants, servants, and employees. I can find no restriction in the bill on the number of attendants, servants, and employees that that individual might have. I am wondering if there is any restriction.

Mr. ROBERTSON of Virginia. I would remind my distinguished colleague from Ohio of the fact that there is no restriction upon that class of employees who come to the United States now to work in embassies and legations. We point out on page 6 of the report, as follows:

> The committee has ascertained [from the Department of State] that the privileges to which international organizations and their officials will be entitled are somewhat more limited than those which are extended by the United States to foreign governments. This is particularly true with respect of the following matters: (1) The exemption from customs duties to officers and employees of international organizations is limited to baggage and effects imported in connection with the arrival of the owner whereas the exemption enjoyed by diplomatic officials is considerably broader; (2) foreign governments and diplomatic officials enjoy substantially broader exemptions from excise taxes than those which would be extended to international organizations under this bill; (3) the immunity from suit to be extended to officers and employees of international organizations is limited to immunity for acts performed by them in their official capacity whereas diplomatic officers enjoy full immunity from legal processes in this country.

It was also brought to our attention that the act passed by the British Parliament is far more liberal than this act. We limited this as much as we could safely do and still permit the proper entry of employees of the international organization.

Mr. BROWN of Ohio. But there is no limitation on the part of dependents or employees or servants that any of these individuals can bring in?

Mr. ROBERTSON of Virginia. Technically, no; practically, yes. They have to support everybody they bring over here, and I do not believe they will bring many more than they will actually use.

Mr. BROWN of Ohio. Let me ask one other question, if I may. This bill is not limited to the United Nations Organization, is it?

Mr. ROBERTSON of Virginia. No; but it is limited to an international organization of which we are a member, and we cannot be a member without an act of Congress.

Mr. BROWN of Ohio. It would cover any international organization?

Mr. ROBERTSON of Virginia. It has to be international. It has to be public and not private; the Congress has to vote us into it.

Mr. BROWN of Ohio. It has to be an international organization that the Congress of the United States has approved; is that right?

Mr ROBERTSON of Virginia. That is right, it has to be voted on by Congress, on which you and I have the privilege of voting.

Mr. JENKINS. Mr. Speaker, will the gentleman yield?

Mr. ROBERTSON of Virginia. I yield.

Mr. JENKINS. With reference to the admission of these persons under the immigration laws, they are not admitted for the purpose of citizenship. They will only become temporary employees, and only admitted to work, and to do exactly what this bill provides they should do. It does not involve the question of quota limitations whatever. They are not admitted for citizenship purposes.

Mr. ROBERTSON of Virginia. That is correct.

Mr. RANKIN. Mr. Speaker, will the gentleman yield?

Mr. ROBERTSON of Virginia. I yield.

Mr. RANKIN. And that applies only so long as they are in the service of their country?

Mr. JENKINS. They are subject to the same deportation regulations as anybody else who is admitted.

Mr. ROBERTSON of Virginia. If they leave that foreign service we could deport them.

Mr. RANKIN. This bill does not interfere with State laws in any way?

Mr. ROBERTSON of Virginia. None whatever.

Mr. JENKINS. If the gentleman will yield further, there may be some question as to how this matter was referred to the Ways and Means Committee. In addition to the tariff regulations, it also has to do with social security. Many of these individuals who come in to work for this organization want to have some social-security regulations of their own. It is supposed that this will be a gigantic organization and that many Americans will find employment with it. Those Americans will have to leave the service of our Government and go to work under that organization. Consequently, they should be protected, from the standpoint of social security. That is another reason why this bill came to our committee.

Mr. ROBERTSON of Virginia. The gentleman is absolutely right.

The SPEAKER. Is there objection to the request of the gentleman from Virginia?

There being no objection, the Clerk read the bill, as follows:

> *Be it enacted, etc.*, That for the purposes of this act the term "international organizations" shall include only public international organizations of which the United States is a member and which shall have been designated by the President through appropriate Executive order or orders as being entitled to enjoy the privileges, exemptions, and immunities herein provided: *Provided*, That the President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke any such des-

ignation, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this act.

SEC. 2. International organizations shall enjoy the status, immunities, exemptions, and privileges set forth in this section, as follows:

(a) International organizations shall, to the extent consistent with the instrument creating them, possess the capacity—

(i) to contract;

(ii) to acquire and dispose of real and personal property;

(iii) to institute legal proceedings.

(b) International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy immunity from suit and every form of judicial process except to the extent that they may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract.

(c) Property and assets of international organizations, wherever located and by whomsoever held, shall be immune from search, unless such immunity be expressly waived, and from confiscation. The archives of international organizations shall be inviolable.

(d) Insofar as concerns customs duties and internal-revenue taxes imposed upon or by reason of importation, and the procedures in connection therewith; the registration of foreign agents; and the treatment of official communications, the privileges, exemptions, and immunities to which international organizations shall be entitled shall be those accorded under similar circumstances to foreign governments.

SEC. 3. Pursuant to regulations prescribed by the Commissioner of Customs with the approval of the Secretary of the Treasury, the baggage and effects of alien officers and employees of international organizations, or of aliens designated by foreign governments to serve as their representatives in or to such organizations, or of the families, suites, and servants of such officers, employees, or representatives shall be admitted (when imported in connection with the arrival of the owner) free of customs duties and free of internal-revenue taxes imposed upon or by reason of importation.

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(a) Effective with respect to taxable year beginning after December 31, 1943, section 116 (c), relating to the exclusion from gross income of income of foreign governments, is amended to read as follows:

"(c) Income of foreign governments and of international organizations: The income of foreign governments or international organizations received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments or by international organizations, or from interest on deposits in banks in the United States or moneys belonging to such foreign governments or international organizations, or from any other source within the United States."

(b) Effective with respect to taxable years beginning after December 31, 1943, section 116 (h) (1), relating to the exclusion from gross income of amounts paid employees of foreign governments, is amended to read as follows:

"(1) Rule for exclusion: Wages, fees, or salary of any employee of a foreign government or of an international organization or of the Commonwealth of the Philippines (including a consular or other officer, or a nondiplomatic representative), received as compensation for official services to such government, international organization, or such Commonwealth—

"(A) If such employee is not a citizen of the United States, or is a citizen of the Commonwealth of the Philippines (whether or not a citizen of the United States); and

"(B) If, in the case of an employee of a foreign government or of the Commonwealth of the Philippines, the services are of a character similar to those performed by employees of the Government of the United States in foreign countries or in the Commonwealth of the Philippines, as the case may be; and

"(C) If, in the case of an employee of a foreign government or the Commonwealth of the Philippines, the foreign government or the Commonwealth grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country or such Commonwealth, as the case may be."

(c) Effective January 1, 1946, section 1426 (b), defining the term "employment" for the purposes of the Federal Insurance Contributions Act, is amended (1) by striking out the word "or" at the end of subparagraph (14), (2) by striking out the period at the end of subparagraph (15) and inserting in lieu thereof a semicolon and the word "or", and (3) by inserting at the end of the subsection the following new subparagraph:

"(16) Service performed in the employ of an international organization."

(d) Effective January 1, 1946, section 1607 (c), defining the term "employment" for the purposes of the Federal Unemployment Tax Act, is amended (1) by striking out the word "or" at the end of subparagraph (14), (2) by striking out the period at the end of subparagraph (15) and inserting in lieu thereof a semicolon and the word "or", and (3) by inserting at the end of the subsection the following new subparagraph:

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(e) Section 1621 (a) (5), relating to the definition of "wages" for the purpose of collection of income tax at the source, is amended by inserting after the words "foreign government" the words "or an international organization."

(f) Section 3466 (a), relating to exemption from communications taxes is amended by inserting immediately after the words "the District of Columbia" a comma and the words "or an international organization."

(g) Section 3469 (f) (1), relating to exemption from the tax on transportation of persons, is amended by inserting immediately after the words "the District of Columbia" a comma and the words "or an international organization."

(h) Section 3475 (b) (1), relating to exemption from the tax on transportation of property, is amended by inserting immediately after the words "the District of Columbia" a comma and the words "or an international organization."

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"(18) International organizations: The term 'international organizations' means public international organizations of which the United States is a member and which are designated by the President by Executive order as being entitled to enjoy privileges, exemptions, and immunities."

SEC. 5. (a) Effective January 1, 1946, section 209 (b) of the Social Security Act, defining the term "employment" for the purposes of title II of the act, is amended (1) by striking out the word "or" at the end of subparagraph (14), (2) by striking out the period at the end of subparagraph (15) and inserting in lieu thereof a semicolon and the word "or", and (3) by inserting at the end of the subsection the following new subparagraph:

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SEC. 6. International organizations shall be exempt from all property taxes imposed by, or under the authority of, any act of Congress, including such acts as are applicable solely to the District of Columbia or the Territories; and shall be entitled to the same exemptions and immunities from State or local taxes as is the United States Government.

SEC. 7. (a) Persons designated by foreign governments to serve as their representatives in or to international organizations and the officers and employees of such organizations, and members of the immediate families of such representatives, officers, and employes residing with them, other than nationals of the United States, shall, insofar as concerns laws regulating entry into and departure from the United States, alien registration and fingerprinting, the registration of foreign agents, and selective training and service, be entitled to the same privileges, exemptions, and immunities as are accorded under similar circumstances to officers and employees, respectively, of foreign governments, and members of their families.

(b) Representatives of foreign governments in or to international organizations and officers and employees of such organizations shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as such representatives, officers, or employees except insofar as such immunity may be waived by the foreign government or international organization concerned.

(c) Section 3 of the Immigration Act approved May 26, 1924, as amended (U. S. C., title 8, sec. 203), is hereby amended by striking out the period at the end thereof and substituting the following language:

"(7) An alien officer or employee of an international organization, his family, attendants, servants, and employees."

(d) Section 15 of the Immigration Act approved May 26, 1924, as amended (U. S. C., title 8, sec. 215), is hereby amended to read as follows:

"SEC. 15. The admission to the United States of an alien excepted from the class of immigrants by clause (1), (2), (3), (4), (5), (6), or (7) of section 3, or declared to be a nonquota immigrant by subdivision (e) of section 4, shall be for such time and under such conditions as may be by regulations prescribed (including, when deemed necessary for the classes mentioned in clause (2), (3), (4), or (6) of section 3 and subdivision (e) of section 4, the giving of bond with sufficient surety, in such sum and containing such conditions as may be by regulations prescribed) to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States: *Provided*, That no alien who has been, or who may hereafter be, admitted into the United States under clause (1) or (7) of section 3, as an official of a foreign government, or as a member of the family of such official, or as an officer or employee of an international organization, or as a member of the family of such officer or employee, shall be required to depart from the United States without the approval of the Secretary of State."

SEC. 8. (a) No person shall be entitled to the benefits of this act unless he (1) shall have been duly notified to and accepted by the Secretary of State as a representative,

officer, or employee; or (2) shall have been designated by the Secretary of State, prior to formal notification and acceptance, as a prospective representative, officer, or employee; or (3) is a member of the family or suite, or servant, of one of the foregoing accepted or designated representatives, officers, or employees.

(b) Should the Secretary of State determine that the continued presence in the United States of any person entitled to the benefits of this act is not desirable, he shall so inform the foreign government or international organization concerned, as the case may be, and after such person shall have had a reasonable length of time, to be determined by the Secretary of State, to depart from the United States, he shall cease to be entitled to such benefits.

(c) No person shall, by reason of the provisions of this act, be considered as receiving diplomatic status or as receiving any of the privileges incident thereto other than such as are specifically set forth herein.

SEC. 9. The privileges, exemptions, and immunities of international organizations and of their officers and employees, and members of their immediate families residing with them, provided for in this act, shall be granted notwithstanding the fact that the similar privileges, exemptions, and immunities granted to a foreign government, its officers, or employees, may be conditioned upon the existence of reciprocity by that foreign government: *Provided*, That nothing contained in this act shall be construed as precluding the Secretary of State from withdrawing the privileges, exemptions, and immunities herein provided from persons who are nationals of any foreign country on the ground that such country is failing to accord corresponding privileges, exemptions, and immunities to citizens of the United States.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Calendar No. 870

79TH CONGRESS, 1st Session | SENATE | REPORT No. 861

IMMUNITIES FOR INTERNATIONAL ORGANIZATIONS

DECEMBER 18 (legislative day, OCTOBER 29), 1945.—Ordered to be printed

Mr. TAFT, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 4489]

The Committee on Finance, to whom was referred the bill (H. R. 4489) to extend certain privileges, exemptions, and immunities to international organizations and to the officers and employees thereof, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

This bill as reported by the committee consists of two titles. Title I contains the provisions of the bill relating to privileges, exemptions, and immunities for international organizations and their officers and employees. Title II of the bill makes several amendments of an administrative or technical nature to the internal-revenue laws, which are noncontroversial and which should be enacted before the 1st of January.

TITLE I

PURPOSE OF THE LEGISLATION

The basic purpose of this title is to confer upon international organizations, and officers and employees thereof, privileges and immunities of a governmental nature. The definition of the term "international organization" received the special attention of the committee. Under the bill as reported, the benefits of this title will be extended only to those international organizations in which the United States participates with the sanction of Congress. There are excluded from the benefits of the title organizations of a private nature or public international organizations in which the United States does not participate. Furthermore, as a practical matter, the benefits will not be extended to organizations in which the United States does participate but which carry on activities entirely outside of the United States. A further committee amendment would authorize the President, in the light of the functions performed by

any particular international organization, to withhold or withdraw from such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title or to condition or limit the enjoyment by any organization or its officers or employees of any of such privileges, exemptions, or immunities. This provision will permit the adjustment or limitation of the privileges in the event that any international organization should engage, for example, in activities of a commercial nature. Provision is also made for the withdrawal of the benefits of the title entirely from organizations which abuse such benefits, and for the withdrawal of such benefits for other reasons which presumably would include the cessation of activities of a particular organization.

At the present time the Federal Government enjoys within the United States certain well-established privileges and immunities such as exemption from suit without its consent and certain specific tax immunities, as for example, exemption from social-security taxes. Under provisions of law and the comity of nations, furthermore, governments have traditionally granted to each other, and to the officials of each other, certain specific privileges, exemptions, and immunities with respect to these and other matters. However, in cases where this Government associates itself with one or more foreign governments in an international organization, there exists at the present time no law of the United States whereby this country can extend privileges of a governmental character with respect to international organizations or their officials in this country. It is to fill this need that this bill has been presented. The self-interest of this Government in legislation of this character is twofold since such legislation will not only protect the official character of public international organizations located in this country but it will also tend to strengthen the position of international organizations of which the United States is a member when they are located or carry on activities in other countries.

While the need for such legislation has existed for some time, the problem has become of pressing importance only in the last few years in connection with the increased activities of the United States in relation to international organizations. Provisions have been made with respect to the problem of privileges and immunities in the international conferences in connection with the creation of UNRRA, the International Monetary Fund and International Bank, the Food and Agriculture Organization of the United Nations, and others. The increased importance of the Pan American Union and its expanded activities, will also require the extension of privileges and immunities to this organization which has long had its headquarters in the United States.

The bill has been prepared primarily to meet the requirements of organizations such as those mentioned in the preceding paragraph. However, it will also be available to meet the needs of the United Nations Organization, the headquarters of which will in all probability be established in the United States. Although the establishment of the headquarters of that organization in this country may in due course require the negotiation of a special agreement covering matters beyond the scope of this legislation, all of the privileges and immunities provided for in this bill will have to be extended in any event to the United Nations Organization. In this sense it is considered to be basic legislation in this field, and the passage of this bill at

this time would be an important indication of the desire of the United States to facilitate fully the functioning of international organizations in this country. The committee understands that the provisions of the bill will satisfy in full the requirements of other international organizations conducting activities in the United States.

In this regard the committee is informed that the provisions of the bill are standard in the light of available precedents. The agreement between the Government of Switzerland and the League of Nations in connection with the establishment of the headquarters of the League in that country, and the Diplomatic Privileges (Extension) Act, 1944, whereby the British Government was authorized by its Parliament to extend privileges and immunities to international organizations, constitute important precedents for the legislation now before us and the British legislation is substantially similar in conception and content to the legislation under consideration. The committee has been advised that other governments, notably the Governments of Canada and the Netherlands, have taken action on the same problem in connection with activities of international organizations in their territories.

In general, as stated at the beginning of this report, the privileges and immunities provided in this legislation are similar to those granted by the United States to foreign governments and their officials. However, this legislation has the advantage of setting forth in one place all of the specific privileges which international organizations will enjoy. The privileges to which international organizations and their officials will be entitled are somewhat more limited than those which are extended by the United States to foreign governments. This is particularly true with respect of the following matters: (1) The exemption from customs duties to officers and employees of international organizations is limited to baggage and effects imported in connection with the arrival of the owner whereas the exemption enjoyed by diplomatic officials is considerably broader; (2) foreign governments and diplomatic officials enjoy substantially broader exemptions from excise taxes than those which would be extended to international organizations under this bill; (3) the immunity from suit to be extended to officers and employees of international organizations is limited to immunity for acts performed by them in their official capacity whereas diplomatic officers enjoy full immunity from legal processes in this country.

The committee is satisfied that this legislation will safeguard the interests of the United States while enabling this country to fulfill its commitments in connection with its membership in international organizations, and that it should therefore pass.

EXPLANATION OF TITLE I BY SECTIONS

Section 1 of the bill defines the term "international organization" for the purposes of the legislation in the restrictive sense discussed above. It also provides for the withholding or withdrawal of any specific privileges from any international organization or its officers and employees, or for the revocation of the designation of any international organization as being entitled to enjoy the benefits of the bill. These are basic provisions to which the committee has given close attention. The committee believes that the interests of the

United States are adequately protected by the restrictions which have been provided. The broad powers granted to the President will permit prompt action in connection with any abuse of privileges and immunities or the conduct by any such organization of activities of a type in which such organizations have not heretofore been engaged.

Section 2 sets forth certain general exemptions which would be extended to international organizations including immunity from suit, search, and confiscation, and inviolability of archives. With respect to immunity from suit, customs duties, and internal revenue taxes, imposed upon or by reason of importation, and procedures for collection and enforcement of these duties and taxes, the privileges, exemptions, and immunities extended international organizations are those accorded foreign governments under similar circumstances. Likewise with respect to the registration of foreign agents and the treatment of official communications, international organizations are put on the same basis as foreign governments.

Section 3 provides exemption from customs duties and internal revenue taxes, imposed upon or by reason of importation, with respect to the baggage and effects of alien officers and employees of international organizations, aliens designated by foreign governments to serve as their representatives in or to such organizations, and the families, suites, or servants of such officers, employees, or representatives. In order to receive the exemption, baggage and effects must be imported in connection with the arrival of the owner in this country.

Section 4 provides for amendments of the Internal Revenue Code in order to extend exemptions from Federal taxation to international organizations and their officers and employees.

International organizations are put on the same basis as foreign governments with respect to the exemption of income from sources within the United States. This provision is made effective for taxable years beginning after December 31, 1943.

Likewise, for taxable years beginning after December 31, 1943, exemption from income tax is extended to alien officers and employees of international organizations but not to American citizens. In this respect the exemption is similar to the exemption now provided for employees of a foreign government. However, there is no requirement that the services performed by the employee of an international organization shall be similar to those performed by Federal employees abroad, nor that an equivalent exemption shall be extended Federal employees. Provision with respect to reciprocity by foreign governments is made in section 9 of the bill. The exemption is limited to wages, fees, or salary received as compensation for official services to such international organizations so that the beneficiaries of the exemption are not relieved by the bill from taxes on income derived from commercial activities in the United States, speculation in securities, or other sources within the United States.

International organizations and all of their employees, including United States citizens as well as aliens, are exempted from social-security taxes and the collection of tax at the source on wages. International organizations and their employees are thus placed in precisely the same position with respect to these taxes as the United States Government and foreign governments.

International organizations are also exempted from the Federal communications taxes and taxes on transportation of persons and

property but neither they nor their officers and employees are exempted from any Federal excise or tax not specifically referred to in the bill.

Section 3797 (a) of the code is amended to include a definition of the term "international organization" for the purposes of the amendments to the code made by this bill. The term would include only such organizations as have been determined in the manner provided in section 1 of this bill to be entitled to the privileges, exemptions, and immunities provided for under this legislation. As provided in section 1 of the bill, the President could withhold or withdraw from any organization any of the tax exemptions provided for by the bill, or could withdraw entirely its designation as an international organization, in which case the international organization and its officers and employees would cease to be entitled to the tax exemptions provided by the bill.

Section 5 amends the Social Security Act to remove from covered employment services performed in the employ of an international organization, paralleling the employment-tax exemptions accorded by section 4. Provisions are made for refunding taxes collected prior to the effective date, January 1, 1946, of the exemptions and for excepting services rendered prior to that date.

Section 6 provides that international organizations shall be exempt from all property taxes imposed by or under the authority of any act of Congress, including such as are applicable to the District of Columbia. The committee has stricken from the bill a provision of section 6 which purported to extend to international organizations the same exemptions and immunities from State and local taxes as are enjoyed by the United States Government; the committee believes that this matter should be properly dealt with by the State and local authorities.

Section 7 provides that alien officers and employees of international organizations and representatives of foreign governments therein shall enjoy the same privileges as officials of foreign governments in respect of laws regulating entering into and departure from the United States, alien registration and fingerprinting, registration of foreign agents, and selective training and service. The immigration laws are amended accordingly and, under section 7 (d) and 8 (b), the same procedure for deportation is made applicable to alien officers and employees of international organizations as in the case of officials of foreign governments.

Under section 7 (b), all officials of international organizations, including American citizens, and representatives of foreign governments therein, would be granted immunity from suit and legal process for acts performed in their official capacity. It should be noted that under this provision and section 8 (c) there would not be extended full diplomatic immunity from judicial process as in the case of diplomatic officers.

Section 8 (a) provides the procedure for notification to and acceptance by the Secretary of State of the persons to be entitled to the benefits of the legislation. Section 8 (c) provides that no person shall by reason of the provisions of the legislation, receive diplomatic status or be entitled to any of the privileges incident thereto except as set forth in the bill.

Section 9 provides that the benefits of the legislation shall be granted notwithstanding the fact that similar privileges and immunities granted by the United States to a foreign government may be conditioned upon the extension of reciprocity by that government. This

provision is included to make it clear that the privileges and immunities may be extended to international organizations even though such organizations are not in a position to accord similar treatment to the United States; in substance the effect is to state that the reciprocity provisions which are contained in certain laws providing for privileges and immunities to foreign governments would not be applicable in this situation. However, this section also provides that the Secretary of State shall not be precluded from withdrawing privileges and immunities from nationals of any foreign country which fails to provide corresponding privileges to the citizens of the United States; this is an important sanction in which the committee places considerable importance.

TITLE II

SECTION 201. EXTENSION OF TIME FOR CLAIMING CREDIT OR REFUND WITH RESPECT TO WAR LOSSES

This section of the bill would extend the time for the filing of claims for credit or refund based upon overpayments resulting from the failure to take as deductions war losses described in section 127 of the Internal Revenue Code. This latter section, which was added to the code by the Revenue Act of 1942, sets forth the rules and conditions under which the taxpayer may determine that his property has been destroyed or seized for the purpose of taking an income tax deduction for the loss thereof. The two earliest years within which a war loss may be sustained under this section are 1941 and 1942. By virtue of section 3 of Public Law 511, Seventy-eighth Congress, the time for the filing of claims for credit or refund with respect to war losses sustained in 1941 will expire in the usual case on December 31, 1945. The time for the filing of claims for credit or refund for the year 1942 will ordinarily expire on March 15, 1946. It is believed that a number of taxpayers with war losses sustained in 1941 and 1942 have as yet failed to claim deductions for these losses. Inasmuch as a possible revision of the recovery provisions of section 127 may be incorporated in the next revenue bill, it seems desirable to grant further time within which claims for credit or refund relating to such war losses may be filed.

Accordingly, this section provides that in the case of a claim for credit or refund due to an overpayment of the tax arising from the failure of the taxpayer to take a deduction in respect of property deemed destroyed or seized under section 127 (a) for a taxable year beginning in 1941 or 1942, the 3-year period of limitation prescribed under section 322 (b) (1) shall not expire prior to December 31, 1946. Also, in the case of any such claim filed on or before such date, the amount of the credit or refund will not be subject to the limitations provided by section 322 (a) (2) or (3) to the extent of the overpayment attributable to such war-loss deduction.

SECTION 202. CONTRIBUTIONS TO PENSION TRUSTS

This section of the bill is designed to make a technical amendment to section 23 (p) (2) of the Internal Revenue Code, relating to deductions under prior income-tax acts for contributions to pension trusts. Under section 23 (p) of the Internal Revenue Code, prior to its amendment by the Revenue Act of 1942, and under prior revenue acts

beginning with the Revenue Act of 1928, an employer maintaining a pension trust for his employees which met the requirements of section 165 was allowed, in addition to the contributions to such trust during the taxable year to cover the pension liability accruing during the year allowed as deductions under section 23 (a), a reasonable amount paid into the trust during the taxable year in excess of such contributions, but only if such amount was apportioned in equal parts over a period of 10 consecutive years beginning with the year in which the transfer or payment was made.

Section 23 (p) of the Internal Revenue Code, as amended by section 162 (b) of the Revenue Act of 1942, continues to allow deductions under prior income-tax acts, but with respect to deductions allowable under the Internal Revenue Code, it makes section 23 (p) (2) apply only to an amount that was apportioned to any taxable year beginning after December 31, 1942, from a contribution that was made during a taxable year beginning before January 1, 1943. Accordingly, a contribution apportioned to the taxable year beginning in 1942 would not be allowed as a deduction for that year. This section of the bill adjusts the dates appearing in section 23 (p) (2) in order to permit deductions allowable under section 23 (p) for taxable years beginning prior to January 1, 1942, which were apportioned under such section to any year beginning after December 31, 1941. This amendment would be applicable as though it had been a part of section 162 (b) of the Revenue Act of 1942.

SECTION 203. PETITION TO THE TAX COURT OF THE UNITED STATES

This section of the bill relates to the 90-day period within which a petition may be filed with The Tax Court of the United States (formerly the Board of Tax Appeals) for a redetermination of the liability in respect of certain taxes. Under the present law, in computing the period of 90 days, Sunday, or a legal holiday in the District of Columbia, is not counted as the ninetieth day. In view of a recent order of The Tax Court, dated September 7, 1945, to the effect that Saturdays constitute no part of the administrative workweek, it is desirable that Saturdays also be treated in a like manner.

Accordingly, this section amends section 272 (a) (1) (relating to the redetermination of a deficiency in respect of the tax imposed by ch. 1), section 732 (a) (relating to the redetermination of the excess-profitx tax in the case of abnormalities under sec. 711 (b) (1) (H), (I), (J), or (K), sec. 721, or sec. 722), section 871 (a) (1) (relating to the redetermination of a deficiency in respect of the estate tax), and section 1012 (a) (1) (relating to the redetermination of a deficiency in respect of the gift tax), so that in the computation of the 90-day period for the filing of the petition Saturday, Sunday, or a legal holiday in the District of Columbia shall not be counted as the ninetieth day. This amendment would be effective on and after September 8, 1945, which is the first Saturday after the date of the order of the Tax Court declaring that there would be no business hours on Saturday.

O

Calendar No. 870

79TH CONGRESS
1ST SESSION

H. R. 4489

[Report No. 861]

IN THE SENATE OF THE UNITED STATES

NOVEMBER 23 (legislative day, OCTOBER 29), 1945
Read twice and referred to the Committee on Finance

DECEMBER 18 (legislative day, OCTOBER 29), 1945
Reported by Mr. TAFT, with amendments

[Omit the part struck through and insert the part printed in italic]

AN ACT

To extend certain privileges, exemptions, and immunities to international organizations and to the officers and employees thereof, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That, for the purposes of this Act, the term "international organizations" shall include only public international organizations of which the United States is a member and which shall have been designated by the President through appropriate Executive order or orders as being entitled to enjoy the privileges, exemptions, and immunities herein provided:~~

~~*Provided,* That the President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke any such designation, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this Act.~~

TITLE I

SECTION 1. For the purposes of this title, the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title (including the amendments made by this title) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege,

exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this title.

SEC. 2. International organizations shall enjoy the status, immunities, exemptions, and privileges set forth in this section, as follows:

(a) International organizations shall, to the extent consistent with the instrument creating them, possess the capacity—

(i) to contract;

(ii) to acquire and dispose of real and personal property;

(iii) to institute legal proceedings.

(b) International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy *the same* immunity from suit and every form of judicial process *as is enjoyed by foreign governments,* except to the extent that ~~they~~ *such organizations* may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract.

(c) Property and assets of international organizations, wherever located and by whomsoever held, shall be immune from search, unless such immunity be expressly waived, and from confiscation. The archives of international organizations shall be inviolable.

(d) Insofar as concerns customs duties and internal-revenue taxes imposed upon or by reason of importation, and the procedures in connection therewith; the registration of foreign agents; and the treatment of official communications, the privileges, exemptions, and immunities to which international organizations shall be entitled shall be those accorded under similar circumstances to foreign governments.

SEC. 3. Pursuant to regulations prescribed by the Commissioner of Customs with the approval of the Secretary of the Treasury, the baggage and effects of alien officers and employees of international organizations, or of aliens designated by foreign governments to serve as their representatives in or to such organizations, or of the families, suites, and servants of such officers, employees, or representatives shall be admitted (when imported in connection with the arrival of the owner) free of customs duties and free of internal-revenue taxes imposed upon or by reason of importation.

SEC. 4. The Internal Revenue Code is hereby amended as follows:

(a) Effective with respect to taxable ~~year~~ *years* beginning after December 31, 1943, section 116 (c), relating to the exclusion from gross income of income of foreign governments, is amended to read as follows:

"(c) INCOME OF FOREIGN GOVERNMENTS AND OF INTERNATIONAL ORGANIZATIONS.—The income of foreign governments or international organizations received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments or by international organizations, or from interest on deposits in banks in the United States ~~or~~ *of* moneys belonging to such foreign governments or international organizations, or from any other source within the United States."

(b) Effective with respect to taxable years beginning after December 31, 1943, section 116 (h) (1), relating to the exclusion from gross income of amounts paid employees of foreign governments, is amended to read as follows:

"(1) RULE FOR EXCLUSION.—Wages, fees, or salary of any employee of a foreign government or of an international organization or of the Commonwealth of the Philippines (including a consular or other officer, or a nondiplomatic representative), received as compensation for official services to such government, international organization, or such Commonwealth—

"(A) If such employee is not a citizen of the

United States, or is a citizen of the Commonwealth of the Philippines (whether or not a citizen of the United States); and

"(B) If, in the case of an employee of a foreign government or of the Commonwealth of the Philippines, the services are of a character similar to those performed by employees of the Government of the United States in foreign countries or in the Commonwealth of the Philippines, as the case may be; and

"(C) If, in the case of an employee of a foreign government or the Commonwealth of the Philippines, the foreign government or the Commonwealth grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country or such Commonwealth, as the case may be."

(c) Effective January 1, 1946, section 1426 (b), defining the term "employment" for the purposes of the Federal Insurance Contributions Act, is amended (1) by striking out the word "or" at the end of ~~subparagraph~~ *paragraph* (14), (2) by striking out the period at the end of ~~subparagraph~~ *paragraph* (15) and inserting in lieu thereof a semicolon and the word "or", and (3) by inserting at the end of the subsection the following new ~~subparagraph~~ *paragraph*:

~~"(16) Service performed in the employ of an international organization."~~

"(16) Service performed in the employ of an international organization."

(d) Effective January 1, 1946, section 1607 (c), defining the term "employment" for the purposes of the Federal Unemployment Tax Act, is amended (1) by striking out the word "or" at the end of ~~subparagraph~~ *paragraph* (14), (2) by striking out the period at the end of ~~subparagraph~~ *paragraph* (15) and inserting in lieu thereof a semicolon and the word "or", and (3) by inserting at the end of the subsection the following new ~~subparagraph~~ *paragraph*:

~~"(16) Service performed in the employ of an international organization."~~

"(16) Service performed in the employ of an international organization."

(e) Section 1621 (a) (5), relating to the definition of "wages" for the purpose of collection of income tax at the source, is amended by inserting after the words "foreign government" the words "or an international organization".

(f) Section 3466 (a), relating to exemption from communications taxes, is amended by inserting immediately after the words "the District of Columbia" a comma and the words "or an international organization".

(g) Section 3469 (f) (1), relating to exemption from

the tax on transportation of persons, is amended by inserting immediately after the words "the District of Columbia" a comma and the words "or an international organization".

(h) Section 3475 (b) (1), relating to exemption from the tax on transportation of property, is amended by inserting immediately after the words "the District of Columbia" a comma and the words "or an international organization".

(i) Section 3797 (a), relating to definitions, is amended by adding at the end thereof a new paragraph as follows:

~~"(18) INTERNATIONAL ORGANIZATIONS. — The term 'international organizations' means public international organizations of which the United States is a member and which are designated by the President by executive order as being entitled to enjoy privileges, exemptions, and immunities."~~

"(18) INTERNATIONAL ORGANIZATION. — The term 'international organization' means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act."

SEC. 5. (a) Effective January 1, 1946, section 209 (b) of the Social Security Act, defining the term "employment" for the purposes of title II of the Act, is amended (1) by striking out the word "or" at the end of ~~subparagraph~~ *paragraph* (14), (2) by striking out the period at the end of ~~sub-~~

~~paragraph~~ *paragraph* (15) and inserting in lieu thereof a semicolon and the word "or", and (3) by inserting at the end of the subsection the following new ~~subparagraph~~ *paragraph*:

"(16) Service performed in the employ of an international organization *entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act.*"

(b) No tax shall be collected under title VIII or IX of the Social Security Act or under the Federal Insurance Contributions Act or the Federal Unemployment Tax Act, with respect to services rendered prior to January 1, 1946, which are described in ~~subparagraph~~ *paragraph* (16) of sections 1426 (b) and 1607 (c) of the Internal Revenue Code, as amended, and any such tax heretofore collected (including penalty and interest with respect thereto, if any) shall be refunded in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax. No interest shall be allowed or paid on the amount of any such refund. No payment shall be made under title II of the Social Security Act with respect to services rendered prior to January 1, 1946, which are described in ~~subparagraph~~ *paragraph* (16) of section 209 (b) of such Act, as amended.

SEC. 6. International organizations shall be exempt from all property taxes imposed by, or under the authority of, any

Act of Congress, including such Acts as are applicable solely to the District of Columbia or the Territories~~; and shall be entitled to the same exemptions and immunities from State or local taxes as is the United States Government~~.

SEC. 7. (a) Persons designated by foreign governments to serve as their representatives in or to international organizations and the officers and employees of such organizations, and members of the immediate families of such representatives, officers, and employees residing with them, other than nationals of the United States, shall, insofar as concerns laws regulating entry into and departure from the United States, alien registration and fingerprinting, the registration of foreign agents, and selective training and service, be entitled to the same privileges, exemptions, and immunities as are accorded under similar circumstances to officers and employees, respectively, of foreign governments, and members of their families.

(b) Representatives of foreign governments in or to international organizations and officers and employees of such organizations shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as such representatives, officers, or employees except insofar as such immunity may be waived by the foreign government or international organization concerned.

(c) Section 3 of the Immigration Act approved May 26, 1924, as amended (U. S. C., title 8, sec. 203), is hereby amended by striking out the period at the end thereof and ~~substituting the following language:~~

~~"(7) An alien officer or employee of an international organization, his family, attendants, servants, and employees."~~ *inserting in lieu thereof a comma and the following: "and (7) a representative of a foreign government in or to an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act, or an alien officer or employee of such an international organization, and the family, attendants, servants, and employees of such a representative, officer, or employee".*

(d) Section 15 of the Immigration Act approved May 26, 1924, as amended (U. S. C., title 8, sec. 215), is hereby amended to read as follows:

"SEC. 15. The admission to the United States of an alien excepted from the class of immigrants by clause (1), (2), (3), (4), (5), (6), or (7) of section 3, or declared to be a nonquota immigrant by subdivision (e) of section 4, shall be for such time and under such conditions as may be by regulations prescribed (including, when deemed necessary for the classes mentioned in clause (2), (3), (4), or (6) of section 3 and subdivision (e) of section 4, the giving of

bond with sufficient surety, in such sum and containing such conditions as may be by regulations prescribed) to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States: *Provided,* That no alien who has been, or who may hereafter be, admitted into the United States under clause (1) or (7) of section 3, as an official of a foreign government, or as a member of the family of such official, or as *a representative of a foreign government in or to an international organization or* an officer or employee of an international organization, or as a member of the family of such ~~officer~~ *representative, officer,* or employee, shall be required to depart from the United States without the approval of the Secretary of State."

SEC. 8. (a) No person shall be entitled to the benefits of this ~~Act~~ *title* unless he (1) shall have been duly notified to and accepted by the Secretary of State as a representative, officer, or employee; or (2) shall have been designated by the Secretary of State, prior to formal notification and acceptance, as a prospective representative, officer, or employee; or (3) is a member of the family or suite, or servant, of one of the foregoing accepted or designated representatives, officers, or employees.

(b) Should the Secretary of State determine that the continued presence in the United States of any person en-

titled to the benefits of this ~~Act~~ *title* is not desirable, he shall so inform the foreign government or international organization concerned, as the case may be, and after such person shall have had a reasonable length of time, to be determined by the Secretary of State, to depart from the United States, he shall cease to be entitled to such benefits.

(c) No person shall, by reason of the provisions of this ~~Act~~ *title*, be considered as receiving diplomatic status or as receiving any of the privileges incident thereto other than such as are specifically set forth herein.

SEC. 9. The privileges, exemptions, and immunities of international organizations and of their officers and employees, and members of their ~~immediate~~ ~~families~~ ~~residing with them~~ *families, suites, and servants,* provided for in this ~~Act~~ *title,* shall be granted notwithstanding the fact that the similar privileges, exemptions, and immunities granted to a foreign government, its officers, or employees, may be conditioned upon the existence of reciprocity by that foreign government: *Provided,* That nothing contained in this ~~Act~~ *title* shall be construed as precluding the Secretary of State from withdrawing the privileges, exemptions, and immunities herein provided from persons who are nationals of any foreign country on the ground that such country is failing to accord corresponding privileges, exemptions, and immunities to citizens of the United States.

SEC. 10. This title may be cited as the "International Organizations Immunities Act".

TITLE II

SEC. 201. EXTENSION OF TIME FOR CLAIMING CREDIT OR REFUND WITH RESPECT TO WAR LOSSES.

If a claim for credit or refund under the internal revenue laws relates to an overpayment on account of the deductibility by the taxpayer of a loss in respect of property considered destroyed or seized under section 127 (a) of the Internal Revenue Code (relating to war losses) for a taxable year beginning in 1941 or 1942, the three-year period of limitation prescribed in section 322 (b) (1) of the Internal Revenue Code shall in no event expire prior to December 31, 1946. In the case of such a claim filed on or before December 31, 1946, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in section 322 (b) (2) or (3) of such code, whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of the loss described in this section.

SEC. 202. CONTRIBUTIONS TO PENSION TRUSTS.

(a) DEDUCTIONS FOR THE TAXABLE YEAR 1942 UNDER PRIOR INCOME TAX ACTS.—Section 23 (p) (2) of the Internal Revenue Code is amended by striking out the words "January 1, 1943" and inserting in lieu thereof

"January 1, 1942", and by striking out the words "December 31, 1942" and inserting in lieu thereof "December 31, 1941".

(b) EFFECTIVE DATE.—The amendment made by this section shall be applicable as if it had been made as a part of section 162 (b) of the Revenue Act of 1942.

SEC. 203. PETITION TO THE TAX COURT OF THE UNITED STATES.

(a) TIME FOR FILING PETITION.—The second sentences of sections 272 (a) (1), 732 (a), 871 (a) (1), and 1012 (a) (1), respectively, of the Internal Revenue Code are amended by striking out the parenthetical expression appearing therein and inserting in lieu thereof the following: "(not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetieth day)".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as of September 8, 1945.

Passed the House of Representatives November 20, 1945.

Attest: SOUTH TRIMBLE,

Clerk.

Calendar No. 870

79TH CONGRESS
1ST SESSION

H. R. 4489

[Report No. 861]

AN ACT

To extend certain privileges, exemptions, and immunities to international organizations and to the officers and employees thereof, and for other purposes.

NOVEMBER 23 (legislative day, OCTOBER 29), 1945
Read twice and referred to the Committee on Finance

DECEMBER 18 (legislative day, OCTOBER 29), 1945
Reported with amendments

IMMUNITIES FOR INTERNATIONAL ORGANIZATIONS

The Senate proceeded to consider the bill (H. R. 4489) to extend certain privileges, exemptions, and immunities to international organizations and to the officers and employees thereof, and for other purposes, which had been reported from the Committee on Finance with amendments.

The first amendment was on page 1, line 3, to strike out—

That, for the purposes of this act, the term "international organizations" shall include only public international organizations of which the United States is a member and which shall have been designated by the President through appropriate Executive order or orders as being entitled to enjoy the privileges, exemptions, and immunities herein provided: *Provided*, That the President shall be authorized, if in his judgment such

action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke any such designation, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this act.

And insert:

TITLE I

SECTION 1. For the purposes of this title, the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title (including the amendments made by this title) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this title.

Mr. TAFT. Mr. President, I wish to make a brief explanation of the bill.

The purpose of the bill is to extend to international organizations, in which American membership has been specifically authorized by Congress, the right to enjoy in this country approximately the same privileges and immunities as those which are enjoyed by the representatives of foreign governments. In other words, the principle involved is that the UNO, being an organization made up of a number of foreign governments, as well as our own, if established in this country should enjoy the same status as an embassy of the British Government, for example, or that of some other government.

The Senate Finance Committee has rewritten the bill in many respects for the purpose of safeguarding against the possibility of abuse of privilege. The amendment which is now before the Senate proposes that the privileges shall be extended only to international organizations in which the United States participates pursuant to a treaty, or under authority of an act of Congress authorizing such participation or making an appropriation for such participation. The President is authorized to cancel the privilege if he finds it necessary to do so, or he may cancel any individual privilege, exemption, or immunity in the event it appears that any of the organizations, in their functioning, go beyond the purpose of the act.

We were somewhat concerned that they might try to engage in commercial enterprises, or be authorized to do so, and we did not wish in such event to give them any exemption from taxation that is not given to private concerns operating in the same field.

Mr. President, I have one amendment which I wish to offer, but I shall wait until the committee amendments are disposed of.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The amendment was agreed to.

The next amendment was, on page 3, line 22, before the word "immunity", to insert "the same."

The amendment was agreed to.

The next amendment was, on the same page, line 23, after the word "process", to insert "as is enjoyed by foreign governments."

The amendment was agreed to.

The next amendment was, on the same page, line 24, after the word "that", to strike out "they," and insert "such organizations."

The amendment was agreed to.

The next amendment was, on page 5, line 1, after the word "taxable", to strike out "year" and insert "years."

The amendment was agreed to.

The next amendment was, on the same page, line 11, after the words "United States", to strike out "or" and insert "of."

The amendment was agreed to.

The next amendment was, on page 8, after line 9, to strike out:

(18) International organizations: The term "international organizations" means public international organizations of which the United States is a member and which are designated by the President by Executive order as being entitled to enjoy privileges, exemptions, and immunities.

And insert:

(18) International organization: The term "international organization" means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act.

The amendment was agreed to.

The next amendment was, on the same page, line 24, after the words "end of", to strike out "subparagraph" and insert "paragraph"; in line 25, after the words "at the end of", to strike out "subparagraph" and insert "paragraph"; and on page 9, line 3, after the word "new", to strike out "subparagraph" and insert "paragraph."

The amendment was agreed to.

The next amendment was, on page 9, line 5, after the word "organization", to insert "entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act."

The amendment was agreed to.

The next amendment was, on the same page, line 12, after the word "in", to strike out "subparagraph," and insert "paragraph."

The amendment was agreed to.

The next amendment was, on the same page, line 22, after the word "in", to strike out "subparagraph" and insert "paragraph."

The amendment was agreed to.

The next amendment was, on page 10, line 2, after the word "territories", to strike out "and shall be entitled to the same exemptions and immunities from State or local taxes as is the United States Government."

Mr. TAFT. Mr. President, I may say that the other House attempted to exempt the organizations from State and local taxes.

The Senate committee felt that that was wholly beyond the power of Congress, and therefore we eliminated the provision.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The next amendment of the committee was on page 11, line 3, after the word "and", to strike out:

substituting the following language:

"(7) An alien officer or employee of an international organization, his family, attendants, servants, and employees."

And to insert "inserting in lieu thereof a comma and the following: 'and (7) a representative of a foreign government in or to an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act, or an alien officer or employee of such an international organization, and the family, attendants, servants, and employees of such a representative, officer, or employee.'"

The amendment was agreed to.

The next amendment was, on page 12, line 9, after the word "as," to insert "a representative of a foreign government in or to an international organization."

The amendment was agreed to.

The next amendment was, on page 12, line 12, after the word "such", to strike out "officer" and insert "representative officer."

The amendment was agreed to.

The next amendment was, on page 12, line 16, after the word "this", to strike out "Act" and insert "title."

The amendment was agreed to.

The next amendment was, on page 13, line 1, after the word "this", to strike out "Act" and insert "title."

The amendment was agreed to.

The next amendment was, on line 8, to strike out "Act" and insert "title."

The amendment was agreed to.

The next amendment was on page 13, line 13, after the word "their", to strike out "immediate families residing with them" and insert "families, suites, and servants"; and on line 15 to strike out "Act" and insert "title."

The amendment was agreed to.

The next amendment was, on page 14, to insert the following:

SEC. 10. This title may be cited as the "International Organizations Immunities Act."

The amendment was agreed to.

The next amendment was on page 14, after line 2, to insert a new title, as follows:

TITLE II

SEC. 201. Extension of time for claiming credit or refund with respect to war losses.

If a claim for credit or refund under the internal revenue laws relates to an overpayment on account of the deductibility by the taxpayer of a loss in respect of property considered destroyed or seized under section 127

(a) of the Internal Revenue Code (relating to war losses) for a taxable year beginning in 1941 or 1942, the 3-year period of limitation prescribed in section 322 (b) (1) of the Internal Revenue Code shall in no event expire prior to December 31, 1946. In the case of such a claim filed on or before December 31, 1946, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in section 322 (b) (2) or (3) of such code, whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of the loss described in this section.

SEC. 202. Contributions to pension trusts.

(a) Deductions for the taxable year 1942 under prior income tax acts: Section 23 (p) (2) of the Internal Revenue Code is amended by striking out the words "January 1, 1943" and inserting in lieu thereof "January 1, 1942", and by striking out the words "December 31, 1942" and inserting in lieu thereof "December 31, 1941"

(b) Effective date: The amendment made by this section shall be applicable as if it had been made as a part of section 162 (b) of the Revenue Act of 1942.

SEC. 203. Petition to The Tax Court of the United States.

(a) Time for filing petition: The second sentences of sections 272 (a) (1), 732 (a), 871 (a) (1), and 1012 (a) (1) respectively, of the Internal Revenue Code are amended by striking out the parenthetical expression appearing therein and inserting in lieu thereof the following: "(not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetieth day)".

(b) Effective date: The amendments made by this section shall take effect as of September 8, 1945.

The amendment was agreed to.

Mr. TAFT. Mr. President, I offer the amendment which I send to the desk.

The PRESIDING OFFICER. The clerk will state the amendment.

The CHIEF CLERK. On page 10, line 12, it is proposed after the word "fingerprinting" to insert the word "and", and after the comma on page 10, line 13, it is proposed to strike out the words "and selective training and service."

Mr. TAFT. Mr. President, since the committee meeting it has been pointed out to the committee that an exemption from selective training and service may be given by the President of the United States to aliens who are residents of this country under the terms of the Selective Service Act. Therefore, instead of attempting to deal with the subject in this bill, we determined it should be left to the President's discretion, acting under the Selective Service Act. That is agreeable to the Selective Service System, and while the State Department did not quite like it, they are willing to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Ohio [Mr. TAFT].

The amendment was agreed to.

Mr. LANGER. Mr. President, what would happen if the act were repealed?

Mr. TAFT. Then there would be no question of our exempting from our selective service any foreigners who might be members of an international organization, because there would be no selective service.

Mr. President, title II of the act, on page 14, contains technical amendments to the tax law which would have to be passed before the 1st of January. The House apparently had not discovered that had to be done, so the Senate Finance Committee has added these amendments to this particular bill, because this is in the nature of a revenue bill, a bill amending the income tax law.

Title II merely extends certain times, which would otherwise expire, for another year, to make one or two unimportant technical changes in the law.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

MESSAGE FROM THE SENATE

The message also announced that the Senate had passed, with amendments in which the concurrence of the House is requested, bills and a joint resolution of the House cf the following titles:

H. R. 4489. An act to extend certain privileges, exemptions, and immunities to international organizations and to the officers and employees thereof, and for other purposes; and

OFFICERS OF INTERNATIONAL ORGANIZATIONS

Mr. ROBERTSON of Virginia. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H. R. 4489) an act to extend certain privileges, exemptions, and immunities to international organizations and to the officers and employees thereof, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 1, strike out all after line 2, over to and including line 7 on page 2, and insert:

"TITLE I

"SECTION 1. For the purposes of this title, the term 'international organization' means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title (including the amendments made by this title) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this title."

Page 2, line 19, after "enjoy", insert "the same."

Page 2, line 20, after "process", insert "as is enjoyed by foreign governments."

Page 2, line 21, strike out "they" and insert "such organizations."

Page 3, line 24, strike out "year" and insert "years."

Page 4, line 9, strike out "or" and insert "cf."

Page 5, line 20, strike out "subparagraph" and insert "paragraph."

Page 5, line 21, strike out "subparagraph" and insert "paragraph."

Page 5, line 24, strike out "subparagraph" and insert "paragraph."

Page 6, strike out lines 1 and 2 and insert:

"'(16) Service performed in the employ of an international organization.'"

Page 6, line 6, strike out "subparagraph" and insert "paragraph."

Page 6, line 7, strike out "subparagraph" and insert "paragraph."

Page 6, line 10, strike out "subparagraph" and insert "paragraph."

Page 6, strike out lines 11 and 12 and insert:

"'(16) Service performed in the employ of an international organization.'"

Page 7, strike out lines 6 to 11, inclusive, and insert:

"'(18) International organization: The term "international organization" means a public international organization entitled to

enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act.'"

Page 7, line 15, strike out "subparagraph" and insert "paragraph."

Page 7, line 16, strike out "subparagraph" and insert "paragraph."

Page 7, line 19, strike out "subparagraph" and insert "paragraph."

Page 7, line 21, after "organization" insert "entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act."

Page 7, line 1, strike out "subparagraph" and insert "paragraph."

Page 8, line 10, strike out "subparagraph" and insert "paragraph."

Page 8, strike out all in line 15 after "Territories" down to and including "Government" in line 17.

Page 8, line 25, after "fingerprinting", insert "and."

Page 9, line 1, strike out "and selective training and service."

Page 9, strike out lines 17, 18, and 19, and insert "inserting in lieu thereof a comma and the following: 'and (7) a representative of a foreign government in or to an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act, or an alien officer or employee of such an international organization, and the family, attendants, servants, and employees of such a representative, officer, or employee.'"

Page 10, line 14, after "as", insert "a representative of a foreign government in or to an international organization or."

Page 10, line 15, strike out "officer" and insert "representative, officer."

Page 10, line 19, strike out "act" and insert "title."

Page 11, line 5, strike out "act" and insert "title."

Page 11, line 12, strike out "act" and insert "title."

Page 11, lines 17 and 18, strike out "immediate families residing with them" and insert "families, suites, and servants."

Page 11, line 18, strike out "act" and insert "title."

Page 11, line 23, strike out "act" and insert "title."

Page 12, after line 4, insert:

"SEC. 10. This title may be cited as the 'International Organizations Immunities Act.'

"TITLE II

"SEC. 201. Extension of time for claiming credit or refund with respect to war losses.

"If a claim for credit or refund under the internal revenue laws relates to an overpayment on account of the deductibility by the taxpayer of a loss in respect of property considered destroyed or seized under section 127 (a) of the Internal Revenue Code (relating to war losses) for a taxable year beginning in 1941 or 1942, the 3-year period of limitation prescribed in section 322 (b) (1) of the Internal Revenue Code shall in no event expire prior to December 31, 1946. In the case of such a claim filed on or before December 31, 1946, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in section 322 (b) (2) or (3) of such code, whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of the loss described in this section.

"SEC. 202. Contributions to pension trusts.

"(a) Deductions for the taxable year 1942 under prior income-tax acts: Section 23 (p) (2) of the Internal Revenue Code is amended by striking out the words 'January 1, 1943' and inserting in lieu thereof 'January 1, 1942', and by striking out the words 'December 31, 1942' and inserting in lieu thereof 'December 31, 1941.'

"(b) Effective date: The amendment made by this section shall be applicable as if it had been made as a part of section 162 (b) of the Revenue Act of 1942.

"SEC. 203. Petition to The Tax Court of the United States.

"(a) Time for filing petition: The second sentences of sections 272 (a) (1), 732 (a), 871 (a) (1), and 1012 (a) (1), respectively, of the Internal Revenue Code are amended by striking out the parenthetical expression appearing therein and inserting in lieu thereof the following: '(not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetieth day)

"(b) Effective date: The amendments made by this section shall take effect as of September 8, 1945."

The SPEAKER. Is there objection to the request of the gentleman from Virginia [Mr. ROBERTSON]?

Mr. MICHENER. Mr. Speaker, reserving the right to object, certainly these are formidable-sounding amendments. The bill comes from the Ways and Means Committee. The gentleman from New York [Mr. REED], and other members of the committee on this side are present. I hope the amendments will be thoroughly explained to the House.

Mr. ROBERTSON of Virginia. Mr. Speaker, the amendments sound formidable, but the meaning is simple when you get below the surface.

The essence of the amendments, except the three amendments put on as tax riders to this bill, limit the scope of the bill as passed by the House last month. It will be recalled that I explained when I called the bill up in November that the emergency for this legislation grew out of the prospects that the headquarters for UNO will probably be in this country. We do not know whether it will be Boston, San Francisco, Chicago, or "Tuskeehoma."

There is every evidence that the headquarters will be here, and when these foreign employees come we want to be in position to extend them what might be called southern hospitality. In other words, this legislation is absolutely essential to carry out the agreements we have made and which other nations have already extended to similar organizations. The Senate made these restrictions. We thought the language of the bill limited these privileges to these international organizations that had been specifically sanctioned by the Congress. The Senate thought we ought to make that plain, and one amendment makes that provision: They do not get the benefits, these tax exemptions and other perquisites, unless the Congress has sanctioned the organization. The next amendment provides that if some organization starts functioning here and goes beyond the scope for which it was created, let us say starts into business over here, the President by Executive order can withdraw the privileges from the employees of that foreign organization.

Mr. RANKIN. Ought not that to be written into law? Why should we wait for the Executive? Should not that be written into law, that if they come here and engage in other business these privileges should cease?

Mr. ROBERTSON of Virginia. We have written it into law. Somebody has got to act in all law enforcement and we designate the President because he handles our foreign affairs under the Constitution; he acts for the Congress and the American people. It is written into this law and he is directed to withdraw from them these privileges if he finds they are violating the terms under which they were permitted to enter and to do business presumably for some international organization. It is a very hypothetical case, though, that representatives of Great Britain, for instance, who would be assigned to headquarters of the UNO would open up a shipping business in Boston or San Francisco. They just do not operate that way.

Mr. RANKIN. I do not know. I saw in the papers the other day that the British Empire owns stock in General Motors, almost a controlling interest. I do not know whether that is true or not, but under the common law of England one corporation cannot own stock in another, and I do not believe the United States Government could own stock in a British corporation. Unless there is a great deal of hurry about this proposition——

Mr. ROBERTSON of Virginia. Well, there is.

Mr. RANKIN. Why?

Mr. ROBERTSON of Virginia. Simply because we are going to recess today, as the gentleman well knows, and we do not propose to come back until the 14th of January. In the meantime final action has got to be taken as to whether UNO will have its headquarters here or somewhere else. Everybody thinks it would be very fine to have the headquarters of this international organization in this country.

I communicated with the State Department today and was told that it was highly essential for us to complete action on this.

Here is a report that is unanimously presented by the Senate Finance Committee, the distinguished Senator from Ohio [Mr. TAFT] reporting for that committee. These amendments were unanimously adopted by the Senate. They restrict what we have already voted for, and the vote in the House on our bill was unanimous.

Mr. RANKIN. I still contend that it should be written into the law that if they come here and then violate their exemptions and engage in other business here or engage in any kind of propaganda against this Government that they should automatically have these privileges withdrawn and be subjected to taxation.

Mr. ROBERTSON of Virginia. The law does take care of that as fully as we know how to put it in the law.

Mr. FOLGER. Mr. Speaker, will the gentleman yield?

Mr. ROBERTSON of Virginia. I yield.

Mr. FOLGER. The Congress has spoken. All that this does is to give the

President the power to enforce it when it becomes necessary.

Mr. RANKIN. It does not make it the law.

Mr. FOLGER. That is the gist of it, is it not?

Mr. ROBERTSON of Virginia. Absolutely. It is provided that the President shall withdraw from such organization or its officers and employees their exemptions or immunities provided they do something they are not supposed to do. The situation is fully taken care of.

Mr. ROBSION of Kentucky. Mr. Speaker, will the gentleman yield?

Mr. ROBERTSON of Virginia. I yield.

Mr. ROBSION of Kentucky. I wish to inquire if the gentleman or his committee has taken any testimony as to how many organizations now in existence outside of UNO would come under the provisions of this bill?

Mr. ROBERTSON of Virginia. If UNRRA had to extend relief to us it would come under it. It also applies to certain foreign agencies of UNRRA. If the International Food and Agricultural Organization, which we have joined, should set up headquarters here, it would come under this. The only agency that we know of which would immediately function under this is UNO, but any international organization of which we are a member by action of the Congress and in which we participate, will come within the provisions of this act.

Mr. ROBSION of Kentucky. There are quite a number of them already. This provides for additional organizations that may be formed?

Mr. ROBERTSON of Virginia. I tried to explain that all of these amendments limited provisions that were unanimously passed by the House. It does not add any new organizations, it does not add any new powers. The language was deemed to be a little too broad in the items I have explained and the Senate limited them. I am asking that we accept the limitations adopted by the Senate. Those limitations, as I said, had the unanimous endorsement of the Senate committee, the Senate, the State Department, the Treasury Department, and the tax suggestions are approved by our committee and by our staff on internal revenue taxation.

Mr. ROBSION of Kentucky. But it does provide for the creation of additional organizations?

Mr. ROBERTSON of Virginia. It does not.

Mr. ROBSION of Kentucky. I mean for the recognition of such organizations?

Mr. ROBERTSON of Virginia. It limits what we have already done. The original bill provided that when there is an international organization which we have joined by act of Congress, we should extend to them the privileges of immunity in general that we extend to the diplomatic corps. One thing we did in this bill that the Senate took out was this: We gave them freedom from State and local taxation. That was taken out by the Senate committee and I am asking the House to agree to that. It limits what we have undertaken to do. Another thing, it takes out the provision in our bill about selective service because that is covered by section 5 of our Selective Service Act.

Mr. ROBSION of Kentucky. I hope the gentleman will not feel a little overanxious and irritated by these questions. You see, there is no report printed, there is no report before us, and we do not have the opportunity to know what is contained in this report. I should like to ask another question. Is there any estimate in the gentleman's mind as to how many persons this will grant these extraordinary privileges to in this country? How many persons?

Mr. ROBERTSON of Virginia. That question was asked last month when we had the bill before us and our answer was that we had no way of knowing how many persons, but we had no reason to believe that any foreign nation would send over here more persons than they needed to do the job, because they had to sustain them and pay them while they are here.

Mr. ROBSION of Kentucky. We went through that experience. It developed just before the war that Japan had 1 consul and 250 vice consuls with keen eyes, with keen minds, and with diplomatic immunity going about the people in this country and over in Hawaii. Who is going to be able to follow all of these organizations and all of these people with diplomatic immunities and find out where they are and what they are doing?

Mr. ROBERTSON of Virginia. The Senate thought that our bill was not strict enough on that score, so it put this first amendment in that if they brought more people over here than they ought to bring over here and they got to doing something which we did not approve, the President would withdraw these privileges from them.

Mr. ROBSION of Kentucky. It has only been a short time ago when the newspapers were full of reports that people came here without diplomatic immunity as visitors, and that they had engaged in business, and that their profits had amounted to $800,000,000, and escaped taxes.

Mr. ROBERTSON of Virginia. That was an entirely different category. They came over here not as representatives of their government engaged in an international organization of which we were members. They came over here as aliens on some kind of a temporary visa. Our tax laws did not reach them, and they participated, with a lot of others, in gambling on the stock market in New York, in which they made a good deal of money, I understand. But this bill has nothing to do with that.

Mr. ROBSION of Kentucky. They did not have diplomatic immunity?

Mr. ROBERTSON of Virginia. They did not have any kind of immunity.

Mr. ROBSION of Kentucky. Yet they were able to accomplish this merely as aliens; that which they did accomplish. Now, will all of this group coming in here be immune?

Mr. ROBERTSON of Virginia. I can say to my distinguished colleague that he has raised an entirely separate issue that is now being investigated by the Bureau of Internal Revenue as to whether these folks are taxable under existing law, and if not, whether legislation can be enacted to apply to them. The Ways and Means Committee expects to receive a report from the Bureau of Internal Revenue on this matter.

Mr. ROBSION of Kentucky. It has this to do with it: They did not have the authority that will be granted to these maybe thousands and thousands of people going over this country, some of them friendly, and perhaps some of them otherwise, to pry into and go about things——

Mr. ROBERTSON of Virginia. I just tried to explain to my colleague that this bill, if agreed to, would limit tax relief to the salaries paid by these organizations, and if they go into business they would not be exempt as to such income.

Mr. ROBSION of Kentucky. They would have to be caught first.

Mr. ROBERTSON of Virginia. Well, do you not have to catch any violator first?

Mr. MUNDT. Mr. Speaker, will the gentleman yield?

Mr. ROBERTSON of Virginia. I yield to the gentleman from South Dakota.

Mr. MUNDT. I believe that the gentleman said that the reason for urgency in connection with this bill was because the United Nations had accepted the invitation of this country to locate their international capital in the United States.

Mr. ROBERTSON of Virginia. That is correct.

Mr. MUNDT. As I recall, he listed the invitation of Boston and Tuskahoma and a couple of other Johnny-come-lately invitations——

Mr. ROBERTSON of Virginia. I did not mean to eliminate any great area like that which the gentleman represents.

Mr. MUNDT. I am sure if the United States uses sagacity they will adopt the Black Hills suggestion. The bill also covers that?

Mr. ROBERTSON of Virginia. Absolutely.

Mr. HOFFMAN. Mr. Speaker, will the gentleman yield?

Mr. ROBERTSON of Virginia. I yield to the gentleman from Michigan.

Mr. HOFFMAN. I thought I heard something about limiting the number of persons who were to come over. Should there not also be something in the legislation which would limit the kind of people who should be permitted to come here and be immune from our laws? I make that inquiry because I have in my hand here a letter dated December 10 written from Detroit in which it says, among other things:

> The enclosed is a statement by William Z. Foster, chairman of the Communist Party, urging support for the General Motors strike.

It is signed by Carl Winter, chairman of the Michigan Communist Party. Now are you going to let all those fellows come over here from Russia or any other place and join up with Thomas,

who has asked Attlee to aid in the General Motors strike, and let those people go on and do anything they want to?

Mr. ROBERTSON of Virginia. No. I tried to explain that if they come over to aid in the General Motors strike, they lose their immunity. but I do not think that we could tell Russia that they could not bring Communists over here to represent them.

Mr. HOFFMAN. Does the gentleman think that those Communists should be permitted to come over here and take part in these strikes?

Mr. ROBERTSON of Virginia. Absolutely not.

Mr. HOFFMAN. How are you going to stop it if this thing goes through?

Mr. ROBERTSON of Virginia. Because we put in a provision that they lose their immunity if they do anything outside of the purposes of the organization that they represent.

Mr. HOFFMAN. If and when the President makes a finding.

Mr. ROBERTSON of Virginia. That is right.

In conclusion I wish to summarize the substantive amendments as follows:

First. The benefits of the bill are extended only to those international organizations in which the United States participates with the sanction of Congress. That was our intention.

Second. The President is authorized in the light of functions performed by any particular international organization to withhold or withdraw from such organization, or its officers or employees, any of the privileges, exemptions, and immunities provided for in the title, or to condition or limit the enjoyment by any organization, or its officers or employees, of any of such privileges, exemptions or immunities. This will permit the adjustment or limitation of the privileges in the event that any international organization should engage, for example, in activities of a commercial nature. Provision is also made for withdrawal of the benefits of the title from organizations which abuse such benefits.

Third. The bill omits the provision of the House bill which provided that international organizations shall be entitled to the same exemptions and immunities from State and local taxes as is the United States Government. There is considerable doubt as to the authority of the Federal Government to extend such exemptions and immunities so far as State or local taxes are concerned.

Fourth. The House bill exempted from the provisions of selective training and service persons designated by foreign governments to serve as their representatives in or to international organizations, and the officers and employees of such organizations, and members of the immediate families of such representatives, officers, or employees residing with them, other than nationals of the United States. The Senate bill omits reference to selective training and service, since this matter, so far as aliens are concerned, is already provided for in section 5 of the Selective Service Act.

The Senate bill also adds a separate title providing certain tax amendments of an administrative nature. It was necessary to act on these amendments before December 31, 1945.

Fifth. The first tax amendment extends the time for filing claims for refund or credit with respect to war losses for the years 1941 and 1942. In a previous act we had extended this period to December 31, 1945, with respect to the year 1941. Since the whole war-loss matter is going to be studied by our committee and changes recommended it was deemed advisable to grant a further extension for both 1941 and 1942 through December 31, 1946.

Sixth. Another amendment corrects an error in the Revenue Act of 1942 with respect to pension trusts which omitted reference to the year 1942 and thereby created a hiatus in the statute. It is necessary to correct this situation now to prevent unnecessary paper work on the part of the Bureau of Internal Revenue.

Seventh. The last amendment deals with the period for filing petitions with The Tax Court of the United States. A taxpayer at the present time must file his petition with The Tax Court within a period of 90 days. Where the ninetieth day falls on Sunday or a legal holiday such Sunday or legal holiday is not counted as the ninetieth day. Due to the fact that the Government does not now conduct business on Saturday, it is necessary to amend the statute so that where the ninetieth days falls on Saturday, Saturday will not be counted as the ninetieth day.

All of these tax amendments have the approval of the Treasury Department and the joint staff. The Tax Court of the United States is particularly interested in having the last amendment referred to adopted as soon as possible.

The SPEAKER. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The Senate amendment was concurred in.

A motion to reconsider was laid on the table.

MESSAGE FROM THE HOUSE

The message further announced that the House had agreed to the amendments of the Senate to the bill (H. R. 4489) to extend certain privileges, exemptions, and immunities to international organizations and to the officers and employees thereof, and for other purposes.

[PUBLIC LAW 291—79TH CONGRESS]
[CHAPTER 652—1ST SESSION]
[H. R. 4489]

AN ACT

To extend certain privileges, exemptions, and immunities to international organizations and to the officers and employees thereof, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SECTION 1. For the purposes of this title, the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title (including the amendments made by this title) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this title.

SEC. 2. International organizations shall enjoy the status, immunities, exemptions, and privileges set forth in this section, as follows:

(a) International organizations shall, to the extent consistent with the instrument creating them, possess the capacity—

(i) to contract;

(ii) to acquire and dispose of real and personal property;

(iii) to institute legal proceedings.

(b) International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract.

(c) Property and assets of international organizations, wherever located and by whomsoever held, shall be immune from search, unless

such immunity be expressly waived, and from confiscation. The archives of international organizations shall be inviolable.

(d) Insofar as concerns customs duties and internal-revenue taxes imposed upon or by reason of importation, and the procedures in connection therewith; the registration of foreign agents; and the treatment of official communications, the privileges, exemptions, and immunities to which international organizations shall be entitled shall be those accorded under similar circumstances to foreign governments.

SEC. 3. Pursuant to regulations prescribed by the Commissioner of Customs with the approval of the Secretary of the Treasury, the baggage and effects of alien officers and employees of international organizations, or of aliens designated by foreign governments to serve as their representatives in or to such organizations, or of the families, suites, and servants of such officers, employees, or representatives shall be admitted (when imported in connection with the arrival of the owner) free of customs duties and free of internal-revenue taxes imposed upon or by reason of importation.

SEC. 4. The Internal Revenue Code is hereby amended as follows:

(a) Effective with respect to taxable years beginning after December 31, 1943, section 116 (c), relating to the exclusion from gross income of income of foreign governments, is amended to read as follows:

"(c) INCOME OF FOREIGN GOVERNMENTS AND OF INTERNATIONAL ORGANIZATIONS.—The income of foreign governments or international organizations received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments or by international organizations, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments or international organizations, or from any other source within the United States."

(b) Effective with respect to taxable years beginning after December 31, 1943, section 116 (h) (1), relating to the exclusion from gross income of amounts paid employees of foreign governments, is amended to read as follows:

"(1) RULE FOR EXCLUSION.—Wages, fees, or salary of any employee of a foreign government or of an international organization or of the Commonwealth of the Philippines (including a consular or other officer, or a nondiplomatic representative), received as compensation for official services to such government, international organization, or such Commonwealth—

"(A) If such employee is not a citizen of the United States, or is a citizen of the Commonwealth of the Philippines (whether or not a citizen of the United States); and

"(B) If, in the case of an employee of a foreign government or of the Commonwealth of the Philippines, the services are of a character similar to those performed by employees of the Government of the United States in foreign countries or in the Commonwealth of the Philippines, as the case may be; and

"(C) If, in the case of an employee of a foreign government or the Commonwealth of the Philippines, the foreign government or the Commonwealth grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country or such Commonwealth, as the case may be."

(c) Effective January 1, 1946, section 1426 (b), defining the term "employment" for the purposes of the Federal Insurance Contributions Act, is amended (1) by striking out the word "or" at the end of paragraph (14), (2) by striking out the period at the end of paragraph (15) and inserting in lieu thereof a semicolon and the word "or", and (3) by inserting at the end of the subsection the following new paragraph:

"(16) Service performed in the employ of an international organization."

(d) Effective January 1, 1946, section 1607 (c), defining the term "employment" for the purposes of the Federal Unemployment Tax Act, is amended (1) by striking out the word "or" at the end of paragraph (14), (2) by striking out the period at the end of paragraph (15) and inserting in lieu thereof a semicolon and the word "or", and (3) by inserting at the end of the subsection the following new paragraph:

"(16) Service performed in the employ of an international organization."

(e) Section 1621 (a) (5), relating to the definition of "wages" for the purpose of collection of income tax at the source, is amended by inserting after the words "foreign government" the words "or an international organization".

(f) Section 3466 (a), relating to exemption from communications taxes is amended by inserting immediately after the words "the District of Columbia" a comma and the words "or an international organization".

(g) Section 3469 (f) (1), relating to exemption from the tax on transportation of persons, is amended by inserting immediately after the words "the District of Columbia" a comma and the words "or an international organization".

(h) Section 3475 (b) (1), relating to exemption from the tax on transportation of property, is amended by inserting immediately after the words "the District of Columbia" a comma and the words "or an international organization".

(i) Section 3797 (a), relating to definitions, is amended by adding at the end thereof a new paragraph as follows:

"(18) INTERNATIONAL ORGANIZATION.—The term 'international organization' means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act."

SEC. 5. (a) Effective January 1, 1946, section 209 (b) of the Social Security Act, defining the term "employment" for the purposes of title II of the Act, is amended (1) by striking out the word "or" at the end paragraph (14), (2) by striking out the period at the end of paragraph (15) and inserting in lieu thereof a semicolon and the word "or", and (3) by inserting at the end of the subsection the following new paragraph:

"(16) Service performed in the employ of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act."

(b) No tax shall be collected under title VIII or IX of the Social Security Act or under the Federal Insurance Contributions Act or the Federal Unemployment Tax Act, with respect to services rendered prior to January 1, 1946, which are described in paragraph (16) of sections 1426 (b) and 1607 (c) of the Internal Revenue Code, as amended, and any such tax heretofore collected (including penalty and interest with respect thereto, if any) shall be refunded in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax. No interest shall be allowed or paid on the amount of any such refund. No payment shall be made under title II of the Social Security Act with respect to services rendered prior to January 1, 1946, which are described in paragraph (16) of section 209 (b) of such Act, as amended.

SEC. 6. International organizations shall be exempt from all property taxes imposed by, or under the authority of, any Act of Congress, including such Acts as are applicable solely to the District of Columbia or the Territories.

SEC. 7. (a) Persons designated by foreign governments to serve as their representatives in or to international organizations and the officers and employees of such organizations, and members of the immediate families of such representatives, officers, and employees residing with them, other than nationals of the United States, shall, insofar as concerns laws regulating entry into and departure from the United States, alien registration and fingerprinting, and the registration of foreign agents, be entitled to the same privileges, exemptions, and immunities as are accorded under similar circumstances to officers and employees, respectively, of foreign governments, and members of their families.

(b) Representatives of foreign governments in or to international organizations and officers and employees of such organizations shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as such representatives, officers, or employees except insofar as such immunity may be waived by the foreign government or international organization concerned.

(c) Section 3 of the Immigration Act approved May 26, 1924, as amended (U. S. C., title 8, sec. 203), is hereby amended by striking out the period at the end thereof and inserting in lieu thereof a comma and the following: "and (7) a representative of a foreign government in or to an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act, or an alien officer or employee of such an international organization, and the family, attendants, servants, and employees of such a representative, officer, or employee".

(d) Section 15 of the Immigration Act approved May 26, 1924, as amended (U. S. C., title 8, sec. 215), is hereby amended to read as follows:

"SEC. 15. The admission to the United States of an alien excepted from the class of immigrants by clause (1), (2), (3), (4), (5), (6), or (7) of section 3, or declared to be a nonquota immigrant by subdivision (e) of section 4, shall be for such time and under such conditions as may be by regulations prescribed (including, when deemed

necessary for the classes mentioned in clause (2), (3), (4), or (6) of section 3 and subdivision (e) of section 4, the giving of bond with sufficient surety, in such sum and containing such conditions as may be by regulations prescribed) to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States: *Provided*, That no alien who has been, or who may hereafter be, admitted into the United States under clause (1) or (7) of section 3, as an official of a foreign government, or as a member of the family of such official, or as a representative of a foreign government in or to an international organization or an officer or employee of an international organization, or as a member of the family of such representative, officer, or employee, shall be required to depart from the United States without the approval of the Secretary of State."

SEC. 8. (a) No person shall be entitled to the benefits of this title unless he (1) shall have been duly notified to and accepted by the Secretary of State as a representative, officer, or employee; or (2) shall have been designated by the Secretary of State, prior to formal notification and acceptance, as a prospective representative, officer, or employee; or (3) is a member of the family or suite, or servant, of one of the foregoing accepted or designated representatives, officers, or employees.

(b) Should the Secretary of State determine that the continued presence in the United States of any person entitled to the benefits of this title is not desirable, he shall so inform the foreign government or international organization concerned, as the case may be, and after such person shall have had a reasonable length of time, to be determined by the Secretary of State, to depart from the United States, he shall cease to be entitled to such benefits.

(c) No person shall, by reason of the provisions of this title, be considered as receiving diplomatic status or as receiving any of the privileges incident thereto other than such as are specifically set forth herein.

SEC. 9. The privileges, exemptions, and immunities of international organizations and of their officers and employees, and members of their families, suites, and servants, provided for in this title, shall be granted notwithstanding the fact that the similar privileges, exemptions, and immunities granted to a foreign government, its officers, or employees, may be conditioned upon the existence of reciprocity by that foreign government: *Provided*, That nothing contained in this title shall be construed as precluding the Secretary of State from withdrawing the privileges, exemptions, and immunities herein provided from persons who are nationals of any foreign country on the ground that such country is failing to accord corresponding privileges, exemptions, and immunities to citizens of the United States.

SEC. 10. This title may be cited as the "International Organizations Immunities Act".

TITLE II

SEC. 201. EXTENSION OF TIME FOR CLAIMING CREDIT OR REFUND WITH RESPECT TO WAR LOSSES.

If a claim for credit or refund under the internal revenue laws relates to an overpayment on account of the deductibility by the tax-

payer of a loss in respect of property considered destroyed or seized under section 127 (a) of the Internal Revenue Code (relating to war losses) for a taxable year beginning in 1941 or 1942, the three-year period of limitation prescribed in section 322 (b) (1) of the Internal Revenue Code shall in no event expire prior to December 31, 1946. In the case of such a claim filed on or before December 31, 1946, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in section 322 (b) (2) or (3) of such code, whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of the loss described in this section.

SEC. 202. CONTRIBUTIONS TO PENSION TRUSTS.

(a) DEDUCTIONS FOR THE TAXABLE YEAR 1942 UNDER PRIOR INCOME TAX ACTS.—Section 23 (p) (2) of the Internal Revenue Code is amended by striking out the words "January 1, 1943" and inserting in lieu thereof "January 1, 1942", and by striking out the words "December 31, 1942" and inserting in lieu thereof "December 31, 1941".

(b) EFFECTIVE DATE.—The amendment made by this section shall be applicable as if it had been made as a part of section 162 (b) of the Revenue Act of 1942.

SEC. 203. PETITION TO THE TAX COURT OF THE UNITED STATES.

(a) TIME FOR FILING PETITION.—The second sentences of sections 272 (a) (1), 732 (a), 871 (a) (1), and 1012 (a) (1), respectively, of the Internal Revenue Code are amended by striking out the parenthetical expression appearing therein and inserting in lieu thereof the following: "(not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetieth day)".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as of September 8, 1945.

Approved December 29, 1945.

79TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 1989

AMENDMENTS TO RAILROAD RETIREMENT ACT RAILROAD UNEMPLOYMENT INSURANCE ACT, AND RELATED PROVISIONS OF LAW

MAY 9, 1946.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BULWINKLE, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H. R. 1362]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 1362) to amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

The committee amendment to the text of the bill strikes out all of the bill after the enacting clause and inserts in lieu thereof a substitute which appears in the reported bill in italic type.

The other committee amendment proposes to modify the title of the bill.

THE INTRODUCED BILL AND COMMITTEE ACTION THEREON

The bill, H. R. 1362, which the committee herewith reports to the House with an amendment in the nature of a substitute, was introduced on January 11, 1945. In its introduced form the bill proposed numerous and substantial changes in the existing railroad retirement and unemployment insurance statutes, and in related provisions of the internal revenue laws, the major proposals, stated briefly, being as follows:

1. Extension of coverage to freight forwarders not controlled by railroads, to railroad-controlled trucking companies, and to certain companies whose services are used by railroads.

2. New definition of employment relation which both lessened and broadened the class of individuals who could claim prior-service credit.

3. Disability annuities payable without reduction to individuals of age 60 or over regardless of length of service, and to those with 10 years of service regardless of age; in each instance with respect to permanent disability preventing the employee from engaging in any regular employment for hire.

4. Disability annuities payable to individuals with a "current connection with the railroad industry" if (1) having 20 years of service, regardless of age, or (2) if 60 years of age, regardless of length of service; in each instance with respect to permanent disability preventing the employee from engaging in his regular occupation.

5. Survivor benefits corresponding in general to those under social security but at approximately a 25-percent higher level as to amount and coordinated with social-security benefits in a manner raising difficult administrative problems; these benefits to be payable to all survivors of employees, annuitants, and pensioners regardless of whether death occurred before the effective date.

6. Minimum annuity provisions, on a more liberal basis than the existing minimum, for those having 5 years of service and a "current connection with the railroad industry."

7. Increase in the retirement tax rate to 11½ percent until 1949, 12 percent from 1949 to 1951, and 12½ percent thereafter.

8. Proposal that the function of collecting the retirement taxes (now exercised by the Bureau of Internal Revenue) be transferred to the Railroad Retirement Board; and that the retirement taxing provisions be removed from the Internal Revenue Code and made a part of the Railroad Retirement Act of 1937.

9. Larger unemployment-insurance benefits for those with high base-year earnings and longer duration of benefits for all.

10. Sickness and maternity benefits on the same basis as the unemployment insurance system. No change was proposed in the present rate of unemployment insurance contributions by the carriers, the assumption being that the present rate would be sufficient to finance the proposed new sickness and maternity benefits as well as unemployment insurance.

11. A change in the wage basis for taxes and benefits, so that, instead of excluding amounts in excess of $300 earned in any month, amounts in excess of $300 earned in a month could be counted up to an aggregate, for a calendar year, of $300 multiplied by the number of months of service in the year.

The number and complexities of the changes in existing law proposed by the bill is indicated in the material hereinafter in this report set forth in compliance with paragraph 2a of rule XIII of the Rules of the House.

In view of the far-reaching and complicated character of these proposals, and the important factor involved of increased costs to carriers and employees, the committee, in hearings on the bill, made every effort to afford an opportunity to all interested parties to make full presentation of their views. Hearings began on January 31 and extended to April 26, 1945, with the printed testimony covering 1186 pages.

After the conclusion of 37 sessions of hearings the bill was referred to a subcommittee for study, with instructions to report its recommendations to the full committee. The subcommittee held 22 meetings in executive session on the bill, and after the subcommittee made its report the full committee held a number of meetings.

It was apparent, from the testimony presented to the committee, that, while it was generally admitted that the railroad retirement system under present law is operating at a deficit, there was disagreement as to how much of an increase in present taxes would be necessary to make the system solvent even though no increased benefits were provided for. Differing views were also presented as to what would be the cost of providing the new benefits proposed by the bill as introduced, with resulting differences of opinion as to the new tax rates that would have to be provided for if such new benefits were granted.

As the subcommittee proceeded with the task of studying and analyzing the proposals of the bill, it became more and more apparent that intelligent decisions on the questions involved could not be made unless additional cost estimates could be obtained. With funds made available by the House, a competent actuary was retained to assist the committee in studying the various cost estimates which had been presented in the hearings, and on March 14, 1946, the actuary presented his report.

The actuarial report showed that the tax rates required for the benefits proposed in the bill as introduced should have been 1½ percent higher as to retirement and 1 percent higher as to unemployment insurance (including sickness), or a total of 2½ percent higher than proposed in the bill, to assure financial adequacy and soundness of the systems.

After study of the actuarial report and further study of the bill the subcommittee, on April 9, 1946, made certain recommendations to the committee. These recommendations proposed the adoption of certain of the provisions of the bill, some of them with modifications, and proposed the elimination of certain of the proposals which it believed to be either too costly, not clear in their effect (for example, the provision for increased coverage), undesirable as a matter of policy, or too complex from the standpoint of administration. The subcommittee also recommended certain new proposals. After consideration of the subcommittee's report and the actuarial report, as well as the testimony presented at the hearings, the committee has taken action resulting in the amendment to the bill herewith reported to the House and summarized below.

THE PROVISIONS OF THE COMMITTEE AMENDMENT

This committee amendment proposes to amend the existing Railroad Retirement Act of 1937, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code. These statutory provisions now embody the law in reference to benefits receivable and taxes and contributions payable by railway employees, as well as taxes and contributions payable by carriers.

While the amendments proposed by the committee do not grant all of the new benefits proposed by the introduced bill, they take away no present benefits now existing in favor of the employees which the intro-

duced bill would not have taken away, they preserve certain of such benefits which the introduced bill would have taken away, and they add several new benefit provisions to existing law. The proposed amendments (which are explained hereinafter under the heading "Explanation of the Committee Amendment by Titles and Sections") provide in substance for:

1. Creating a beneficial right in behalf of surviving dependents of employees to specified monthly benefits

Under the committee amendment the new survivor benefits to be paid operate in favor of the same dependents as under the Social Security Act. The time and amount of payments to the surviving beneficiaries are likewise computed, so far as is practicable, in the same manner as under the Social Security Act.

Under the present law, the employee beneficiary has an optional right to allot a percentage of his retirement benefits to his surviving widow, in which case his own annuity is reduced. Under the plan proposed the surviving dependents would be entitled to benefits in their own right. The benefits so provided are granted without reducing the benefit available to the employee.

In addition to making provision for new survivor benefits, the committee amendment (sec. 7 (d)) preserves the death benefit provided for under present law, so far as it has accrued to an individual up to January 1, 1947, reduced by such amounts as may be paid under the new survivor-benefit provisions.

2. New classes of beneficiaries on account of occupational disability, and liberalization of present disability annuity provisions

The committee amendment adds new provisions to present law, providing for payment of full retirement annuities to employees permanently disabled as a result of occupational injury or disease if they meet either of the following specifications:

(*a*) Disabled for any regular employment for hire and having 10 or more years of service;

(*b*) Disabled for employment in their regular railroad occupation, having 20 or more years of service or being 60 years of age or over, and having a current connection with the railroad industry.

Under the present law, annuities are paid to employees who are totally and permanently disabled from any cause and who are unable to perform any regular employment. In order to qualify, they must either have 30 years of service or be 60 years of age or over. For those qualifying with 30 years of service the full annuity is paid, but for those qualifying only by being age 60 or over, a reduction is provided. The proposed amendments allow these provisions to remain as at present, except that the reduction for those qualifying only by reason of age is eliminated both for existing annuitants and for future ones.

3. Reduction of retirement age for women

Under the committee amendment, female employees who have had 30 years of service may retire at age 60 on a full annuity. Under the present law, women have the same retirement provisions as men, namely, that the full annuity is not payable until age 65, although

optional retirement between 60 and 65 can take place for those with 30 years of service, but with a reduction in the annuity.

4. Liberalization of minimum annuity provisions

The committee amendment provides for increased minimums, applicable with respect to all types of annuities for those having 5 or more years of service and a current connection with the railroad industry, or for those who have completed 20 years of service and were railroad employees when they attained age 65. Provision is made that the annuities of those now on the rolls will be increased if the new minimum provisions apply.

Under the present law, the minimum annuities payable are on a smaller basis than under the proposal and, moreover, apply only to annuities payable upon retirement at age 65 or later where the individual was an employee when he attained age 65 and had completed 20 years of service.

5. An increase in the tax as to retirement benefits in order to finance the proposed benefit changes

The actuary retained by the committee estimates that the amendments listed above will require additional income equivalent to approximately 1½ percent of pay roll, itemized as follows:

	Cost as percentage of pay roll	Cost on basis of $4,000,000,000 pay roll
Survivor benefits [1]	1.2	$48,000,000
New occupational disability benefits [2]	.2	8,000,000
Women retiring at age 60 with 30 years of service	.02	800,000
New minimum annuity provisions	.3	12,000,000
Total additional	1.72	68,800,000

[1] Net total after allowing for cost savings due to partial elimination of present death benefits.
[2] Including additional cost for paying full annuities, rather than reduced ones, to present disability annuitants qualifying at age 60 with less than 30 years of service.

NOTE.—The figures shown above for estimated costs are single values on a "most probable" basis and do not indicate the range of variation inherent in such estimates.

6. Increase in the tax as to retirement benefits in order to put the present railroad retirement system on a sound actuarial level-payment basis

This is accomplished by a proposal to add 3 percent to the existing ultimate tax of 7½ percent, half payable by the employers and half by the employees. The actuarial advisory committee, under the railroad retirement system, in its latest report for the 3-year period ending December 31, 1941, found that an additional tax of 3.32 percent was desirable at that time to place the retirement system on a sound actuarial level-payment basis. The actuary retained by the committee estimates that an additional 3-percent tax would substantially assure a sound basis for the railroad-retirement system.

The total necessary increase in the ultimate tax rate of 7½ percent in 1949 and thereafter provided under the present act is thus determined to be 4½ percent, making a total tax rate of 12 percent. It is recommended that this tax rate be adopted effective January 1, 1947, which is the effective date provided in the committee amendment for the various benefit changes. Under the present act the combined tax schedule is 7 percent until 1949 and 7½ percent thereafter. The

committee believe that it is desirable to have the taxes on a level-payment basis after 1946 rather than having a slight increase in 1949 and level thereafter.

7. Reduction in the unemployment-insurance tax rate

Under the committee amendment, the tax rate for unemployment insurance will be reduced from the existing 3 percent to varying amounts going as low as one-half percent, depending on the size of the unemployment-insurance account. On the basis of its present size of over $700,000,000 the tax rate would be one-half percent. Under the present law, no provision for tax-rate reduction is made when the experience is favorable and a large fund has been built up.

8. Collection of unemployment-insurance tax

The committee amendment provides for the collection of the unemployment-insurance tax after January 1, 1947, by the Bureau of Internal Revenue rather than by the Railroad Retirement Board as at present. Amendments to the Railroad Unemployment Insurance Act and the Internal Revenue Code are included to effect this change. The taxes for the support of the railroad retirement system are now collected by the Bureau of Internal Revenue under provisions of the Internal Revenue Code.

SUMMARY OF PRESENT AND RECOMMENDED TAXES

A summary of the present and recommended tax rates under railroad retirement and unemployment-insurance is shown in the table below:

	Employee		Employer		Total	
	Present	Recommended	Present	Recommended	Present	Recommended
	Rates until 1949					
Retirement	3.50	6.00	3.50	6.00	7.00	12.00
Unemployment			3.00	[1] 1.50	3.00	[1] 1.50
Total	3.50	6.00	6.50	[1] 6.50	10.00	[1] 12.50
	Rates in 1949 and after					
Retirement	3.75	6.00	3.75	6.00	7.50	12.00
Unemployment			3.00	[1] 1.50	3.00	[1] 1.50
Total	3.75	6.00	6.75	[1] 6.50	10.50	[1] 12.50

[1] Based on the unemployment-insurance account being at a sufficiently high level. This rate could be as much as 2.5 percent more if the account is at a low level.

COMPARISON OF COMMITTEE AMENDMENT WITH INTRODUCED BILL

The amendment proposed by the committee differs from the bill as introduced in regard to the benefits under the Railroad Retirement Act of 1937 and the Railroad Unemployment Insurance Act, and in regard to the taxes in respect thereto.

First, considering the retirement benefits, there are the following major differences:

1. *Changes in coverage and service credit.*—The committee amendment does not provide for any changes in coverage as did the introduced bill in respect to freight forwarders not controlled by railroads, railroad-controlled trucking companies, and certain companies whose services are used by railroads. Also, the committee amendments do not make the changes in definition of employment relation and the special crediting of prior service for redcaps, and other proposals for crediting service and compensation, that were contained in the introduced bill.

2. *New classes of disability beneficiaries.*—The committee amendment extends disability annuities to those with less than 30 years of service and under the age of 60, and provides new "regular occupation" disability annuities, only to those disabled as a result of occupational injury or disease, whereas the introduced bill provided such benefits regardless of cause of disability.

3. *Survivor benefits.*—The committee amendments provide for survivor benefits of the same size as those in the Social Security Act, whereas the introduced bill provided for benefits which were about 25 percent higher. Also, the amendments maintain the survivor benefits as an entirely independent system, corresponding to the retirement benefits, whereas the introduced bill provided for a coordination of the survivor benefits with those under the Social Security Act. While this proposed coordination had some merits it involved serious administrative complications. The amendments grant survivor benefits only in respect to deaths after 1946 where insured status is present, whereas the introduced bill, in addition, gave benefits for deaths before 1947 and for all survivors of annuitants and pensioners regardless of whether insured status was possessed by virtue of taxable earnings after 1936.

The committee amendment (sec. 7 (d)) preserves the death benefit provided for under present law, so far as it has accrued to an individual up to January 1, 1947, reduced by such amounts as may be paid under the new survivor-benefit provisions. On the other hand, under the introduced bill this would not be the case.

In regard to unemployment insurance, the committee amendment makes no changes as to benefits, whereas the introduced bill provided for higher benefit rates for employees with high amounts of earnings in the base year and for longer durations of benefits for all employees. In addition, the introduced bill contained provision for an extensive sickness and maternity insurance system, which is not included in the amendments.

The committee amendment provides that the tax for retirement purposes shall be 12 percent in 1947 and thereafter, whereas the introduced bill provided for a rate of 11½ percent until 1949, 12 percent from 1949 to 1951, and 12½ percent thereafter. However, upon the basis of its actuarial report it appears to the committee that the tax rates in the introduced bill should have been higher by about 1½ percent in order to finance adequately the present retirement system and the new benefits provided therein.

Under the introduced bill the function of collecting the retirement taxes was proposed to be transferred from the Bureau of Internal Revenue to the Railroad Retirement Board, whereas the committee

amendment makes no such change. Also, the introduced bill provided that the taxes should be permanently appropriated in full to the Railroad Retirement Account with administrative expenses being paid therefrom, whereas the committee amendment leaves unchanged the present situation whereby separate appropriations are made for administrative expenses and for the account on the basis of estimated tax receipts.

In regard to unemployment insurance taxes, the committee amendment provides for a form of merit or experience rating so as to require a lower tax rate when the fund is sufficiently large, whereas the introduced bill made no change in the tax rate. However, the committee believes on the basis of its actuarial report that the introduced bill should have provided for an increase in the tax rate of 1 percent so as to support the more liberal unemployment-insurance benefits and the sickness and maternity insurance benefits. Also, the committee amendment transfers the tax-collection function from the Railroad Retirement Board to the Bureau of Internal Revenue, whereas the introduced bill made no such change.

In regard to benefits under both retirement and unemployment insurance and in regard to taxes for both systems, the committee amendments maintain the present basis of computing only on earnings up to $300 for any calendar month. On the other hand, the introduced bill used as a basis earnings from all employers in a year excluding amounts in excess of $300 multiplied by the number of months of service in the year.

The table below shows the increases in cost, as percentages of pay roll, arising from the new benefits proposed by the introduced bill as contrasted with the new benefits in the committee amendment:

	Cost of benefits in introduced bill, percent	Cost of benefits in committee amendment, percent
Retirement	3.5	1.7
Unemployment (including sickness and maternity)	1.6	
Total	5.1	1.7

NOTE.—The figures shown for estimated costs are single values on a "most probable" basis and do not indicate the range of variation inherent in such estimates.

DESIRABILITY OF CHANGES IN EXISTING LAW MADE BY THE COMMITTEE AMENDMENT

The committee feels that it is of primary importance to place the retirement system (on the basis of benefits payable under existing law) on a sound actuarial level-payment basis and for that purpose recommends an increase of 3 percent in the tax rate. The committee recognizes that this increase may be either more or less than actual future experience will show is necessary. However, it is believed that any necessary adjustment either upward or downward will be relatively small, and that no change will be required for many years to come. If the present very high level of pay roll continues, along with

high living costs, the proposed tax increase will probably be more than is necessary. In such event, either a reduction could be made later, or the retirement benefits could be increased back to the same level of adequacy which they possessed when the system was originally inaugurated. In any case, if the proposed tax rate was later found to be more than adequate and a reduction necessary, there will have been no inequity to present employees for whom benefits based on prior service are payable, even though no contributions were collected therefor. On the other hand if future experience as to the level of pay roll or as to other actuarial cost factors is appreciably less favorable than the assumptions used in cost estimates made by the actuary of the committee, then an increase in the tax rate above the 12 percent level will have to be made at some time in the future.

The addition of survivor benefits on a basis corresponding to those available to workers covered by the general social-security program rounds out the railroad retirement program to the same general degree of completeness as the social-security system. The provision of monthly benefits for surviving widowed mothers and their children, for aged widows, and for certain dependent parents, along with lump-sum death payments in some cases, seems a very desirable feature to replace the existing lump-sum death payments which bear no relationship to presumptive family and dependency needs.

The extension of disability benefits to those with shorter periods of service than the 30 years required under the present act is believed desirable in respect to employees whose disability is caused by occupational reasons. Similarly, it is felt that some recognition should be given to individuals who are disabled because of an occupational injury or disease so that they cannot follow their usual occupation, even though they are not so badly disabled as to be unable to obtain any employment.

The proposal that women who have had 30 or more years' service may retire at age 60 on a full annuity instead of at age 65 follows the pattern often present in private retirement systems where women are allowed earlier retirement than men. This is especially the case in regard to those still working at age 60, which would include most of the women eligible under this provision.

The new minimum annuity provision results in more substantial benefits for those having a definite connection with the railroad industry at or near the time of retirement, and as such seems a desirable change in order to provide appropriate amounts for those with short service periods or low wage levels.

In order to finance the proposed additional benefits under the retirement system, there is recommended an additional tax of 1½ percent which, on a level-payment basis, should approximately support the new features added. As was the case with the additional amount needed to make the present retirement system self-sufficient, this increase may be slightly too low or slightly too high, as will be shown by long-range future experience. Any adjustment necessary, when combined with that for the existing retirement system, should not be very sizable, and it may be anticipated that the proposed rate will be possible of maintenance for many years to come.

It seems desirable that the collection of the unemployment insurance tax should be handled by the agency set up primarily for tax-collection purposes—the Bureau of Internal Revenue, which also collects the taxes in respect to the retirement system. It likewise seems advisable to maintain the present simple wage basis for determining taxes and benefits rather than going to an administratively more complicated annual-wage basis.

With the benefits now provided under the Unemployment Insurance Act, it appears very likely, although not a certainty, that the present statutory 3-percent tax rate is more than necessary. It is therefore thought desirable that a reduction in the tax rate be made so long as the fund is of a sufficiently large size. This parallels the policy of the vast majority of the State unemployment-compensation programs where, by various methods, rate reductions are granted when the experience is favorable.

EXPLANATION OF COMMITTEE AMENDMENT BY TITLES AND SECTIONS

TITLE I—AMENDMENTS TO RAILROAD RETIREMENT ACT OF 1937

Section 1. Addition of certain definitions

This section adds subsections (o) through (z) to the definition section of the Railroad Retirement Act of 1937, as amended.

Subsection (o) defines the circumstances which must exist on a particular date for an individual to have, on such date "a current connection with the railroad industry." This definition has significance for the purpose of determining (1) whether an individual is eligible for an annuity (as proposed by the amendment made by section 2 of the committee amendment) by reason of being unable, as the result of occupational injury or disease, to work in his regular occupation as a railroad employee, and (2) in the case where an individual is entitled to an annuity, whether such individual shall receive the minimum annuity proposed by the amendment made by section 3 of the committee amendment.

Subsection (p) defines the term "occupational injury or disease" which has significance for the purpose of determining whether an individual is eligible for an annuity (as proposed by the amendment made by sec. 2 of the committee amendment) either by reason of being unable, after 10 years of service, to engage in any regular employment for hire, or by reason of being unable, after 20 years of service, to work in his regular occupation as a railroad employee. This definition is based upon the definition of the term "injury" in section 2 of the Longshoremen's and Harbor Workers' Compensation Act (U. S. C., title 33, secs. 902 (2)).

Subsections (q) through (z) contain the definitions which have significance for the purposes of the new survivor benefit provisions proposed by the amendment made by section 4 of the committee amendment. These definitions are explained in the discussion of section 4 of the committee amendment.

Section 2. Amendment to section 2

This section amends section 2 of the Railroad Retirement Act of 1937, as amended, relating to eligibility for annuities, so as to retain, except as set forth below, the existing provisions of law:

(1) After January 1, 1947, women 60 years of age or over who have completed 30 years of service will become eligible for a full annuity without the reduction made under existing law of one one-hundred-and-eightieth of the annuity for each calendar month that they are under age 65 when the annuity begins to accrue. Section 7 (a) of the committee amendment makes it certain that after January 1, 1947, deductions will not continue to be made in payments to women of 60 or over with 30 years of service whose annuities began to accrue prior to that date.

(2) Under existing law individuals totally and permanently disabled are eligible for annuities before age 65 if they are 60 years of age or over but their annuities are reduced by one one-hundred-and-eightieth for each month that they are under age 65 when the annuity begins to accrue. The committee amendment eliminates the provisions of law reducing the annuity. Section 7 (a) of the committee amendment makes it certain that after January 1, 1947, deductions will not continue to be made in the case of totally and permanently disabled individuals 60 years of age or older whose annuities began to accrue prior to that date.

(3) The committee amendment eliminates the requirement of existing law that, if an individual entitled to a total and permanent disability annuity recovers from the disability before attaining age 65, any future age annuity be reduced on an actuarial basis so as to compensate for the disability annuity previously received by him.

(4) The committee amendment substitutes for the words "totally and permanently disabled for regular employment for hire" the words "permanent physical or mental condition is such that they are unable to engage in any regular employment for hire" in order that the language will be the same as that used in the new classes of eligibility discussed in paragraph (5). The change in language does not change the test to be applied in determining if an individual will be entitled to a disability annuity and is consistent with existing interpretive regulations of the Railroad Retirement Board.

(5) The committee amendment provides for two new types of retirement annuities based on disability, as follows:

First, in the case of "individuals who on or after January 1, 1947, have completed ten years of service and whose permanent physical or mental condition, as the result of occupational injury or disease, is such that they are unable to engage in any regular employment for hire."

Second, in the case of "individuals who on or after January 1, 1947, have, on the date as of which the annuity begins to accrue, a current connection with the railroad industry and, on such date, either have completed twenty years of service or have attained the age of sixty, and whose permanent physical or mental condition, as the result of occupational injury or disease, is such as to be disabling for work in their regular occupation as employees."

The Railroad Retirement Board is required, with the cooperation of employers and employees, to secure the establishment of standards determining the physical and mental conditions which are permanently disabling for work in the several occupations in the railroad industry. The determination as to which of several occupations of an employee is his "regular occupation" must be made under definite standards prescribed by the amendment.

(6) In the case of an individual receiving an annuity by reason of being unable to work in his regular railroad occupation the committee amendment provides that no annuity shall be paid with respect to any month in which such individual earns more than $75 in service for hire or in self-employment.

Section 3. Minimum annuities

The amendment to existing law made by this section liberalizes the minimum annuity provisions by adding a new class of annuitants who are entitled to minimum annuities and by increasing the amount of the minimum annuity payable.

Existing law provides minimum annuities to annuitants who were employees when they attained age 65 and had completed 20 years of service. The committee amendment retains existing law and in addition provides minimum annuities for annuitants irrespective of age who have, on the date their annuities begin to accrue, a current connection with the railroad industry and have, on such date, completed 5 years of service.

If an individual is entitled to a minimum annuity the minimum amount payable for any month is whichever of the following is the least:

EXISTING LAW	COMMITTEE AMENDMENT
(1) $40.	(1) $50.
(2) 80 percent of his monthly compensation but not less than $20.	(2) $3 multiplied by the number of his years of service.
(3) His monthly compensation.	(3) His monthly compensation.

Under subsection (a) of section 7 of the committee amendment the new minimum annuity provisions will be applicable (with respect to calendar months after December 31, 1946), without further application, to an individual to whom an annuity began to accrue before January 1, 1947, if such annuity was based on not less than 5 years of service, without regard to the current connection requirement. This follows the bill as introduced and the committee actuary advises that the probable savings in administrative expenses, by not requiring determination of "current connection" as of past dates, would offset the probable increased cost involved.

Section 4. Repeal of sections 4 and 5; addition of sections providing for survivor benefits

This section strikes out sections 4 and 5 of the existing law and inserts new provisions providing survivor benefits patterned after the survivor insurance provisions of the Social Security Act.

Section 4 of the existing law permits individuals to elect to receive reduced annuities for life in order to provide annuities to their spouses after death. The saving provisions in subsection (c) of section 7 of the committee amendment follow the bill as introduced in requiring certain elections made before January 1, 1947, to be reaffirmed in order to be given effect after that date and permitting certain other elections made before such date to be revoked.

Section 5 of the existing law provides a death benefit based on a certain percentage of earnings in the railroad industry after December 31, 1936, less annuity payments to the employee and his spouse. The saving provisions contained in section 7 (d) of the committee amendment (explained more fully below) preserve the rights of

individuals to the amount of the death benefit accrued up to December 31, 1946, reduced by amounts paid under the new survivor-benefit provisions.

New survivor-benefit provisions.—The new survivor-benefit provisions added to the Railroad Retirement Act of 1937 by section 4 of the committee amendment contain a few minor departures from the Social Security Act by reason of certain inherent differences between the social security and the railroad retirement systems. Whereas wage credits under the Social Security Act are based on the amount "paid" to an individual, under the proposed new provisions of the Railroad Retirement Act they are based on wages "earned" by him. A difference in the method of keeping wage records in the past has required a slight divergence in the method of computing benefits based on employment before 1947. This divergence affects only those cases in which a worker in the upper wage bracket has had intermittent railroad employment, and even in such cases the resulting difference in benefit amounts will ordinarily be only a few cents. Under the Social Security Act, the provisions dealing with survivors benefits and those dealing with benefits payable to or on account of the retirement of the wage earner are closely interwoven. Under the Railroad Retirement Act, as proposed to be amended by the committee amendment, the survivors and retirement benefits are separate. These and a few other differences have necessitated some difference in language between the provisions of the Social Security Act dealing with survivors benefits and provisions of the Railroad Retirement Act on this subject. The benefits provided are, however, in all substantial respects identical with those provided for survivors under the Social Security Act.

Definitions in connection with survivors' benefits.—The basic definitions necessary to the survivors' insurance provisions have been added as new subsections (q) to (z), inclusive, of section 1, the definition section, of the present Railroad Retirement Act.

Wages.—Subsection (q), which defines wages for purposes of the act, is patterned after the definition in section 209 (a) of the Social Security Act. The term is defined to include all compensation up to a maximum of $3,000 earned in any calendar year after 1936, excluding, however, the excess over $300 in any month's compensation prior to 1947. The last exclusion is necessary because the Railroad Retirement Board's records do not show in most cases any compensation earned in a month which is in excess of $300. This definition omits a provision in the Social Security Act which, for the years 1937, 1938, and 1939, bases the $3,000 limitation on earnings of an employee from any one employer, rather than on his total earnings. This method of computing the social-security tax was thought inequitable, and was corrected for future years by the 1939 amendments of the social-security legislation. The definition, in order to avoid requiring railroad employers to report compensation on one basis, and wages on another basis, also omits certain minor exclusions, such as certain payments for time lost due to sickness. It is not believed that these differences will have any material effect on benefit rights.

Survivor benefit credit and average monthly wage.—Under the committee amendment the amount of the payments to survivors depends upon the amount of the "survivor benefit credit" of the individual with respect to whose wages the payments are to be made.

The amount of this credit is in turn dependent on the average wages of the individual. It may be helpful, therefore, to discuss the definition of average monthly wages first.

Subsection (s), which defines the term "average monthly wage," is patterned after section 209 (f) of the Social Security Act, but with appropriate modifications necessary to make the two systems operate alike. Such wage is to be computed by dividing (1) the wages earned by an individual before the quarter in which he died, became entitled at or after age 65 to receive an annuity under section 2, or attained age 65 if he became entitled to an annuity under section 2 before attaining such age, whichever of these three events first occurred, by (2) three times the number of quarters elapsing after 1936 and before such quarter in which he died, became so entitled or so attained the age of 65. Any quarter before the quarter in which he attained the age of 22 is excluded from the divisor (the number of elapsed quarters) if he did not earn $50 in wages in such quarter. It may be noted that the lack of earnings during the period when an annuity is payable before the annuitant reaches 65 would count against his survivors in computing the average wage on which their benefits are based, just as any periods of unemployment of a wage earner, even though due to disability, count against his survivors under the Social Security Act.

Subsection (r), which defines the term "survivor benefit credit," is patterned after the definition of primary insurance benefit in section 209 (e) of the Social Security Act, but with appropriate changes necessary to adapt the definition to the Railroad Retirement Act. The amount of the survivor benefit credit (upon which the amounts of the survivors' benefits depend) is determined by adding (1) 40 percent of the first $50 of the individual's average monthly wage and 10 percent of the next $200 of such wage and (2) 1 percent of the amount computed under clause (1) multiplied by the number of years in which $200 or more of wages were earned by the individual.

Completely and partially insured status and quarter of coverage.—Under the committee amendment, as under the Social Security Act, the entitlement of survivors to benefits or payments depends on whether the deceased wage earner worked in covered employment for a sufficient length of time and earned a stated amount of compensation therefor. This is expressed in the committee amendment in terms of completely or partially insured status of the deceased individual. Thus, aged widow's insurance benefits and parent's insurance benefits are payable only if the deceased husband or son was a completely insured individual when he died, while child's and widow's current insurance benefits and lump-sum death payments are payable if he was a completely or partially insured individual at that time. Whether or not he was a completely insured individual at his death depends, in turn, on whether he had acquired a sufficient number of quarters of coverage. It may be helpful, therefore, to discuss the definition of "quarter of coverage" first.

Subsection (v), which defines the term "quarter of coverage," is intended to serve the same purpose as the definition of quarter of coverage which appears in section 209 (g) of the Social Security Act. Under it, an individual acquires a quarter of coverage for each calendar quarter in which he has earned not less than $50 in wages. However since the records of the Railroad Retirement Board will

frequently not be adequate, for the period prior to the enactment of the new legislation, to indicate in what calendar quarter an individual's wages were earned, some method had to be devised for determining the number of quarters of coverage acquired by employees after 1936 and prior to 1947. The table which appears in subsection (v) was intended for this purpose. Under it, an individual who has worked in at least 1 but not more than 3 months of a calendar year and has earned between $50 to $2,999.99 in a calendar year is given one quarter of coverage; an individual who has worked in 4 to 6 months of a calendar year is given one quarter of coverage if he earned $50 to $99.99, and two quarters of coverage if he has earned $100 to $2,999.99 in that year; an individual who has worked in 7 to 9 months of a calendar year is given one quarter of coverage if he earned $50 to $99.99, two quarters if he earned $100 to $149.99, and three quarters of coverage if he earned $150 to $2,999.99 in that year; and an individual who has worked in 10 to 12 months in a calendar year and has earned not less than $200 is given four quarters of coverage.

Since it will be frequently important, particularly in determining during the first few years after the enactment of this legislation whether an individual was currently insured when he died, to know in which of the calendar quarters in the years preceding the enactment of this legislation wages were earned, this subsection also provides that where an individual has under the table only one quarter of coverage for a calendar year he shall be deemed to have earned his wages in the last calendar quarter; where he has under the table two calendar quarters of coverage he shall be deemed to have earned his wages equally in the last two calendar quarters, etc.

Subsection (t), which defines the term "completely insured individual," is patterned after the definition of "fully insured individual" in section 209 (g) of the Social Security Act. Under it an individual is completely insured (1) if he has 40 quarters of coverage (10 years of railroad work) or (2) if he had not less than 1 quarter of coverage for each 2 of the quarters elapsing after 1936 or after he became 21, whichever is later, and before the quarter in which he reached 65 or died, whichever first occurred. He must, however, have had at least 6 quarters of coverage. This subsection also provides generally for giving an individual a quarter of coverage for each quarter in the calendar year following his first quarter of coverage if he has earned $3,000 or more in wages during such year. Periods during which annuities are payable prior to attainment of age 65 are not excluded from the elapsed quarters in determining completely insured status, since periods of unemployment before age 65, even though due to disability, are not excluded in the corresponding determination under the Social Security Act.

Subsection (u), which defines the term "partially insured individual" is the same as section 209 (h) of the Social Security Act defining the term "currently insured individual." It provides that an individual shall be deemed partially insured if he has earned not less than $50 in wages in each of not less than 6 of the 12 calendar quarters immediately preceding the quarter in which he died. The purpose of this provision is to provide protection for the surviving dependents

of individuals who earn a certain minimum amount of wages in railroad employment within the last 3 years before death, but who have not worked in such employment a sufficient length of time to qualify them as completely insured individuals.

Widow.—Subsection (w), which defines the term "widow," is the same as the definition of that term in section 209 (j) of the Social Security Act. A "widow" is the surviving wife of an individual who is either the mother of his child or was married to him for a year before he died.

Child.—Subsection (x), which defines the term "child," is the same as the definition of that term in section 209 (k) of the Social Security Act. It defines the term as meaning an individual's child, an individual's stepchild by a marriage contracted before the individual attained 60 and prior to 1 year before his death, and a child legally adopted by an individual prior to the date he attained age 60 and prior to 1 year before he died.

Status as widow, child, or parent.—Subsection (y), which is patterned after section 209 (m) of the Social Security Act, provides that the determination of whether an applicant is the widow, child, or parent of an individual is to be made by applying such law as the courts of the State in which the individual was domiciled at his death would apply in determining the devolution of his intestate personal property, or as would be applied by the courts of the District of Columbia if he was not domiciled in any State.

Subsection (z) follows section 209 (n) of the Social Security Act by providing that a widow shall be deemed to have been living with her husband when he died if they were both members of the same household at that time, or if she was receiving regular contributions from him toward her support at that time, or if he had been ordered by a court to contribute to her support.

The new section providing for survivor benefits.—The new section 4 added to the Railroad Retirement Act of 1937 by the committee amendment states the conditions under which payments will be made to survivors of railroad employees.

Child's insurance benefits: Subsection (a) of the new section 4 is patterned after section 202 (c) of the Social Security Act providing for child's insurance benefits. It is designed to assure the child a monthly benefit based on his deceased father's wages. Paragraph (1) of this subsection provides that a child shall be entitled to monthly benefits if his father died a completely or partially insured individual after 1946, if the child has filed an application for such benefits, if he was under 18 and unmarried at the time he filed the application, and if he was dependent upon his father at the time of his father's death. The child is entitled to receive such benefits until he dies, marries, is adopted, or attains the age of 18.

Paragraph (2) of subsection (a) provides that the amount of the child's insurance benefit for each month shall be equal to one-half of his parent's survivor benefit credit, or equal to one-half of the largest survivor benefit credit if there is more than one parent. Paragraphs (3) and (4) of subsection (a) define what is meant by dependency upon a parent. Since a child is normally dependent upon his father or adopting father, paragraph (3) provides that he shall be deemed to be so dependent unless at the time of the father's death the father was not living with or contributing to the child's support

and (A) the child is neither the legitimate nor adopted child of the father, or (B) the child had been adopted by someone else, or (C) the child was living with and supported by his stepfather. Since a child is not usually financially dependent upon his mother, adopting mother, or stepparent, paragraph (4) provides that a child shall not be deemed dependent upon such individual unless at the time of such individual's death no parent other than such individual was contributing to the support of the child and the child was not living with its father or adopting father.

Widow's insurance benefits: Subsection (b), defining the conditions under which a widow is entitled to widow's insurance benefits, is patterned after section 202 (d) of the Social Security Act and is intended to assure the aged widow of monthly benefits after her husband's death. It provides that a widow shall be entitled to monthly insurance benefits if her husband died a completely insured individual after 1946, if she has not remarried, if she is 65, has filed an application for widow's insurance benefits, and was living with her husband when he died, and if she is not herself entitled to an annuity under section 2 of the Railroad Retirement Act equal to or greater than three-fourths of her husband's survivor benefit credit. She continues to be entitled to such benefits until she remarries, dies, or becomes entitled to an annuity under section 2 equal to or greater than three-fourths of the survivor-benefit credit of her husband. The widow's insurance benefit for each month is equal to three-fourths of the survivor-benefit credit of her husband less the amount of her annuity if she is entitled to one under section 2.

Widow's current insurance benefits: Subsection (c), which defines the conditions under which a widow is entitled to widow's current insurance benefits, is patterned after section 202 (e) of the Social Security Act. The purpose of this subsection is to extend financial protection to the widow regardless of her age while she has in her care a child of her deceased husband entitled to child's insurance benefits. It provides that she is entitled to widow's current insurance benefits if her husband died a completely or partially insured individual after 1946, if she has not remarried, is not entitled to receive a widow's insurance benefit, and is not entitled to receive an annuity under section 2 equal to or greater than three-fourths of her husband's survivor-benefit credit, if she was living with her husband when he died and has filed an application for widow's current insurance benefits, and if at the time of such filing she has in her care a child of her deceased husband entitled to child's insurance benefits. She remains entitled to such benefits until no child of her deceased husband is entitled to child's insurance benefits, she becomes entitled to receive a widow's insurance benefit, she remarries or dies, or she becomes entitled to receive an annuity under paragraph (1) or (2) of section 2 (a) equal to or greater than three-fourths of her deceased husband's survivor-benefit credit. Her widow's current insurance benefit for each month is equal to three-fourths of the survivor-benefit credit of her husband less the amount of her annuity if she is entitled to one under section 2 (or less the amount of her widow's current insurance benefit, if that is smaller).

Parent's insurance benefits: Subsection (d), which defines the conditions under which parents are eligible for monthly benefits, is patterned after section 202 (f) of the Social Security Act. The purpose

of these benefits is to extend financial protection to the aged parents where the parents were wholly dependent upon and supported by the wage earner at the time of the wage earner's death and where there are no widow and no unmarried surviving children under the age of 18. It provides that a parent shall be entitled to benefits if his son or daughter died completely insured after 1946, if the parent is 65, was wholly dependent upon and supported by the wage earner at the time of his death and filed proof thereof within 2 years of such death, if the parent has not remarried since such death and is not entitled to receive any other insurance benefits or any annuity under section 2, the total of which for a month is equal to or greater than one-half of the survivor-benefit credit of the deceased son or daughter. Such parent remains entitled to benefits until he dies, marries, or becomes entitled to receive insurance benefits (other than parent's insurance benefits) or an annuity under section 2 in a total amount equal to or greater than one-half of the survivor-benefit credit of the deceased child. The amount of the parent's insurance benefit for each month is equal to one-half of the survivor-benefit credit or, if there is more than one such credit, it is equal to one-half of the greatest survivor-insurance benefit, less the amount of any insurance benefits (other than parent's insurance benefits) and of any annuity under section 2 to which such parent may be entitled. The term "parent" is defined for this subsection to mean the mother or father of the wage earner, the step-parent of the wage earner by a marriage contracted before the wage earner was 16, and the adopting parent by whom the wage earner was adopted before he was 16.

Lump-sum death payments: Subsection (e) which provides for the payment of lump sums upon the death of a wage earner is patterned after section 202 (g) of the Social Security Act. It provides for payment of a lump sum to persons described in the subsection upon the death after 1946 of a completely or partially insured individual leaving no surviving widow, child, or parent who would on filing an application in the month in which such individual died, be entitled to a monthly benefit under subsections (a), (b), (c), or (d) of this section. A lump-sum payment may be payable to the following persons: To the widow or widower of the deceased; or, if none be living at the time of the Board's determination, to any child or children of the deceased and any other persons who are, under the intestacy law of the State in which the deceased was domiciled, entitled to share as distributees with the children of the deceased, in such proportions as provided by such law; or, if none of the foregoing be living at the time of the Board's determination, then to the parent or parents of the deceased, in equal shares. The Railroad Retirement Board is to determine the relationship of the persons mentioned above and, if there is more than one person entitled to the lump-sum death payment, the Board is to distribute the payment among them. If none of such persons is living at the time of the Board's determination the amount due is to be paid to any persons equitably entitled thereto, to the extent and in the proportions that he or they have paid the expenses of burial of the deceased. The lump sum is payable only if application therefor is filed by or on behalf of the eligible person prior to the expiration of 2 years after the death of the wage earner. The payment is an amount equal to six times the survivor-benefit credit of the deceased wage earner, except that if it is paid in reimbursement for funeral expenses it may not exceed the amount of such expenses.

Applications: Under subsections (a), (b), (c), and (d) an individual is not entitled to monthly benefits until he has fulfilled all the conditions specified in those subsections. The filing of an application is one of the conditions and an individual cannot become entitled, with one exception, to any monthly benefits until he has filed the application. Paragraph (1) of subsection (f), which is the same as section 202 (h) of the Social Security Act, specifies the exception. Under it an individual who has met all the conditions of entitlement to an insurance benefit for a month except the filing of an application is entitled to such benefit for such month if he does file the application before the end of the third month succeeding such month.

Paragraph (2) of subsection (f) is patterned after section 205 (m) of the Social Security Act and provides that applications for benefits filed prior to 3 months before the first month in which the applicant meets all the other conditions of entitlement to the benefits shall not be valid. Paragraph (3) provides that applications for any benefits or payments under this section shall be made and filed in such manner as the Board may by regulation prescribe.

Family payments: Subsection (g), which is patterned after section 205 (n) of the Social Security Act, authorizes the Board to certify to the Secretary of the Treasury any two or more individuals in the same family for joint payment of the total benefits payable to such individuals.

Benefits not paid at death: Subsection (h) constitutes a new provision which has no analog in the Social Security Act. It is necessary to include this provision by reason of the difference between the two systems as to the disposition of benefits due but not paid at death. If an individual dies before any payment to which he is entitled is actually made to him under section 202 of the Social Security Act the amount due him at his death is payable to any individuals who may become entitled to benefits subsequently upon the same wage record. If no such benefits are payable in the future the Federal Government retains the funds. The proposed subsection (h) provides that the amount of any payment due an individual under this section, but not paid to him before his death, shall be paid to the same persons, and subject to the same conditions and limitations, (1) as though such amount was a lump sum payable under subsection (e) by reason of the death of the individual with respect to whose wages the amount was payable and (2) as though the individual with respect to whose wages the amount was payable had died on the date of the death of the individual to whom the amount was due. In short, the amount is paid to the persons who bear the requisite relation or connection with the deceased wage earner (rather than with the beneficiary), and the date for determining that relationship or connection of the persons with the deceased wage earner, and the starting date of the 2-year period within which application for the payment must be filed, is the date of the deceased beneficiary's death.

Assignment: Subsection (i), which is the same as section 207 of the Social Security Act, provides that a right to payment under this section is not transferable or assignable and that no moneys paid or payable under this section may be subject to execution or other legal process.

Entitlement: Subsection (j) of the new section 4 has no analog in the Social Security Act. It provides that, for purposes of this

section and subsections (s) and (t) of section 1, an individual shall be deemed entitled to an annuity for any month if an annuity is, or thereafter becomes, payable to him for the accrual during such month. This provision was deemed necessary because title II of the Social Security Act, whose provisions your committee has followed in establishing benefits for survivors of railroad employees, speaks in terms of entitlement to benefits for a month, whereas the Railroad Retirement Act, in dealing with a similar situation, speaks of the accrual of an annuity for a month, the payment not being due until the first day of the following month.

New section relating to reduction and increase of insurance benefits.—The new section 5 added by the committee amendment to the Railroad Retirement Act of 1937 provides a maximum and minimum for benefits payable under the new section 4 and provides for reduction or increase of benefits to such maximum or minimum. It also provides for deductions from benefits in cases where the individual entitled to them earns a stated amount of wages covered by the Social Security Act and in certain other enumerated cases.

Maximum benefits: When the total of benefits payable under section 4 with respect to an individual's wages exceeds $20, the total is limited by subsection (a) of section 5 so that it may not exceed $85, or two times the survivor benefit credit of the deceased wage earner, or 80 percent of his average monthly wage, whichever is the least; except that the total of benefits may not be reduced to less than $20. This subsection, which is the same as section 203 (a) of the Social Security Act, also provides that the reduction is to be made prior to any deductions under subsection (d) of section 5.

Minimum benefits: Subsection (b), which is the same as section 203 (b) of the Social Security Act, provides for increasing, where necessary, the benefits payable on the basis of an individual's wages so that they will in no case total less than $10. Such increases are to be made prior to any deductions under subsection (d) of section 5.

Proportionate reduction or increase: Subsection (c) is the same as section 203 (c) of the Social Security Act and provides that whenever a reduction or increase in the total of benefits is required under subsection (a) or (b), each benefit payable for the month with respect to the wages of an individual shall be proportionately decreased or increased.

Deductions because of employment, failure to attend school, or absence of child: Subsection (d) is the same as section 203 (d) of the Social Security Act. It provides that deductions shall be made from any benefits to which an individual is entitled until they total the amount of such benefits for any month in which (*a*) he rendered services for wages (as defined in section 209 (a) of the Social Security Act, as amended) of not less than $15, or (*b*) if he was a child over 16 and under 18, he failed to attend school regularly and the Board finds that attendance was feasible, or (*c*) if the individual is a widow entitled to widow's current insurance benefits, she did not have in her care a child of her husband entitled to receive child's insurance benefits.

Prevention of duplication of deductions: Subsection (e) is the same as section 203 (f) of the Social Security Act. It prevents a duplication of deductions under subsection (d) if more than one of the events specified in subsection (d) occur in the same month.

Report to the Board: Subsection (f) is the same as section 203 (g) of the Social Security Act. It requires that the occurrence of any event enumerated in subsection (d) be reported to the Board by any individual whose benefits are subject to deduction under that subsection by reason of such occurrence, such report to be made prior to receipt and acceptance of a benefit for the second month following the month in which the event occurred. Any such individual who has knowledge thereof and fails to report any such occurrence is penalized by duplicating the amount of the deduction.

Section 5. Returns and records as to compensation

This section amends section 8 of the Railroad Retirement Act of 1937, as amended, in two respects: (1) It amends the first sentence of the section so as to require employers to file with the Railroad Retirement Board returns under oath of "compensation" rather than "monthly compensation" as provided in existing law; and (2) it amends the second sentence of the section so as to provide that after 4 years after a return is required to be made the Board's record of the compensation so returned shall be conclusive as to the amount of compensation earned by an employee during each month covered by the return rather than the return being conclusive after such period as provided in existing law.

The saving provision in section 7 (e) of the committee amendment provides that returns made with respect to any period before January 1, 1947, shall be conclusive (in the same manner and to the same extent as provided under such section 8 prior to its amendment) except that after March 31, 1951, the Railroad Retirement Board's record of the amount of the compensation earned by an employee during each month covered by any such return shall be conclusive.

Section 6. Incidental amendments

This section makes a number of changes in existing law which are made necessary by reason of the changes in existing law made by the preceding sections of the committee amendment.

Section 7. Saving provisions

This section contains a number of saving provisions which, except for differences made necessary by reason of differences between the committee amendment and the bill as introduced, are substantially the same as the saving provisions contained in the bill as introduced. In most instances these provisions have been explained briefly above in connection with the provisions to which they relate, but a more complete explanation of section 7 (d) is given below.

Section 7 (d) has been incorporated as a saving provision in order to carry out the committee's objective of not taking away any present benefits that have accrued up to the effective date. It deals with the death benefit under the Railroad Retirement Act of 1937 which is based on 4 percent of creditable compensation after 1936 less any annuity payments that have been received (in effect this provision in the 1937 act merely guaranteed every individual that he would receive at least as much in benefits as he had paid in taxes).

The subsection provides that for survivors of any individual who dies before 1947 the death benefit provisions of the 1937 act shall continue to apply, and further that for survivors of any individual who dies after 1946 the total payable to him in annuities and to those of his survivors who are eligible for immediate benefits after

his death shall be at least as much as the death benefit amounted to as of December 31, 1946. Such death benefit when payable must be claimed within 2 years after the date of the employee's death except that where monthly benefits are payable to surviving dependents or to a designated spouse under a joint survivor annuity, the death benefit must be claimed within 2 years after the cessation of all such survivors' benefits. Payment of the death benefit is made to the same person or persons as under the present law.

TITLE II—AMENDMENTS TO RAILROAD UNEMPLOYMENT INSURANCE ACT

Section 201. Termination of period with respect to which contributions are payable

This section makes the basic amendment to the Railroad Unemployment Insurance Act necessary to carry out the policy of transferring to the Bureau of Internal Revenue the function of collecting the amounts paid by carriers for the support of the railroad unemployment insurance system. The section amends section 8 (a) of the Railroad Unemployment Insurance Act so as to provide that no contributions shall be payable under that act with respect to compensation payable to employees with respect to services rendered after December 31, 1946. By other provisions of the bill, hereinafter explained, taxes for the support of the railroad unemployment insurance system, to be collected by the Bureau of Internal Revenue, are imposed upon carriers beginning January 1, 1947.

Section 202. Amendments relating to railroad unemployment insurance account

This section makes amendments to section 10 of the Railroad Unemployment Insurance Act, and to section 904 (a) and (f) of the Social Security Act, for the following purposes:

(1) To provide (following the formula now applicable in the case of contributions under the Railroad Unemployment Insurance Act) that the railroad unemployment insurance account (from which the benefits under the Railroad Unemployment Insurance Act are paid) shall receive 90 per centum of all the taxes (including interest, civil fines, civil penalties, additional amounts, and additions to taxes) collected by the Bureau of Internal Revenue under the new tax provisions which are to become effective with respect to service rendered on or after January 1, 1947.

(2) To grant authority for the payment of refunds from the unemployment insurance account on account of overpayments of taxes under the new tax provisions.

Section 203. Amendment relating to railroad unemployment insurance administration fund

This section contains an amendment to section 11 of the Railroad Unemployment Insurance Act, relating to the railroad unemployment insurance administration fund, which is the fund from which administrative expenses of the Railroad Retirement Board are paid in connection with the operation of the railroad unemployment insurance system.

Under the law as now in force, 10 percent of the contributions collected by the Railroad Retirement Board are credited directly to the fund, and, so that the fund will not become unnecessarily large,

the law provides that so much of the balance of the fund as of June 30 of each year as is in excess of $6,000,000 shall as of such date be transferred from the fund to the railroad unemployment insurance account.

Consistently with the amendment above referred to with respect to the railroad unemployment insurance account, the amendment made by this section provides that the fund shall receive 10 per centum of all the taxes (exclusive of all interest, fines, penalties, additional amounts, and additions to tax) collected under the new tax provisions above referred to. No change has been made in the provision of present law providing that so much of the balance of the fund as of June 30 of each year as is in excess of $6,000,000 shall as of such date be transferred from the fund to the railroad retirement account.

Section 204. Incidental amendments

This section provides for changes in existing law which are necessary because of other amendments made.

Subsection (a) amends subsection (g) of section 2 of the Railroad Unemployment Insurance Act, relating to question of the persons to whom payment shall be made in cases where unemployment insurance benefits have accrued but had not been paid at the time of the death of the individual entitled thereto. It was necessary to modify this subsection because of references contained therein to provisions of the Railroad Retirement Act of 1937 which are amended by title I of the committee amendment.

Subsections (b) and (e) make amendments necessary to clarify the respective powers of the Railroad Retirement Board and the Bureau of Internal Revenue in connection with refunds.

Subsection (c) makes an amendment which corrects certain references to provisions of the Internal Revenue Code, and which also insures that the Railroad Retirement Board will continue to have certain authority which it now has in connection with requiring the making of payments referred to in the second sentence of section 2 (f) of the Railroad Unemployment Insurance Act.

Subsection (d) amends subsection (d) of section 9 of the Railroad Unemployment Insurance Act to add provisions relating to the disposition of fines and criminal penalties imposed in connection with the administration of the new tax provisions added by title III of the committee amendment.

Section 205. Saving provisions

This section contains a saving provision necessary in connection with the amendment made to subsection (g) of section 2 of the Railroad Unemployment Insurance Act.

TITLE III—AMENDMENTS TO INTERNAL REVENUE CODE

Section 301. Increase in railroad retirement tax rates

This section by an amendment to sections 1500, 1510, and 1520 of the Internal Revenue Code, which sections impose the taxes in support of the railroad retirement system, increases the rate of employees' tax, employee representatives' tax, and employers' tax, with respect to compensation for services rendered after December 31, 1946. Under the amendment the rate of employees' tax and employers' tax with respect to compensation for services rendered after December 31, 1946,

will be 6 percent, and the rate of employee representatives' tax with respect to compensation for services rendered after December 31, 1946, will be 12 percent.

Section 302. Railroad unemployment tax

Subsection (a) of this section makes such technical amendments to subchapter B of chapter 9 of the Internal Revenue Code, relating to the taxes imposed in support of the railroad retirement system, as are appropriate for the purpose of making the existing provisions of such subchapter part I of such subchapter. Such part may be cited as the "Railroad Retirement Tax Act."

Subsection (b) of this section adds to subchapter B of chapter 9 of the code a new part II, which may be cited as the "Railroad Unemployment Tax Act." The provisions of such part supersede the taxing provisions of the Railroad Unemployment Insurance Act with respect to services rendered after December 31, 1946; and the principal provisions of such part correspond generally to sections 1 and 8 of the Railroad Unemployment Insurance Act. The Railroad Retirement Board will continue to collect the contribution, and make refunds, under the Railroad Unemployment Insurance Act only with respect to services rendered after June 30, 1939, and before January 1, 1947. (See sec. 201 of the committee amendment). The tax imposed under the code in support of the railroad unemployment system, that is, the tax with respect to services rendered after December 31, 1946, is to be collected by the Bureau of Internal Revenue instead of by the Railroad Retirement Board as under existing law; and refunds of the tax under the code and other matters in connection with the administration of such tax will be handled by the Bureau of Internal Revenue.

Part II of subchapter B of chapter 9 of the Internal Revenue Code consists of sections 1550 to 1558, both inclusive.

Section 1550 of the Internal Revenue Code supersedes section 8 (a) of the Railroad Unemployment Insurance Act with respect to services rendered after December 31, 1946, and, except with respect to the period to which the respective sections are applicable, corresponds to such section 8 (a). Section 1550 omits the term "employment," which is used in section 8 (a) of the Railroad Unemployment Insurance Act, since such term is neither necessary nor appropriate in view of the coverage definitions contained in section 1554 of the code. The employers' tax under section 1550 of the code and contributions under section 8 (a) of the Railroad Unemployment Insurance Act are measured by the total amount of compensation payable by an employer to his employees for services performed during a particular period, regardless of the time of actual payment, excluding, however, the amount of compensation in excess of $300 which is payable by the employer to any employee for services performed during any one calendar month. Section 1550 continues the present proration provision where an employee earns conpensation in excess of $300 during any one calendar month from two or more employers. Compensation is payable within the meaning of part II of subchapter B of chapter 9 of the Internal Revenue Code (I) if there is an obligation at any time to pay compensation with respect to services rendered during the particular period for which the return of tax is required, or (2) if, at any time, compensation is actually paid with respect to services rendered during such period. It is immaterial whether such compensation is certain in amount at any time within the return period, and

whether the right exists to enforce the payment of such compensation at any time within the return period. Instead of a 3-percent rate as provided in existing law, a formula for determining the rate with respect to services rendered in a particular calendar year, based on the balance to the credit of the railroad unemployment insurance account as of the close of business on September 30 of the preceding year, as determined by the Secretary of the Treasury, is adopted. (The railroad unemployment insurance account is the account established pursuant to sec. 10 of the Railroad Unemployment Insurance Act, as amended, in the unemployment trust fund under sec. 904 of the Social Security Act, as amended.) For example, if the Secretary of the Treasury determines that the balance to the credit of the account as of the close of business on September 30, 1946, is $350,000,000 or more, the rate with respect to compensation payable to employees for services rendered during the calendar year 1947 will be one-half percent.

Section 1551 of the Internal Revenue Code, relating to adjustments of the tax, corresponds generally to section 8 (d) of the Railroad Unemployment Insurance Act.

Section 1552 of the Internal Revenue Code, relating to overpayments and underpayments of the tax imposed by section 1550 of the code, corresponds generally to section 8 (e) of the Railroad Unemployment Insurance Act. That provision of section 8 (e) which provides that the amount of the overpayment shall be refunded from the railroad unemployment insurance account is omitted from section 1552 of the code. Provision for the refunding of overpayments of the tax under the code from the account is made by an amendment to section 10 of the Railroad Unemployment Insurance Act. (See section 202 of the committee amendment.)

Section 1553 of the Internal Revenue Code, relating to the collection and payment of the tax imposed by the code, corresponds generally to subsections (c), (f), and (g) of section 8 of the Railroad Unemployment Insurance Act. Section 1553 (a) of the code provides for the collection of the tax by the Bureau of Internal Revenue instead of, as provided in section 8 (f) of the Railroad Unemployment Insurance Act, by the Railroad Retirement Board. Section 1553 (a) further provides, in a manner similar to such section 8 (f), that such tax shall be deposited by the Bureau of Internal Revenue with the Secretary of the Treasury, 90 percent of such tax to the credit of the railroad unemployment insurance account and 10 percent of such tax to the credit of the railroad unemployment insurance administration fund. In computing the 90 percent and the 10 percent, all interest, civil fines, civil penalties, additional amounts, and additions to the tax are to be excluded. All interest, civil fines, civil penalties, additional amounts, and additions to the tax, are to be credited to the railroad unemployment insurance account; and no portion of such items is to be credited to the railroad unemployment insurance administration fund. Section 1553 (b) of the code, relating to the time and manner of payment of the tax, corresponds generally to the first sentence of section 8 (g) of the Railroad Unemployment Insurance Act. A provision similar to that contained in section 8 (g), which prohibits the employer from deducting the tax, in whole or in part, from the compensation of his employees, is incorporated in section 1555 (a) of the code. Section 1553 (c) of the code, relating to interest on unpaid taxes, corresponds to the second sentence of section 8 (g) of the Railroad

Unemployment Insurance Act. Section 1553 (d) of the code, relating to fractional parts of a cent, corresponds to section 8 (c) of the Railroad Unemployment Insurance Act.

Section 1554 of the Internal Revenue Code contains the coverage definitions necessary for the imposition of the tax. The definitions contained therein are substantially the same as the corresponding definitions in section 1 of the Railroad Unemployment Insurance Act, except as hereinafter mentioned. The definition of the term "employer," as set forth in section 1554 (a) of the code, corresponds to the definition of that term in section 1 (a) of the Railroad Unemployment Insurance Act. The definition of the term "carrier," as set forth in section 1554 (b) of the code, corresponds to the definition of that term in section 1 (b) of the Railroad Unemployment Insurance Act; and the definition of the term "company," as set forth in section 1554 (c) of the code, corresponds to the definition of that term in section 1 (c) of the Railroad Unemployment Insurance Act. The definition of the term "employee" contained in section 1554 (d) of the code is different from the definition of that term contained in section 1 (d) of the Railroad Unemployment Insurance Act in that the code definition includes neither an employee of a local lodge or division of a railway-labor-organization employer nor an employee representative. Since no tax is imposed under the Railroad Unemployment Insurance Act with respect to services rendered after June 30, 1940, by an employee of a local lodge or division of a railway-labor-organization employer or by an employee representative (see sec. 1 (g) of the Railroad Unemployment Insurance Act), and since accordingly no tax is imposed under the code with respect to such services, it would not be appropriate to include employees of local lodges and divisions of railway-labor-organization employers or employee representatives in the term "employee" as used in the code. This omission from the code definition does not have the effect of making the Federal Unemployment Tax Act (subch. C, ch. 9, Internal Revenue Code) applicable with respect to services rendered by an individual as an employee of a local lodge or division of a railway-labor-organization employer or as an employee representative since the existing exception from employment under the Federal Unemployment Tax Act, that is, "Service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act," is retained in its present form.

The definition of the term "employee" in section 1 (d) of the Railroad Unemployment Insurance Act (which includes certain individuals who are employees of local lodges and divisions of railway-labor-organization employers, and employee representatives), remains unaffected by the definition of the same term in section 1554 (d) of the Railroad Unemployment Tax Act (which does not include such individuals). The legal effect of section 1 (d) and (g), and of section 13 (b), of the Railroad Unemployment Insurance Act is to retain the coverage of such individuals under that act to the exclusion of State unemployment compensation laws, even though no benefits are payable to them, and no contributions are payable, on the basis of their service in their respective capacities. The committee does not intend that the definition of the term "employee" in the Railroad Unemployment Tax Act shall change this legal effect.

The definition of the term "service," as set forth in section 1554 (e) of the code, corresponds to the definition of that term in section 1 (e) of the Railroad Unemployment Insurance Act. The definition of the term "compensation," as set forth in section 1554 (f) of the code, corresponds to the definition of that term in section 1 (i) of the Railroad Unemployment Insurance Act, including the applicable portions of the definition of the term "remuneration" contained in section 1 (j) of the Railroad Unemployment Insurance Act. The proviso, relating to the $300 monthly limitation, in section 1 (i) of the Railroad Unemployment Insurance Act is omitted from the code definition since a similar effect is accomplished by the limitation on the compensation subject to tax, including the proration provision, contained in the tax-imposing provision, section 1550 of the code. Money remuneration payable to an employee representative is also omitted from the code definition since such remuneration is not taxable under the code. The definition of the term "account," as set forth in section 1554 (g) of the code, corresponds to the definition of that term in section 1 (p) of the Railroad Unemployment Insurance Act; the definition of the term "fund," as set forth in section 1554 (h) of the code, corresponds to that in section 1 (q) of the Railroad Unemployment Insurance Act; the definition of the term "United States," as set forth in section 1554 (i) of the code, corresponds to that in section 1 (s) of the Railroad Unemployment Insurance Act; and the definition of the term "State," as set forth in section 1554 (j) of the code, corresponds to that in section 1 (t) of the Railroad Unemployment Insurance Act.

Section 1555 of the Internal Revenue Code imposes certain criminal penalties with respect to the tax imposed by the code. The penalty imposed by section 1555 (a) corresponds to that set forth in section 9 (c) of the Railroad Unemployment Insurance Act as applied to the prohibition on the deduction of the tax from the employees' compensation as set forth in the first sentence of section 8 (g) of such act. The penalty imposed by section 1555 (b) corresponds to that provided for by section 9 (b) of the Railroad Unemployment Insurance Act. No penal provision similar to that in section 9 (a) of the Railroad Unemployment Insurance Act is contained in the new code provisions since the existing provisions of the code and the criminal provisions of other applicable laws are adequate.

Sections 1556 and 1557 of the Internal Revenue Code relate, respectively, to rules and regulations and other laws applicable.

Section 1558 of the Internal Revenue Code provides that part II of subchapter B of chapter 9 of the code may be cited as the "Railroad Unemployment Tax Act."

Section 303. Deposit of collections

This section by an amendment to section 3971 (b) of the Internal Revenue Code provides, in the case of collections under the Railroad Unemployment Tax Act, a further exception to the general rule for the depositing of tax collections in the Treasury of the United States as internal revenue collections.

TITLE IV—EFFECTIVE DATES

This title contains a section which provides that titles I and II of the proposed legislation shall take effect on January 1, 1947. It is unnecessary to make any specific provision with respect to the effective date of titles III and IV.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

THE RAILROAD RETIREMENT ACT OF 1937

"DEFINITIONS

"SECTION 1. For the purposes of this Act—

"(a) [The term 'employer' means any carrier (as defined in subsection (m) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term 'employer' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Board, or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term 'employer' shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and their State and National Legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations. The term 'employer' shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.] *The term 'employer', except as otherwise provided in this subsection, shall mean—*

"(1) Any carrier: A 'carrier' is any express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act;

"(2) Any person, other than a carrier regulated under part I of the Interstate Commerce Act, which, pursuant to arrangements with a carrier or otherwise, performs, for hire, with respect to passengers or property transported, being transported, or to be transported by a carrier, any service included within the term 'transportation' as defined in section 1 (3) of the Interstate Commerce Act, whether or not such service is offered under railroad tariffs;

"(3) Any freight forwarder: A 'freight forwarder' is any person, other than a carrier, which holds itself out to the general public to transport, or provide transportation of property for hire, and which in the ordinary and usual course of its undertaking assembles and consolidates, or provides for assembling and consolidating, shipments of such property, and performs, or provides for the performing of, break-bulk and distributing operations with respect to such consolidated shipments, and assumes responsibility for the transportation of such property from point of receipt to point of destination, and regularly and substantially utilizes, for the transportation of such shipments, the services of one or more carriers;

"(4) Any person engaged in rendering, pursuant to any arrangement for one or more carriers, any service which (i) is of such a nature as to be susceptible of indefinitely continuous performance and (ii) constitutes a part of or is necessary or incidental to the operation or maintenance of way, equipment or structures devoted to

transportation use, or constitutes a clerical, sales, accounting, protective, or communications service necessary or incidental to the conduct of transportation carried on by a carrier, or is rendered with respect to passengers or property transported by railroad at point of departure or shipment or at destination or between such points;

"(5) Any person which, through any form of property interest, is directly or indirectly subject to control by or to common control with a carrier and which (i) is engaged in acquiring or holding title to managing, maintaining, or operating any property devoted substantially to use in the transportation conducted by such carriers; or (ii) is engaged in performing services necessary or incidental to the conduct of the transportation carried on by such carrier, or services in the manufacture of equipment or equipment parts or in the processing of materials for use in the operation, servicing, or maintenance of way, structures or equipment devoted to use in transportation, or services in connection with the storage, elevation, or handling of property transported, being transported, or to be transported if such storage, elevation, or handling services are provided with respect to property accorded privileges of storage in transit, or for the promotion or facilitation of transportation conducted by such carrier; or (iii) is engaged in transportation by motor vehicle;

"(6) Any railroad association, traffic association, tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency, and other association, bureau, agency, or organization controlled and maintained wholly or principally by two or more employers and engaged in the performance of services in connection with or incidental to railroad transportation;

"(7) Any railway labor organization, national in scope, which will have been or may be organized in accordance with the Railway Labor Act, and such organization's State and National legislative committees, general committees, insurance departments, and local lodges and divisions established pursuant to the constitution and bylaws of such organization;

"(8) Any organization maintained or controlled by one or more employers, and principally engaged in furnishing medical, hospital, educational, recreational, or other welfare services to employees, or in providing for the payment of life, sick, accident, or other benefits to such employees or the dependents or survivors of such employees; and

"(9) Any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property, or operating all or any part of the business of an employer as defined herein.

"(10) Exclusions: Except with respect to persons covered by clause (iii) of paragraph (5), the term 'employer' shall not include any person (i) by reason of operations in the conduct of which such person holds itself out directly to the public as a common carrier by water, air, or motor or animal-drawn vehicle, or as a contract carrier by any of such means, other than contract carrier service regularly offered to railroad passengers, shippers, or consignees pursuant to arrangements with an employer such as defined herein; or (ii) by reason of the performance of any operation which is insubstantial or is so irregular or infrequent as to afford no substantial basis for an inference that such operation will be repeated; or (iii) by reason of its being engaged in the mining of coal, the supplying of coal to an employer such as herein defined where delivery is not beyond the mine tipple, and in the operation of equipment or facilities therefor, or in any of such activities, or in logging or the milling of lumber to standard commercial sizes, or in furnishing supplies to a carrier; or (iv) by reason of the operation of a street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, or is a part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed, upon request of the Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this clause. The term 'employer' shall not include any individual by reason of the performance of any service by such individual personally.

"(11) Segregation: Any person who is an employer as defined in this subsection shall be an employer with respect to all activities carried on by it, except that (i) any person who is an employer by reason of paragraph (9) shall be an employer only in the capacity described in that paragraph; (ii) if the Board finds that a person is principally engaged in activities other than employer activities and that its employer activities are conducted as an operation or operations separate and distinct from the operations in which it is principally engaged, such person shall be an employer only with respect to such employer operation or operations; and (iii) if the Board finds that a person who is an employer solely by reason of paragraph (2) or (4) of this subsection, is principally engaged in activities other than employer activities but does not, pursuant to clause (ii) find that the employer activities of such person

are conducted as an operation or operations separate and distinct from the operations in which it is principally engaged, such person shall be an employer only with respect to all work performed in its employ by individuals who regularly and substantially perform work on property structures or equipment devoted to transportation use. If to a substantial extent the individuals working in employer activities regularly work also in the operations in which a person is principally engaged, such employer activities shall not be deemed to be conducted as an operation or operations separate and distinct from the operations in which such person is principally engaged. For the purposes of this subsection, a person shall be deemed to be principally engaged in activities other than employer activities if the man-hours devoted to such other activities are more than one-half of the total man-hours devoted to all activities carried on by such person, except that if the Board finds that a determination on such basis is impracticable or inappropriate the Board shall make the determination on the basis of such factors as in its judgment are relevant and appropriate. The term 'employer activities' as used in this subsection shall mean all such activities as are conducted by a person as a carrier, or as are described in paragraph (2), (3), (4), (5), (6), or (8). When a final determination will have been made as to whether a person is principally engaged in employer activities, the matter shall not be redetermined except upon the basis of operations conducted for a period of not less than three years following the last operations considered in making the previous determination, unless the Board finds that substantial activities will have been abandoned or substantial new activities will have been undertaken. Upon any such redetermination the conclusion shall be governed by the previous determination, unless the Board finds that on the basis of the factors on which such previous determination will have been based, the activities in which the person previously was principally engaged constitute less than 40 per centum of such person's activities.

"(b) The term 'employee' means (1) any individual in the service of one or more employers for compensation, (2) any individual who is in the employment relation to one or more employers, and (3) an employee representative. The term 'employee' shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after the enactment date. The term 'employee representative' means any officer or official representative of a railway labor organization other than a labor organization included in the term 'employer' as defined in section 1 (a) who before or after the enactment date was in the service of an employer as defined in section 1 (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

"The term 'employee' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

"(c) An individual is in the service of an employer whether his service is rendered within or without the United States if (*i*) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, [which service he renders for compensation:] *or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, or he is personally performing for an employer any service by reason of which, except for the last sentence of paragraph (10) of subsection (a), he would be an employer, and (ii) he renders such service for compensation, or a method of computing the monthly compensation for such service is provided in section 3 (c): Provided, however,* That an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clauses (1) or (2) immediately above; or (2) all or substantially all, the individuals, represented by it

are employees of an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and if the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case the Board may prescribe such other formula as it finds to be equitable, *and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation: Provided further,* That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

["(d) An individual is in the employment relation to an employer if he is on furlough, subject to call for service within or outside the United States and ready and willing to serve, or on leave of absence, or absent on account of sickness or disability; all in accordance with the established rules and practices in effect on the employer: *Provided, however,* That an individual shall not be deemed to be in the employment relation to an employer unless during the last pay-roll period in which he rendered service to it he was with respect to that service in the service of an employer in accordance with subsection (c) of this section.]

"*(d) An individual shall be deemed to have been in the employment relation to an employer on the enactment date if (i) he was on that date on leave of absence from his employment, expressly granted to him by the employer by whom he was employed, or by a duly authorized representative of such employer, and the grant of such leave of absence will have been established to the satisfaction of the Board before July 1946; or (ii) he was in the service of an employer after the enactment date and before January 1945 in each of six calendar months, whether or not consecutive; or (iii) before the enactment date he did not retire and was not retired or discharged from the service of the last employer by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before the enactment date to be in the service of such employer and thereafter remained continuously disabled until he attained age sixty-five or until August 1944 or (B) solely for such last stated reason an employer by whom he was employed before the enactment date or an employer who is its successor did not on or after the enactment date and before August 1944 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in clause (ii); or (iv) he was on the enactment date absent from the service of an employer by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the employer, as wrongful, and which was followed within nine years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights: Provided, That an individual shall not be deemed to have been on the enactment date in the employment relation to an employer if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6, or if during the last pay-roll period before the enactment date in which he rendered service to an employer he was not in the service of an employer, in accordance with subsection (c) with respect to any service in such pay-roll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after the enactment date in the service of a local lodge or division defined as an employer in section 1 (a) 7.*

"(e) The term 'United States,' when used in a geographical sense, means the States, Alaska, Hawaii, and the District of Columbia.

"(f) The term 'years of service' shall mean the number of years an individual as an employee shall have rendered service to one or more employers for compensation or received remuneration for time lost, and shall be computed in accordance with the provisions of section 3 (b): *Provided, however,* That where service prior to the enactment date may be included in the computation of years of service as

provided in subdivision (1) of section 3 (b), it may be included as to service rendered to a person which was on the enactment date an employer, irrespective of whether, at the time such service was rendered, such person was an employer; and it may also be included as to service rendered to any express company, sleeping-car company, or carrier by railroad which was a predecessor of a company which, on the enactment date, was a carrier as defined in subsection (m), irrespective of whether, at the time such service was rendered to such predecessor, it was an employer; *it may also be included as to service rendered to a person not an employer in the performance of operations involving the use of standard railroad equipment if such operations were performed by an employer on the enactment date.* Twelve calendar months, consecutive or otherwise, in each of which an employee has rendered such service or received such wages for time lost, shall constitute a year of service. *Ultimate fractions shall be taken at their actual value, except that if the individual will have had not less than fifty-four months of service,* an ultimate fraction of six months or more shall be taken as one year. [An ultimate fraction of less than six months shall be taken at its actual value.]

"(g) The term 'annuity' means a monthly sum which is payable on the 1st day of each calendar month for the accrual during the preceding calendar month.

"(h) The term 'compensation' means any form of money remuneration [earned by] *paid to* an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips, or the voluntary payment by an employer, without deduction from the remuneration of the employee, of any tax now or hereafter imposed with respect to the compensation of such employee. For the purposes of determining monthly compensation and years of service and for the purposes of subsections (a), (c), and (d) of section 2 and subsection (a) of section 5 of this Act, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $3 and (1) such compensation is earned between December 31, 1936, and April 1, 1940, and taxes thereon pursuant to sections 2 (a) and 3 (a) of the Carriers Taxing Act of 1937 or sections 1500 and 1520 of the Internal Revenue Code are not paid prior to July 1, 1940; or (2) such compensation is earned after March 31, 1940.

"A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, 'for time lost' the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1946 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1945 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 8, the period during which such compensation will have been earned.

"In determining the monthly compensation, the average monthly remuneration, and quarters of coverage of any employee, there shall be attributable as compensation paid to him in each calendar month in which he is in military service creditable under section 4 the amount of $160 in addition to the compensation, if any, paid to him with respect to such month.

"(i) The term 'Board' means the Railroad Retirement Board.

"(j) The term 'enactment date' means the 29th day of August 1935.

"(k) The term 'company' includes corporations, associations, and joint-stock companies.

"(l) The term 'employee' includes an officer of an employer.

["(m) The term 'carrier' means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.]

"(m) An individual shall be deemed to have 'a current connection with the railroad industry' at the time an annuity begins to accrue to him and at death if, in any thirty consecutive calendar months before the month in which an annuity under section 2 begins to accrue to him (or the month in which he dies if that first occurs) he will have been in service as an employee in not less than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he will not have been engaged in any regular employment other than employment for an employer in the period before such month and after the end of such thirty months. For the purposes of section 5 only, an individual shall be deemed also to have a 'current connection with the railroad industry' if he is in all other respects completely insured but would not be fully insured under the Social Security Act, or if he is in all other respects partially insured but would be neither fully nor currently insured under the Social Security Act, or if he has no wage quarters of coverage.

"(n) The term 'person' means an individual, a partnership, an association, a joint-stock company, or a corporation.

"(o) The terms 'quarter' and 'calendar quarter' shall mean a period of three calendar months ending on March 31, June 30, September 30, or December 31.

"ANNUITIES

"SEC. 2. (a) The following-described individuals, if they shall have been employees on or after the enactment date, shall, subject to the conditions set forth in subsections (b), (c), and (d), be eligible for annuities after they shall have ceased to render compensated service to any person, whether or not an employer as defined in section 1 (a) (but with the right to engage in other employment to the extent not prohibited by subsection (d)):

"1. Individuals who on or after the enactment date shall be sixty-five years of age or over.

[**"2. Individuals who on or after the enactment date shall be sixty years of age or over and (a) either have completed thirty years of service or (b) have become totally and permanently disabled for regular employment for hire, but the annuity of such individuals shall be reduced one one-hundred-and-eightieth for each calendar month that they are under age sixty-five when the annuity begins to accrue.**

[**"3. Individuals, without regard to age, who on or after the enactment date are totally and permanently disabled for regular employment for hire and shall have completed thirty years of service.**

[**"Such satisfactory proof of the permanent total disability and of the continuance of such disability until age sixty-five shall be made from time to time as may be prescribed by the Board. If the individual fails to comply with the requirements prescribed by the Board as to proof of the disability or the continuance of the disability until age sixty-five, his right to an annuity under subdivision 2 or subdivision 3 of this subsection by reason of such disability shall, except for good cause shown to the Board, cease, but without prejudice to his rights under subdivision 1 or 2 (a) of this subsection. If, prior to attaining age sixty-five, such an individual recovers and is no longer disabled for regular employment for hire, his annuity shall cease upon the last day of the month in which he so recovers and if after such recovery the individual is granted an annuity under subdivision 1 or 2 (a) of this subsection, the amount of such annuity shall be reduced on an actuarial basis to be determined by the Board so as to compensate for the annuity previously received under this subdivision.]**

"2. Women who will have attained the age of sixty and will have completed thirty years of service.

"3. Individuals who will have attained the age of sixty and will have completed thirty years of service, but the annuity of such an individual shall be reduced by one one-hundred-and-eightieth for each calendar month that he is under age sixty-five when his annuity begins to accrue.

"4. Individuals having a current connection with the railroad industry, and whose permanent physical or mental condition is such as to be disabling for work in their regular occupation, and who (i) will have completed twenty years of service or (ii) will have attained the age of sixty. The Board, with the cooperation of employers and employees, shall secure the establishment of standards determining the physical and mental conditions which permanently disqualify employees for work in the several occupations in the railroad industry, and the Board, employers, and employees shall cooperate in the promotion of the greatest practicable degree of uniformity in the standards applied by the several employers. An individual's condition shall be deemed to be disabling for work in his regular occupation if he will have been dis-

qualified by his employer because of disability for service in his regular occupation in accordance with the applicable standards so established; if the employee will not have been so disqualified by his employer, the Board shall determine whether his condition is disabling for work in his regular occupation in accordance with the standards generally established; and, if the employee's regular occupation is not one with respect to which standards will have been established, the standards relating to a reasonably comparable occupation shall be used. If there is no such comparable occupation, the Board shall determine whether the employee's condition is disabling for work in his regular occupation by determining whether under the practices generally prevailing in industries in which such occupation exists such condition is a permanent disqualification for work in such occupation. For the purposes of this section, an employee's 'regular occupation' shall be deemed to be the occupation in which he will have been engaged in more calendar months than the calendar months in which he will have been engaged in any other occupation during the last preceding five calendar years, whether or not consecutive, in each of which years he will have earned wages or salary, except that, if an employee establishes that during the last fifteen consecutive calendar years he will have been engaged in another occupation in one-half or more of all the months in which he will have earned wages or salary, he may claim such other occupation as his regular occupation; or

"5. Individuals whose permanent physical or mental condition is such that they are unable to engage in any regular employment and who (i) have completed ten years of service, or (ii) have attained the age of sixty.

"Such satisfactory proof shall be made from time to time as prescribed by the Board, of the disability provided for in paragraph 4 or 5 and of the continuance of such disability (according to the standards applied in the establishment of such disability) until the employee attains the age of sixty-five. If the individual fails to comply with the requirements prescribed by the Board as to proof of the continuance of the disability until he attains the age of sixty-five years, his right to an annuity by reason of such disability shall, except for good cause shown to the Board, cease, but without prejudice to his rights to any subsequent annuity to which he may be entitled. If before attaining the age of sixty-five an employee in receipt of an annuity under paragraph 4 or 5 is found by the Board to be no longer disabled as provided in said paragraphs, his annuity shall cease upon the last day of the month in which he ceases to be so disabled. An employee, in receipt of such annuity, who earns more than $75 in service for hire, or in self-employment, in each of any six consecutive calendar months, shall be deemed to cease to be so disabled in the last of such six months; and such employee shall report to the Board immediately all such service for hire, or such self-employment. If after cessation of his disability annuity the employee will have acquired additional years of service, such additional years of service may be credited to him with the same effect as if no annuity had previously been awarded to him.

"(b) An annuity shall be paid only if the applicant shall have relinquished such rights as he may have to return to the service of an employer and of the person by whom he was last employed; but this requirement shall not apply to the individuals mentioned in subdivision [2 (b)] *4* and subdivision [3] *5* of subsection (a) prior to attaining age sixty-five.

"(c) An annuity shall begin to accrue as of a date to be specified in a written application (to be made in such manner and form as may be prescribed by the Board and to be signed by the individual entitled thereto), but—

"(1) not before the date following the last day of compensated service of the applicant, and

"(2) not more than sixty days before the filing of the application.

"(d) No annuity shall be paid with respect to any month in which an individual in receipt of an annuity hereunder shall render compensated service to an employer or to the last person by whom he was employed prior to the date on which the annuity began to accrue. Individuals receiving annuities shall report to the Board immediately all such compensated service.

"COMPUTATION OF ANNUITIES

"SEC. 3. (a) The annuity shall be computed by multiplying an individual's 'years of service' by the following percentages of his 'monthly compensation': 2 per centum of the first $50; 1½ per centum of the next $100; and 1 per centum of the next $150.

"(b) The 'years of service' of an individual shall be determined as follows:

"(1) In the case of an individual who was an employee on the enactment date, the years of service shall include all his service subsequent to December 31, 1936, and if the total number of such years is less than thirty, then the

years of service shall also include his service prior to January 1, 1937, but not so as to make his total years of service exceed thirty: *Provided, however,* That with respect to any such individual who rendered service to any employer after January 1, 1937, and who on the enactment date was not an employee of an employer conducting the principal part of its business in the United States no greater proportion of his service rendered prior to January 1, 1937, shall be included in his 'years of service' than the proportion which his total compensation (including compensation in any month in excess of $300) for service after January 1, 1937, rendered anywhere to an employer conducting the principal part of its business in the United States or rendered in the United States to any other employer bears to his total compensation (including compensation in any month in excess of $300) for service rendered anywhere to an employer after January 1, 1937.

"(2) In all other cases, the years of service shall include only the service subsequent to December 31, 1936.

"(3) Where the years of service include only part of the service prior to January 1, 1937, the part included shall be taken in reverse order beginning with the last calendar month of such service.

"(4) In no case shall the years of service include any service rendered after June 30, 1937, *and after the end of the calendar year in which the individual attains the age of sixty-five.* [by an individual who is sixty-five years of age or over, except for the purpose of computing his monthly compensation as provided in subsection (c) of this section.]

"(c) The 'monthly compensation' shall be the average compensation [earned by an employee in] *paid to an employee with respect to* calendar months included in his 'years of service,' except (1) that with respect to service prior to January 1, 1937, the monthly compensation shall be the average compensation earned by an employee in calendar months included in his years of service in the years 1924–1931, and (2) [that where service in the period 1924–1931 is, in the judgment of the Board, insufficient to constitute a fair and equitable basis for determining the monthly compensation for service prior to January 1, 1937, the Board shall determine the monthly compensation for such service in such manner as in its judgment shall be just and equitable. If the employee earned compensation after June 30, 1937, and after the last day of the month in which he attained age sixty-five, such compensation shall be disregarded if the result of taking such compensation into account would be to diminish his annuity. In computing the monthly compensation, no part of any month's compensation in excess of $300 shall be recognized.] *"the amount of compensation paid or attributable as paid to him with respect to each month of service before September 1941 as a station employee whose duties consisted of or included the carrying of passengers' hand baggage and otherwise assisting passengers at passenger stations and whose remuneration for service to the employer was, in whole or in substantial part, in the form of tips, shall be the monthly average of the compensation paid to him as a station employee in his months of service in the period September 1940–August 1941: Provided, however, That where service in the period 1924–1931 in the one case, or in the period September 1940–August 1941 in the other case, is, in the judgment of the Board, insufficient to constitute a fair and equitable basis for determining the amount of compensation paid or attributable as paid to him in each month of service before 1937, or September 1941, respectively, the Board shall determine the amount of such compensation for each such month in such manner as in its judgment shall be fair and equitable. In computing the monthly compensation, no part of any month's compensation in excess $300 earned before 1946, and no compensation for the months of service in a calendar year after 1945 in excess of $300 multiplied by the number of months of service in such calendar year shall be recognized.*

"(d) The annuity of an individual who shall have been an employee representative shall be determined in the same manner and with the same effect as if the employee organization by which he shall have been employed were an employer.

[."(e) If the individual was an employee when he attained age sixty-five and has completed twenty years of service, the minimum annuity payable to him shall be $40 per month: *Provided, however,* That if the monthly compensation on which his annuity is based is less than $50, his annuity shall be 80 per centum of such monthly compensation, except that if such 80 per centum is less than $20, the annuity shall be $20 or the same amount as the monthly compensation, whichever is less. In no case shall the value of the annuity be less than the value of the additional old-age benefit he would receive under title II of the Social Security Act if his service as an employee after December 31, 1936, were included in the term 'employment' as defined therein.]

"(e) *In the case of an individual having a correct connection with the railroad industry and not less than five years of service, the minimum annuity payable shall, before any reduction pursuant to subsection 2 (a) (3), be whichever of the following is the least: (1) $3 multiplied by the number of his years of service; or (2) $50; or (3) his monthly compensation.*

[(f) Annuity payments due an individual but not yet paid at death shall be paid to a surviving spouse if such spouse is entitled to an annuity under an election made pursuant to the provisions of section 4; otherwise they shall be paid to the same individual or individuals who may be entitled to receive any death benefit that may be payable under the provisions of section 5.]

"Annuity payments which will have become due an individual but will not yet have been paid at death shall be paid to the same individual or individuals who, in the event that a lump sum will have become payable pursuant to section 5 hereof upon such death, would be entitled to receive such lump sum, in the same manner as, and subject to the same limitations under which, such lump sum would be paid, except that, as determined by the Board, first, brothers and sisters of the deceased, and if there are none such, then grandchildren of the deceased, if living on the date of the determination, shall be entitled to receive payment prior to any payment being made for reimbursement of burial expenses. If there be no individual to whom payment can thus be made, such annuity payments shall escheat to the credit of the Railroad Retirement Account.

"(g) No annuity shall accrue with respect to the calendar month in which an annuitant dies.

"(h) After an annuity has begun to accrue, it shall not be subject to recomputation on account of service rendered thereafter to an employer, except as provided in subdivision 3 of section 2 (a).

"(i) If an annuity is less than $2.50, it may, in the discretion of the Board, be paid quarterly or in a lump sum equal to its commuted value as determined by the Board.

"SEC. [3A.] *4* (a) For the purposes of determining eligibility for an annuity and computing an annuity, including a minimum annuity, there shall also be included in an individual's years of service, within the limitations hereinafter provided in this section, voluntary or involuntary military service of an individual within or without the United States during any war service period, including such military service prior to the date of enactment of this amendment: *Provided, however,* That such military service shall be included only subject to and in accordance with the provisions of subsection (b) of section 3, in the same manner as though military service were service rendered as an employee: *Provided further,* That an individual who entered military service prior to a war service period shall not be regarded as having been in military service in a war service period with respect to any part of the period for which he entered such military service.

"(b) For the purpose of this section and section 202, as amended, an individual shall be deemed to have been in 'military service' when commissioned or enrolled in the active service of the land or naval forces of the United States and until resignation or discharge therefrom; and the service of any individual in any reserve component of the land or naval forces of the United States, while serving in the land or naval forces of the United States for any period, even though less than thirty days, shall be deemed to have been active service in such force during such period.

"(c) For the purpose of this section and section 202, as amended, a 'war service period' shall mean (1) any war period, or (2) with respect to any particular individual, any period during which such individual (i) having been in military service at the end of a war period, was required to continue in military service, or (ii) was required by call of the President, or by any Act of Congress or regulation, order, or proclamation pursuant thereto, to enter and continue in military service, or (3) any period after September 7, 1939, with respect to which a state of national emergency was duly declared to exist which requires a strengthening of the national defense.

"(d) For the purpose of this section and section 202, as amended, a 'war period' shall be deemed to have begun on whichever of the following dates is the earliest: (1) the date on which the Congress of the United States declared war; or (2) the date as of which the Congress of the United States declared that a state of war has existed; or (3) the date on which war was declared by one or more foreign states against the United States; or (4) the date on which any part of the United States or any territory under its jurisdiction was invaded or attacked by any armed force of one or more foreign states; or (5) the date on which the United States engaged in armed hostilities for the purpose of preserving the Union or of maintaining in any State of the Union a republican form of government.

"(e) For the purpose of this section and section 202, as amended, a 'war period' shall be deemed to have ended on the date on which hostilities ceased.

"(f) Military service shall not be included in the years of service of an individual unless, prior to the beginning of his military service in a war service period and in the same calendar year in which such military service began, or in the next preceding calendar year, the individual rendered service for compensation to an employer or to a person service to which is otherwise creditable under this Act, or lost time as an employee for which he received remuneration, or was serving as an employee representative.

"(g) A calendar month in which an individual was in military service which may be included in the individual's years of service or service period, as the case may be, shall be counted as a month of service: *Provided, however*, That no calendar month shall be counted as more than one month of service.

[[]"(h) In determining the monthly compensation for computing an annuity, military service and any remuneration therefor shall be disregarded.[]]

"(i) In the event military service is or has been used as the basis or as a partial basis for a pension, disability compensation, or any other gratuitous benefits payable on a periodic basis under any other Act of Congress, any annuity under this Act or the Railroad Retirement Act of 1935, which is based in part on such military service and is with respect to a calendar month for all or part of which such pension or other benefit is also payable, shall be reduced with respect to that month by the proportion which the number of years of service by which such military service increases the years of service, or the service period, as the case may be, bears to the total years of service, or by the aggregate amount of such pension or other benefit with respect to that month, whichever would result in the smaller reduction.

"(j) Any department or agency of the United States maintaining records of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the number of months of military service which such department or agency finds the individual to have had during any period or periods with respect to which the Board's request is made, the date and manner of entry into such military service, and the conditions under which such service was continued. Any department or agency of the United States which is authorized to make awards of pensions, disability compensation, or any other gratuitous benefits or allowances payable, on a periodic basis or otherwise, under any other Act of Congress on the basis of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the calendar months for all or part of which any such pension, compensation, benefit, or allowance is payable to, or with respect to, the individual, the amounts of any such pension, compensation, benefit, or allowance, and the military service on which such pension, compensation, benefit, or allowance is based. Any certification made pursuant to the provisions of this subsection shall be conclusive on the Board: *Provided*, That if evidence inconsistent with any such certification is submitted, and the claim is in the course of adjudication or is otherwise open for such evidence, the Board shall refer such evidence to the department or agency which made the original certification and such department or agency shall make such recertification as in its judgment the evidence warrants. Such recertification, and any subsequent recertification, shall be conclusive, made in the same manner, and subject to the same conditions as an original certification.

"(k) No person shall be entitled to an annuity, or to an increase in an annuity, based on military service unless a specific claim for credit for military service is filed with the Board by the individual who rendered such military service, and in no case shall an annuity, or an increase in an annuity, based on military service begin to accrue earlier than sixty days prior to the date on which such claim for credit for military service was filed with the Board nor before October 8, 1940: *Provided*, That this subsection shall not be construed to prevent payment of annuities with respect to accruals, not based on military service, prior to the date on which an annuity based on military service began to accrue.

"(l) An individual who, before the ninety-first day after the date on which this amendment of section [3A] *4* is enacted was awarded an annuity under the Railroad Retirement Act of 1937 or the Railroad Retirement of 1935, but who had rendered military service which, if credited, would have resulted in an increase in his annuity, may, notwithstanding the previous award of an annuity, file with the Board an application for an increase in such annuity based on his military service. Upon the filing of such application, if the Board finds that the military service thus claimed is creditable and would result in an increase in the annuity, the Board, notwithstanding the previous award, shall recertify the an-

nuity on an increased basis in the same manner as though the provisions making military service creditable had been in effect at the time of the original certification subject, however, to the provisions of subsection (k) of this section. If the annuity previously awarded is a joint and survivor annuity, the increased annuity shall be a joint and survivor annuity of the same type, the actuarial value of the increase to be computed as of the effective date of the increase: *Provided, however,* That if on the date the increase begins to accrue the individual has no spouse for whom the election of the joint and survivor annuity was made, the increase on a single life basis shall be added to the individual's annuity.

["(m) In determining the amount of death benefits payable under section 5, there shall be added to the aggregate compensation (determined as provided in section 5) an amount equal to $160 multiplied by the number of months in which the deceased was in creditable military service after December 31, 1936: *Provided,* That if, under any other Act of Congress, there is payable with respect to the death of the individual any gratuitous death benefit, allowance, or pension by reason of military service on the basis of which, in whole or in part, death benefits payable under section 5 are increased under the provisions of this subsection, the amount of such increase shall be reduced by the total amount payable under such other Act or, if such total amount is unascertainable in advance, by the actuarial value thereof, as determined by the Board."]

"(n) In addition to the amount authorized to be appropriated in subsection (a) of section 15 of this Act, there is hereby authorized to be appropriated to the Railroad Retirement Account for each fiscal year, beginning with the fiscal year ending June 30, 1941, (i) an amount sufficient to meet the additional cost of crediting military service rendered prior to January 1, 1937, and (ii) an amount found by the Board to be equal to the amount of the total additional excise and income taxes which would have been payable during the preceding fiscal year under subchapter B of chapter 9 of the Internal Revenue Code, as amended, with respect to the compensation, as defined in such subchapter B, of all individuals entitled to credit under the Railroad Retirement Acts, as amended, for military service after December 31, 1936, if each of such individuals, in addition to compensation actually earned, had earned such compensation in the amount of $160 in each calendar month in which he was in such military service during such preceding fiscal year and such taxes were measured by all such compensation without limitation as to amount earned by any individual in any one calendar month. The additional cost of crediting military service rendered prior to January 1, 1937, shall be deemed to be the difference between the actuarial value of each annuity based in part on military service and the actuarial value of the annuity which would be payable to the same individual without regard to military service. In calculating these actuarial values, (1) whenever the annuity based in part on military service begins to accrue before age 60, the annuity without regard to military service shall be valued on the assumption of deferment to age 60, and whenever the annuity based in part on military service is awarded under subsection 2 (a) of section 2 (a), the annuity without regard to military service shall be valued on the assumption of deferment to age 65; and (2) all such actuarial values shall be calculated as of the date on which the annuity based on military service begins to accrue and shall not thereafter be subject to change. All such actuarial calculations shall be based on the Combined Annuity Table of Mortality and all calculations in this subsection shall take into account interest at the rate of 3 per centum per annum compounded annually. The Railroad Retirement Board, as promptly as practicable after the enactment of this amendment, and thereafter annually, shall submit to the Bureau of the Budget estimates of such military service appropriations to be made to the account, in addition to the annual estimate by the Board, in accordance with subsection (a) of section 15 of this Act, of the appropriation to be made to the account to provide for the payment of annuities, pensions and death benefits not based on military service. The estimate made in any year with respect to military service rendered prior to January 1, 1937, shall be based on the cost, as determined in accordance with the above provisions, of annuities awarded or increased on the basis of such military service up to the close of the preceding fiscal year and not previously appropriated for, and shall take into account interest from the date the annuity began to accrue or was increased to the date or dates on which the amount appropriated is to be credited to the Railroad Retirement Account. In making the estimate for the appropriation for military service rendered after December 31, 1936, the Board shall take into account any excess of deficiency in the appropriation or appropriations for such service in any preceding fiscal year or years, with interest thereon, resulting from an overestimate or underestimate of the

number of individuals in creditable military service or the months of military service.

"(o) Section [3A,] 4 as herein amended, shall be effective as of October 8, 1940. No rights shall be deemed to have accrued under section [3A] 4 which would not have accrued had this Act amending section [3A] 4 been enacted on October 8, 1940.

["JOINT AND SURVIVOR ANNUITY

["SEC. 4. An individual whose annuity shall not have begun to accrue may elect prior to January 1, 1938, or at least five years before the date on which his annuity begins to accrue, or upon furnishing proof of health satisfactory to the Board, to have the value of his annuity apply to the payment of a reduced annuity to him during life and an annuity after his death to his spouse during life equal to, or 75 per centum of, or 50 per centum of such reduced annuity. The amounts of the two annuities shall be such that their combined actuarial value as determined by the Board shall be the same as the actuarial value of the single life annuity to which the individual would otherwise be entitled. Such election shall be irrevocable, except that it shall become inoperative if the individual or the spouse dies before the annuity begins to accrue or if the individual's marriage is dissolved or if the individual shall be granted an annuity under subdivision 3 of section 2 (a): *Provided, however*, That the individual may, if his marriage is dissolved before the date his annuity begins to accrue, or if his annuity under subdivision 3 of section 2 (a) ceases because of failure to make the required proof of disability, make a new election under the conditions stated in the first sentence of this subsection. The annuity of a spouse under this subsection shall begin to accrue on the first day of the calendar month in which the death of the individual occurs.

["DEATH BENEFITS

["SEC. 5. (a) The death benefit shall be an amount equal to 4 per centum of the aggregate compensation (determined in accordance with section 1 (h) of this Act but exclusive of the excess over $300 in any month's earnings) earned by an individual as an employee after December 31, 1936, less any annuity payments paid him, and less any annuity payments due him but not yet paid at his death, and, if he is survived by a spouse entitled to a joint and survivor annuity, less any annuity payments paid such spouse under sections 3 (f) and 4 of this Act, and less any annuity payments due such spouse under said sections but not yet paid at death.

["(b) The amount of the death benefit computed under subsection (a) of this section shall be due upon the death of an individual who was an employee after December 31, 1936, or, if he is survived by a spouse entitled to a joint and survivor annuity, upon the death of such spouse and, upon application therefor, as provided in subsection (c) of this section, shall be paid in a lump sum to the person or persons designated by such individual in a writing filed, on or before the date of his death, with the Board, in such manner and form as provided by the Board: *Provided, however*, That if such designation has not been filed, or was improperly executed or improperly filed, or no designee is alive on the day the death benefit becomes due, the amount of the death benefit shall be paid to the person determined by the Board to have been such individual's spouse on the day of his death; if no such spouse is alive on the day the death benefit becomes due, such amount shall be paid to the person determined by the Board to be his child, by blood or by legal adoption, and alive on the day the death benefit becomes due, and if there be more than one such child they shall share equally; if there be no such child, such amount shall be paid to the person determined by the Board to be his parent and alive on the day the death benefit becomes due, and if both parents are so determined they shall share equally; if there be no such parent, such amount shall be paid to the person determined by the Board to be his brother or sister, by blood or through legal adoption. and alive on the day the death benefit becomes due, and if there be more than one such brother or sister they shall share equally; and if there be no such brother or sister such amount shall be paid to the person determined by the Board to be his grandchild, by blood or through legal adoption, and alive on the day the death benefit becomes due, and if there be more than one such grandchild they shall share equally. If there be no such persons enumerated above in this subsection the Board may compensate other persons to the extent and in the proportions that they have borne the expenses of the last illness or funeral or both of such individual in an amount or amounts, and upon such conditions, as the Board may fix as equitable, but the total of such amounts shall not exceed the amount of the death benefit.

[*"(c) No payment shall be made to any person under this section unless application therefor, in such manner and form as provided by the Board, shall have been filed, by or on behalf of any such person (whether or not legally competent), prior to the expiration of two years after the date the death benefit becomes due as provided in subsection (b) of this section. For the purpose of this subsection, if the death benefit became due as provided in subsection (b) of this section before the enactment of this amendment, such death benefit shall be considered to have become due on the date of the enactment hereof."*]

"ANNUITIES AND LUMP SUMS FOR SURVIVORS

"SEC. 5. (a) Widow's Insurance Annuity.—A widow of a completely insured employee, who will have attained the age of sixty-five, shall be entitled during the remainder of her life or, if she remarries, then until remarriage to an annuity for each month equal to three-fourths of such employee's basic amount.

"(b) Widow's Current Insurance Annuity.—A widow of a completely or partially insured employee, who is not entitled to an annuity under subsection (a) and who at the time of filing an application for an annuity under this subsection will have in her care a child of such employee entitled to receive an annuity under subsection (c) shall be entitled to an annuity for each month equal to three-fourths of the employee's basic amount. Such annuity shall cease upon her death, upon her remarriage, when she becomes entitled to an annuity under subsection (a), or when no child of the deceased employee is entitled to receive an annuity under subsection (c), whichever occurs first.

"(c) Child's Insurance Annuity.—Every child of an employee who will have died completely or partially insured shall be entitled, for so long as such child lives and meets the qualifications set forth in paragraph (1) of subsection (1), to an annuity for each month equal to one-half of the employee's basic amount.

"(d) Parent's Insurance Annuity.—Each parent, sixty-five years of age or over, of a completely insured employee, who will have died leaving no widow and no child, shall be entitled, for life, or, if such parent remarries after the employee's death, then until such remarriage, to an annuity for each month equal to one-half of the employee's basic amount.

"(e) When there is more than one employee with respect to whose death a parent or child is entitled to an annuity for a month, such annuity shall be one-half of whichever employee's basic amount is greatest.

"(f) Lump-Sum Payment.—Upon the death, on or after January 1, 1946, of a completely or partially insured employee who will have died leaving no widow, child, or parent who would on proper application therefor be entitled to receive an annuity under this section for the month in which such death occurred, there shall be paid a lump sum of eight times the employee's basic amount to the following person (or if more than one there shall be distributed among them) whose relationship to the deceased employee will have been determined by the Board, and who will have been living on the date of such determination: to the widow or widower of the deceased; or, if no such widow or widower be then living, to any child or children of the deceased and to any other person or persons who, under the intestacy law of the State where the deceased will have been domiciled, will have been entitled to share as distributees with such children of the deceased, in such proportions as is provided by such law; or, if no widow or widower and no such child and no such other person be then living, to the parent or parents of the deceased, in equal shares. A person who is entitled to share as distributee with an above-named relative of the deceased shall not be precluded from receiving a payment under this subsection by reason of the fact that no such named relative will have survived the deceased or of the fact that no such named relative of the deceased will have been living on the date of such determination. If none of the persons described in this subsection be living on the date of such determination, such amount shall be paid to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the expenses of burial of the deceased. If a lump sum would be payable to a widow, child, or parent under this subsection except for the fact that a survivor will have been entitled to receive an annuity for the month in which the employee will have died, but within one year after the employee's death there will not have accrued to survivors of the employee, by reason of his death annuities which, after all deductions pursuant to paragraph (1) of subsection (i) will have been made, are equal to such lump sum, a payment to any then surviving widow, children, or parents shall nevertheless be made under this subsection equal to the amount by which such lump sum exceeds such annuities so accrued after such deductions. No payment shall be made to any person under this subsection, unless application therefor shall have been filed, by or on behalf of any such person

(whether or not legally competent), prior to the expiration of two years after the date of death of the deceased employee, except that if the deceased employee is a person to whom section 2 of the Act of March 7, 1942 (56 Stat. 143, 144), is applicable such two years shall run from the date on which the deceased employee, pursuant to said Act, is determined to be dead, and for all other purposes of this section such employee, so long as it does not appear that he is in fact alive, shall be deemed to have died on the date determined pursuant to said Act to be the date or presumptive date of death.

"(g) Correlation of Payments.—(1) An individual, entitled on applying therefor to receive for a month before January 1, 1946, an insurance benefit under the Social Security Act on the basis of an employee's wages, which benefit is greater in amount than would be an annuity for such individual under this section with respect to the death of such employee, shall not be entitled to such annuity. An individual, entitled on applying therefor to any annuity or lump sum under this section with respect to the death of an employee, shall not be entitled to a lump-sum death payment, or, for a month beginning on or after January 1, 1946, to any insurance benefits under the Social Security Act on the basis of the wages of the same employee.

"(2) A widow or child, otherwise entitled to an annuity under this section, shall be entitled only to that part of such annuity for a month which exceeds the total of any retirement annuity, and insurance benefit under the Social Security Act to which such widow or child would be entitled for such month on proper application therefor. A parent, otherwise entitled to an annuity under this section shall be entitled only to that part of such annuity for a month which exceeds the total of any other annuity under this section, retirement annuity, and insurance benefit under the Social Security Act to which such parent would be entitled for such month on proper application therefor.

"(h) Maximum and Minimum Annuity Totals.—Whenever according to the provisions of this section as to annuities, payable for a month with respect to the death of an employee, the total of annuities is more than $20 and exceeds either (a) $120, or (b) an amount equal to twice such employee's basic amount, or with respect to employees other than those who will have been completely insured solely by virtue of subsection (l) (7) (iii), such total exceeds (c) an amount equal to 80 per centum of his average monthly remuneration, whichever of such amounts is least, such total of annuities shall, prior to any deductions under subsection (i), be reduced to such least amount or to $20, whichever is greater. Whenever such total of annuities is less than $10, such total shall, prior to any deductions under subsection (i), be increased to $10.

"(i) Deductions from Annuities.—(1) Deductions shall be made from any payments under this section to which an individual is entitled, until the total of such deductions equals such individual's annuity or annuities under this section for any month in which such individual—

"(i) will have rendered compensated service within or without the United States to an employer;

"(ii) will have rendered service for wages of not less than $25;

"(iii) if a child under eighteen and over sixteen years of age, will have failed to attend school regularly and the Board finds that attendance will have been feasible; or

"(iv) if a widow otherwise entitled to an annuity under subsection (b) will not have had in her care a child of the deceased employee entitled to receive an annuity under subsection (c);

"(2) The total of deductions for all events described in paragraph (1) occurring in the same month shall be limited to the amount of such individual's annuity or annuities for that month. Such individual (or anyone in receipt of an annuity in his behalf) shall report to the Board the occurrence of any event described in paragraph (1).

"(3) Deductions shall also be made from any payments under this section with respect to the death of an employee until such deductions total—

"(i) any death benefit, paid with respect to the death of such employee, under sections 5 of the Retirement Acts (other than a survivor annuity pursuant to an election);

"(ii) any lump sum paid, with respect to the death of such employee, under title II of the Social Security Act, or under section 203 of the Social Security Act in force prior to the date of the Social Security Act Amendments of 1939;

"(iii) any lump sum paid to such employee under section 204 of the Social Security Act in force prior to the date of the enactment of the Social Security Act Amendments of 1939, provided such lump sum will not previously have been deducted from any insurance benefit paid under the Social Security Act; and

"(iv) an amount equal to 1 per centum of any wages paid to such employee for services performed in 1939, and subsequent to his attaining age sixty-five, with respect to which the taxes imposed by section 1400 of the Internal Revenue

Code will not have been deducted by his employer from his wages or paid by such employer, provided such amount will not previously have been deducted from any insurance benefit paid under the Social Security Act.

"(4) The deductions provided in this subsection shall be made in such amounts and at such time or times as the Board shall determine. Decreases or increases in the total of annuities payable for a month with respect to the death of an employee shall be equally apportioned among all annuities in such total. An annuity under this section which is not in excess of $5 may, in the discretion of the Board, be paid in a lump sum equal to its commuted value as the Board shall determine.

"(j) When Annuities Begin and End.—No individual shall be entitled to receive an annuity under this section for any month before January 1, 1946. An application for any payment under this section shall be made and filed in such manner and form as the Board prescribes. An annuity under this section for an individual otherwise entitled thereto shall begin with the month in which such individual filed an application for such annuity: Provided, That such individual's annuity shall begin with the first month for which he will otherwise have been entitled to receive such annuity if he files such application prior to the end of the third month immediately succeeding such month. No application for an annuity under this section filed prior to three months before the first month for which the applicant becomes otherwise entitled to receive such annuity shall be accepted. No annuity shall be payable for the month in which the recipient thereof ceases to be qualified therefor.

"(k) Provisions for Crediting Railroad Industry Service Under the Social Security Act in Certain Cases.—(1) For the purpose of determining insurance benefits under title II of the Social Security Act which would begin to accrue on or after January 1, 1946, to a widow, parent, or surviving child, and with respect to lump-sum death payments under such title payable in relation to a death occurring on or after such date, section 15 of the Railroad Retirement Act of 1935, section 209 (b) (9) of the Social Security Act, and section 17 of this Act shall not operate to exclude from 'employment', under Title II of the Social Security Act, service which would otherwise be included in such 'employment' but for such sections. For such purpose, compensation paid in a calendar year shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in service as an employee.

"(2) Not later than January 1, 1950, the Board and the Social Security Board shall make a special joint report to the President to be submitted to Congress setting forth the experience of the Board in crediting wages toward awards, and the experience of the Social Security Board in crediting compensation toward awards, and their recommendations for such legislative changes as are deemed advisable for equitable distribution of the financial burden of such awards between the retirement account and the Federal Old-Age and Survivors Insurance Trust Fund.

"(3) The Board and the Social Security Board shall, upon request, supply each other with certified reports of records of compensation or wages and periods of service and of other records in their possession or which they may secure, pertinent to the administration of this section or title II of the Social Security Act as affected by paragraph (1). Such certified reports shall be conclusive in adjudication as to the matters covered therein: Provided, That if either Board receives evidence inconsistent with a certified report and the application involved is still in course of adjudication or otherwise open for such evidence, such recertification of such report shall be made as, in the judgment of the Board which made the original certification, the evidence warrants. Such recertification and any subsequent recertification shall be treated in the same manner and be subject to the same conditions as an original certification.

"(l) Definitions.—For the purposes of this section the term 'employee' includes an individual who will have been an 'employee', and—

"(1) The qualifications for 'widow', 'child,' and 'parent' shall be, except for the purposes of subsection (f), those set forth in section 209 (j) and (k), and section 202 (f) (3) of the Social Security Act, respectively; and in addition—

"(i) a 'widow' shall have been living with her husband employee at the time of his death;

"(ii) a 'child' shall have been dependent upon its parent employee at the time of his death; shall not be adopted after such death; shall be unmarried; and less than eighteen years of age; and

"(iii) a 'parent' shall have been wholly dependent upon and supported at the time of his death by the employee to whom the relationship of 'parent' is claimed; and shall have filed proof of such dependency and support within two years after such date of death, or within six months after January 1, 1946.

"A 'widow' or a 'child' shall be deemed to have been so living with a husband or so dependent upon a parent if the conditions set forth in section 209 (n) or section 202

(c) (3) or (4) of the Social Security Act, respectively, are fulfilled. In determining whether an applicant is the wife, widow, child, or parent of an employee as claimed, the rules set forth in section 209 (m) of the Social Security Act shall be applied;

"(2) The term 'retirement annuity' shall mean an annuity under section 2 awarded before or after its amendment but not including an annuity to a survivor pursuant to an election of a joint and survivor annuity; and the term 'pension' shall mean a pension under section 6;

"(3) The term 'quarter of coverage' shall mean a compensation quarter of coverage or a wage quarter of coverage, and the term 'quarters of coverage' shall mean compensation quarters of coverage, or wage quarters of coverage, or both: Provided, That there shall be for a single employee no more than four quarters of coverage for a single calendar year;

"(4) The term 'compensation quarter of coverage' shall mean any quarter of coverage computed with respect to compensation paid to an employee after 1936 in accordance with the following table:

Months of service in a calendar year	Total compensation paid in the calendar year				
	Less than $50	$50 but less than $100	$100 but less than $150	$150 but less than $200	$200 or more
1–3	0	1	1	1	1
4–6	0	1	2	2	2
7–9	0	1	2	3	3
10–12	0	1	2	3	4

"(5) The term 'wage quarter of coverage' shall mean any quarter of coverage determined in accordance with the provisions of title II of the Social Security Act;

"(6) The term 'wages' shall mean wages as defined in section 209 (a) of the Social Security Act;

"(7) An employee will have been 'completely insured' if it appears to the satisfaction of the Board that at the time of his death, whether before or after the enactment of this section, he will have had the qualifications set forth in any one of the following paragraphs:

"(i) a current connection with the railroad industry; and a number of quarters of coverage, not less than six, and at least equal to one-half of the number of quarters, elapsing in the period after 1936, or after the quarter in which he will have attained the age of twenty-one, whichever is later, and up to but excluding the quarter in which he will have attained the age of sixty-five years or died, whichever will first have occurred (excluding from the elapsed quarters any quarter during any part of which a retirement annuity will have been payable to him); and if the number of such elapsed quarters is an odd number such number shall be reduced by one; or

"(ii) a current connection with the railroad industry; and forty or more quarters of coverage; or

"(iii) a pension will have been payable to him; or a retirement annuity based on service of not less than ten years (as computed in awarding the annuity) will have begun to accrue to him before 1947;

"(8) An employee will have been 'partially insured' if it appears to the satisfaction of the Board that at the time of his death, whether before or after the enactment of this section, he will have had (i) a current connection with the railroad industry; and (ii) six or more quarters of coverage in the period beginning with the third calendar year next preceding the year in which he will have died and ending with the quarter next preceding the quarter in which he will have died;

"(9) An employee's 'average monthly remuneration' shall mean the quotient obtained by dividing (A) the sum of the compensation and wages paid to him after 1936 and before the quarter in which he will have died, eliminating for any single calendar year, from compensation, any excess over $300 multiplied by the number of months he will have been in service as an employee, and from the sum of wages and compensation any excess over $3,000, by (B) three times the number of quarters elapsing after 1936 and before the quarter in which he will have died: Provided, That for the period prior to and including the calendar year in which he will have attained the age of twenty-two there shall be included in the divisor not more than three times the number of quarters of coverage in such period: Provided further, That there shall be excluded from the divisor any calendar quarter during any part of which a retirement annuity will have been payable to him.

"With respect to an employee who will have been awarded a retirement annuity, the term 'compensation' shall, for the purposes of this paragraph, mean the compensation on which said annuity will have been based;

"(10) The term 'basic amount' shall mean—

"(i) for an employee who will have been partially insured, or completely insured solely by virtue of paragraph (7) (i) or (7) (ii) or both: the sum of (A) 40 per centum of his average monthly remuneration, up to and including $75, plus (B) 10 per centum of such average monthly remuneration exceeding $75 and up to and including $250, plus (C) 1 per centum of the sum of (A) plus (B) multiplied by the number of years after 1936 in each of which the compensation, wages, or both, paid to him will have been equal to $200 or more; if the basic amount, thus computed, is less than $10 it shall be increased to $10;

"(ii) for an employee who will have been completely insured solely by virtue of paragraph (7) (iii): the sum of 40 per centum of his monthly compensation if an annuity will have been payable to him, or, if a pension will have been payable to him, 40 per centum of the average monthly earnings on which such pension was computed, up to and including $75, plus 10 per centum of such compensation or earnings exceeding $75 and up to and including $250. If the average monthly earnings on which a pension payable to him was computed are not ascertainable from the records in the possession of the Board, the amount computed under this subdivision shall be $33.33, except that if the pension payable to him was less than $25, such amount shall be four-thirds of the amount of the pension or $13.33, whichever is greater. The term 'monthly compensation' shall, for the purposes of this subdivision, mean the monthly compensation used in computing the annuity;

"(iii) for an employee who will have been completely insured under paragraph (7) (iii) and either (7) (i) or (7) (ii): the higher of the two amounts computed in accordance with subdivisions (i) and (ii).

"PENSIONS TO INDIVIDUALS ON PENSION OR GRATUITY ROLLS OF EMPLOYERS

"SEC. 6. (a) Beginning July 1, 1937, each individual then on the pension or gratuity roll of an employer by reason of his employment, who was on such roll on March 1, 1937, shall be paid on July 1, 1937, and on the 1st day of each calendar month thereafter during his life, a pension at the same rate as the pension or gratuity granted to him by the employer without diminution by reason of a general reduction or readjustment made subsequent to December 31, 1930, and applicable to pensioners of the employer: *Provided, however,* That no pension payable under this section shall exceed $120 monthly: *And provided further,* That no individual on the pension or gratuity roll of an employer not conducting the principal part of its business in the United States shall be paid a pension under this section unless, in the judgment of the Board, he was, on March 1, 1937, carried on the pension or gratuity roll as a United States pensioner.

"(b) No individual covered by this section who was on July 1, 1937, eligible for an annuity under this Act or the Railroad Retirement Act of 1935, based in whole or in part on service rendered prior to January 1, 1937, shall receive a pension payment under this section subsequent to the payment due on October 1, 1937, or due on the 1st day of the month in which the application for an annuity of such individual has been awarded and certified by the Board, whichever of the two dates is earlier. The annuity claims of such individuals who receive pension payments under this section shall be adjudicated in the same manner and with the same effect as if no pension payments had been made: *Provided, however,* That no such individual shall be entitled to receive both a pension under this section and an annuity under this Act or the Railroad Retirement Act of 1935, and in the event pension payments have been made to any such individual in any month in which such individual is entitled to an annuity under this Act or the Railroad Retirement Act of 1935, the difference between the amounts paid as pensions and the amounts due as annuities shall be adjusted in accordance with such rules and regulations as the Board may deem just and reasonable.

"(c) The pension paid under this section shall not be considered to be in substitution for that part of the pension or gratuity from the employer which is in excess of a pension or gratuity at the rate of $120 a month.

"SEC. 7. Nothing in this Act or the Railroad Retirement Act of 1935 shall be taken as restricting or discouraging payment by employers to retired employees of pensions or gratuities in addition to the annuities or pensions paid to such employees under such Acts, nor shall such Acts be taken as terminating any trust heretofore created for the payment of such pensions or gratuities.

"CONCLUSIVENESS OF RETURNS OF COMPENSATION AND OF FAILURE TO MAKE RETURNS OF COMPENSATION

"SEC. 8. Employers shall file with the Board, in such manner and form and at such times as the Board by rules and regulations may prescribe, returns under oath of [monthly] compensation of employees, and, if the Board shall so require, shall furnish employees with statements of their [monthly] compensation as reported to the Board. [Any such return] *The Board's record of the compensation so returned* shall be conclusive as to the amount of compensation [earned by] *paid to* an employee during each [month] *period* covered by the return, and the fact that *the Board's records show that* no return was made of the compensation claimed to [be earned by] *will* [should be eliminated] *have been paid to* an employee during a particular [calendar month] *period* shall be taken as conclusive that no compensation was [earned by] *paid to* such employee during that [month,] *period,* unless the error in the amount of compensation returned in the one case, or the failure to make return of the compensation in the other case, is called to the attention of the Board within four years after the last date on which return of the compensation was required to be made.

"ERRONEOUS PAYMENTS

"SEC. 9. (a) If the Board finds that at any time more than the correct amount of annuities, pensions, or death benefits has been paid to any individual under this Act or the Railroad Retirement Act of 1935 or a payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940), recovery by adjustments in subsequent payments to which such individual is entitled under this Act or any other Act administered by the Board may, except as otherwise provided in this section, be made under regulations prescribed by the Board. If such individual dies before recovery is completed, recovery may be made by set-off or adjustments, under regulations prescribed by the Board, in subsequent payments due, under this Act or any other Act administered by the Board, to the estate, designee, next of kin, legal representative, or surviving spouse of such individual, with respect to the employment of such individual.

"(b) Adjustments under this section may be made either by deductions from subsequent payments or, with respect to payments which are to be made during a lifetime or lifetimes, by subtracting the total amount of annuities, pensions, or death benefits paid in excess of the proper amount from the actuarial value, as determined by the Board, of such payments to be made during a lifetime or lifetimes and recertifying such payments on the basis of the reduced actuarial value. In the latter case, recovery shall be deemed to have been completed upon such recertification.

"(c) There shall be no recovery in any case in which more than the correct amount of annuities, pensions, or death benefits under this Act or the Railroad Retirement Act of 1935 has been paid to an individual or payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940) who, in the judgment of the Board, is without fault when, in the judgment of the Board, recovery would be contrary to the purpose of the Acts or would be against equity or good conscience.

"(d) No certifying or disbursing officer shall be held liable for any amount certified or paid by him in good faith to any person where the recovery of such amount is waived under subsection (c) of this section or has been begun but cannot be completed under subsection (a) of this section.

"RETIREMENT BOARD

"Personnel

"SEC. 10. (a) There is hereby established as an independent agency in the executive branch of the Government a Railroad Retirement Board, to be composed of three members appointed by the President, by and with the advice and consent of the Senate. Each member shall hold office for a term of five years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of the term and the terms of office of the members first taking office after the enactment date shall expire, as designated by the President, one at the end of two years, one at the end of three years, and one at the end of four years after the enactment date. One member shall be appointed from recommenda-

tions made by representatives of the employees and one member shall be appointed from recommendations made by representatives of carriers, in both cases as the President shall direct, so as to provide representation on the Board satisfactory to the largest number, respectively, of employees and carriers concerned. One member, who shall be the chairman of the Board, shall be appointed initially for a term of two years without recommendation by either carriers or employees and shall not be in the employment of or be pecuniarily or otherwise interested in any employer or organization of employees. Vacancies in the Board shall not impair the powers or affect the duties of the Board or of the remaining members of the Board, of whom a majority of those in office shall constitute a quorum, for the transaction of business. Each of said members shall receive a salary of $10,000 per year, together with necessary traveling expenses and subsistence expenses, or per diem allowance in lieu thereof, while away from the principal office of the Board on official duties.

"DUTIES

"(b) 1. The Board shall have and exercise all the duties and powers necessary to administer this Act and the Railroad Retirement Act of 1935. The Board shall take such steps as may be necessary to enforce such Acts and make awards and certify payments. Decisions by the Board upon issues of law and fact relating to pensions, annuities, or death benefits shall not be subject to review by any other administrative or accounting officer, agent, or employee of the United States.

"2. If the Board finds that an applicant is entitled to an annuity under the provisions of this Act or the Railroad Retirement Act of 1935 then the Board shall make an award fixing the amount of the annuity and shall certify the payment thereof as hereinafter provided; otherwise the application shall be denied.

"3. The Board shall from time to time certify to the Secretary of the Treasury the name and address of each individual entitled to receive a payment, the amount of such payment, and the time at which it should be made, and the Secretary of the Treasury through the Division of Disbursements of the Treasury Department, and prior to audit by the General Accounting Office, shall make payment in accordance with the certification by the Board.

"4. The Board shall establish and promulgate rules and regulations to provide for the adjustment of all controversial matters arising in the administration of such Acts, with power as a Board or through any member or designated subordinate thereof, to require and compel the attendance of witnesses, administer oaths, take testimony, and make all necessary investigations in any matter involving annuities or other payments and shall maintain such offices, provide such equipment, furnishings, supplies, services and facilities, and employ such individuals and provide for their compensation and expenses as may be necessary for the proper discharge of its functions. In the employment of such individuals under the civil-service laws and rules the Board shall give preference over all others to individuals who have had experience in railroad service, if, in the judgment of the Board, they possess the qualifications necessary for the proper discharge of the duties of the positions to which they are to be appointed. All rules, regulations, or decisions of the Board shall require the approval of at least two members, except as provided in subdivision 5 of this subsection and they shall be entered upon the records of the Board, which shall be a public record. Notice of a decision of the Board, or of an employee thereof, shall be communicated to the applicant in writing within thirty days after such decision shall have been made. The Board shall gather, keep, compile, and publish in convenient form such records and data as may be necessary to assure proper administration of such Acts. The Board shall have power to require all employers and employees and any officer, board, commission, or other agency of the United States to furnish such information and records as shall be necessary for the administration of such Acts. The several district courts of the United States and the District Court of the United States for the District of Columbia shall have jurisdiction upon suit by the Board to compel obedience to any order of the Board issued pursuant to this section. The orders, writs, and processes of the District Court of the United States for the District of Columbia in such suits may run and be served anywhere in the United States. The Board shall make an annual report to the President of the United States to be submitted to Congress. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

"5. The Board is authorized to delegate to any of its employees the power to make decisions on applications for annuities or death benefits in accordance with rules and regulations prescribed by the Board: *Provided, however,* That any person aggrieved by a decision so made shall have the right to appeal to the Board.

"COURT JURISDICTION

"SEC. 11. [An employee or other person aggrieved may apply to the district court of any district wherein the Board may have established an office or to the District Court of the United States for the District of Columbia to compel the Board (1) to set aside an action or decision of the Board claimed to be in violation of a legal right of the applicant or (2) to take action or to make a decision necessary for the enforcement of a legal right of the applicant. Such court shall have jurisdiction to entertain such application and to grant appropriate relief. The decision of the Board with respect to an annuity, pension, or death benefit shall not be subject to review by any court unless suit is commenced within one year after the decision shall have been entered upon the records of the Board and communicated to the person claiming the annuity, pension, or death benefit. The jurisdiction herein specifically conferred upon the Federal courts shall not be held exclusive of any jurisdiction otherwise possessed by such courts to entertain actions at law or suits in equity in aid of the enforcement of rights or obligations arising under the provisions of this Act or the Railroad Retirement Act of 1935.] *Decisions of the Board determining the rights or liabilities of any person under this Act shall be subject to judicial review in the same manner, subject to the same limitations, and all provisions of law shall apply in the same manner as though the decision were a determination of corresponding rights or liabilities under the Railroad Unemployment Insurance Act except that the time within which proceedings for the review of a decision with respect to an annuity, pension, or lump-sum benefit may be commenced shall be one year after the decision will have been entered upon the records of the Board and communicated to the claimant.*

"EXEMPTION

"SEC. 12. No annuity or pension payment shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated.

"PENALTIES

"SEC. 13. Any officer or agent of an employer, as the word 'employer' is hereinbefore defined, or any employee acting in his own behalf, or any individual whether or not of the character hereinbefore defined, who shall willfully fail or refuse to make any report or furnish any information required, in accordance with the provisions of section 10 (b) 4, by the Board in the administration of this Act or the Railroad Retirement Act of 1935, or who shall knowingly make or cause to be made any false or fraudulent statement or report when a statement or report is required to be made for the purpose of such Acts, or who shall knowingly make or aid in making any false or fraudulent statement or claim for the purpose of causing an award or payment under such Acts, shall be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year.

"SEPARABILITY

"SEC. 14. If any provision of this Act or the Railroad Retirement Act of 1935, or the application thereof to any person or circumstance, should be held invalid, the remainder of such Act, or the application of such provision to other persons or circumstances, shall not be affected thereby.

"RAILROAD RETIREMENT ACCOUNT

"SEC. 15. (a) There is hereby created an account in the Treasury of the United States to be known as the Railroad Retirement Account. There is hereby authorized to be appropriated to the account for each fiscal year, beginning with the fiscal year ending June 30, 1937, as an annual premium an amount sufficient, with a reasonable margin for contingencies, to provide for the payment of all annuities, pensions, and death benefits in accordance with the provisions of this Act and the Railroad Retirement Act of 1935. Such amount shall be based on such tables of mortality as the Railroad Retirement Board shall from time to

time adopt, and on an interest rate of 3 per centum per annum compounded annually. The Railroad Retirement Board shall submit annually to the Bureau of the Budget an estimate of the appropriation to be made to the account.

"(b) At the request and direction of the Board, it shall be the duty of the Secretary of the Treasury to invest such portion of the amounts credited to the account as, in the judgment of the Board, is not immediately required for the payment of annuities, pensions, and death benefits in accordance with the provisions of this Act and the Railroad Retirement Act of 1935 in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired on original issue at par or by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the account. Such special obligations shall bear interest at the rate of 3 per centum per annum. Obligations other than such special obligations may be acquired for the account only on such terms as to provide an investment yield of not less than 3 per centum per annum. It shall be the duty of the Secretary of the Treasury to sell and dispose of obligations in the account if it shall be in the interest of the account so to do. Any obligations acquired by the account, except special obligations issued exclusively to the account, may be sold at the market price. Special obligations issued exclusively to the account shall, at the request of the Board, be redeemed at par plus accrued interest. All amounts credited to the account shall be available for the payment of all annuities, pensions, and death benefits in accordance with the provisions of this Act and the Railroad Retirement Act of 1935.

"(c) The Board is hereby authorized and directed to select two actuaries, one from recommendations made by representatives of employees and the other from recommendations made by representatives of carriers. These actuaries, along with a third who shall be designated by the Secretary of the Treasury, shall be known as the Actuarial Advisory Committee with respect to the Railroad Retirement Account. The committee shall examine the actuarial reports and estimates made by the Railroad Retirement Board and shall have authority to recommend to the Board such changes in actuarial methods as they may deem necessary. The compensation of the members of the committee of actuaries, exclusive of the member designated by the Secretary, shall be fixed by the Board on a per diem basis.

"(d) The Board shall include in its annual report a statement of the status and the operations of the Railroad Retirement Account. At intervals not longer than three years the Board shall make an estimate of the liabilities created by this Act and the Railroad Retirement Act of 1935 and shall include such estimate in its annual report. Such report shall also contain an estimate of the reduction in liabilities under title II of the Social Security Act arising as a result of the maintenance of this Act and the Railroad Retirement Act of 1935.

"APPROPRIATION FOR ADMINISTRATIVE EXPENSES

"SEC. 16. There is hereby authorized to be appropriated from time to time such sums as may be necessary to provide for the expenses of the Board in administering the provisions of this Act and the Railroad Retirement Act of 1935.

"SOCIAL SECURITY ACT

"SEC. 17. The term 'employment', as defined in subsection (b) of section [210] *209* of title II of the Social Security Act, *and of section 1426 of the Internal Revenue Code* shall not include *service determined pursuant to the provisions of this Act to be* service performed by an individual as an employee as defined in section 1 (b).

"FREE TRANSPORTATION

"SEC. 18. It shall not be unlawful for carriers by railroad subject to this Act to furnish free transportation to individuals receiving annuities or pensions under this Act or the Railroad Retirement Act of 1935 in the same manner as such transportation is furnished to employees in their service.

"INCOMPETENCE

"SEC. 19. (a) Every individual receiving or claiming benefits, or to whom any right or privilege is extended, under this or any other Act of Congress now or

hereafter administered by the Board shall be conclusively presumed to have been competent until the date on which the Board receives written notice, in a form and manner acceptable to the Board, that he is an incompetent, or a minor, for whom a guardian or other person legally vested with the care of his person or estate has been appointed: *Provided, however.* That the Board may, in its discretion, validly, recognize actions by, and conduct transactions with, others acting, prior to receipt of, or in the absence of, such written notice, in behalf of an individual found by the Board to be an incompetent or a minor, if the Board finds such actions or transactions to be in the best interests of such individual.

"(b) Every guardian or other person legally vested with the care of the person or estate of an incompetent or minor who is receiving or claiming benefits, or to whom any right or privilege is extended, under this or any other Act of Congress now or hereafter administered by the Board shall have power everywhere, in the manner and to the extent prescribed by the Board, to take any action necessary or appropriate to perfect any right or exercise any privilege of the incompetent or minor and to conduct all transactions on his behalf under this or any other Act of Congress now or hereafter administered by the Board. Any payment made pursuant to the provisions of this or the preceding subsection shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

"(c) This section shall be effective as of August 29, 1935."

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CHAPTER 9 OF THE INTERNAL REVENUE CODE

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[SUBCHAPTER B—EMPLOYMENT BY CARRIERS]

TITLE II

"Carriers' Taxing Act of 1945"

PART I—TAX ON EMPLOYEES

SEC. [1500.] *20.* Rate of tax—

In addition to other taxes, there shall be levied, collected, and paid upon the income of every employee a tax equal to the following percentages of so much of the compensation of such employee as is not in excess of [$300 for any calendar month, earned by] *$300 multiplied by the number of months in the calendar year with respect to which compensation is paid, paid to* him after the effective date of this [subchapter] *title*—

[1. With respect to compensation earned during the calendar year 1939, the rate shall be 2¾ per centum;]

1. With respect to compensation payable between June 30, 1945, and January 1, 1946, and compensation paid during 1946, 1947, and 1948, the rate shall be 5¾ per centum;

[2. With respect to compensation earned during the calendar years 1940, 1941, and 1942, the rate shall be 3 per centum;]

2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 6 per centum;

[3. With respect to compensation earned during the calendar years 1943, 1944, and 1945, the rate shall be 3¼ per centum;]

3. With respect to compensation paid after December 31, 1951, the rate shall be 6¼ per centum.

[4. With respect to compensation earned during the calendar years 1946, 1947, and 1948, the rate shall be 3½ per centum;

[5. With respect to compensation earned after December 31, 1948, the rate shall be 3¾ per centum.]

SEC. [1501.] *21.* Deduction of tax from compensation—

(a) Requirement. The tax imposed by section [1500] *20* shall be collected by the employer of the taxpayer by deducting the amount of the tax from the compensation of the employee as and when paid. If an employee is paid compensation by more than one employer with respect to any calendar month, then, under regulations made under this [subchapter] *title*, the [Commissioner] *Board* may prescribe the proportion of the tax to be deducted by each employer from the compensation paid by him to the employee with respect to such month.

(b) Indemnification of employer. Every employer required under subsection (a) to deduct the tax shall be made liable for the payment of such tax and shall not be liable to any person for the amount of any such payment.

(c) Adjustments. If more or less than the correct amount of tax imposed by section [1500] *20* is paid with respect to any compensation payment, then, under regulations made under this [subchapter] *title* by the [Commissioner] *Board*, [with the approval of the Secretary,] proper adjustments, with respect both to the tax and the amount to be deducted, shall be made, without interest, in connection with subsequent compensation payments to the same employee by the same employer.

SEC. [1502.] *22*. Overpayments and underpayments—

If more or less than the correct amount of the tax imposed by section [1500] *20* is paid or deducted with respect to any compensation payment and the overpayment or underpayment of the tax cannot be adjusted under section [1501] *21* (c), the amount of the overpayment shall be refunded, or the amount of the underpayment shall be collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations under this [subchapter] *title* as made by the [Commissioner,] *Board* [with the approval of the Secretary].

SEC. [1503.] *23*. Nondeductibility of tax from net income—

For the purposes of the income tax imposed by chapter 1 or by any Act of Congress in substitution therefor, the tax imposed by section [1500] *20* shall not be allowed as a deduction to the taxpayer in computing his net income.

PART II—TAX ON EMPLOYEE REPRESENTATIVES

SEC. [1510.] *24*. Rate of tax—

In addition to other taxes, there shall be levied, collected, and paid upon the income of each employee representative a tax equal to the following percentages of so much of the compensation of such employee representative as is not in excess of [$300 for any calendar month earned by] *$300 multiplied by the number of months in the calendar year with respect to which compensation is paid, paid to* him after the effective date of this [subchapter] *title:*

[1. With respect to compensation earned during the calendar year 1939, the rate shall be 5½ per centum;

[2. With respect to compensation earned during the calendar years 1940, 1941, and 1942, the rate shall be 6 per centum;

[3. With respect to compensation earned during the calendar years 1943, 1944, and 1945, the rate shall be 6½ per centum;

[4. With respect to compensation earned during the calendar years 1946, 1947, and 1948, the rate shall be 7 per centum;

[5. With respect to compensation earned after December 31, 1948, the rate shall be 7½ per centum.]

1. With respect to compensation payable between June 30, 1945, and January 1, 1946, and compensation paid during 1946, 1947, and 1948, the rate shall be 11½ per centum.

2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 12 per centum.

3. With respect to compensation paid after December 31, 1951, the rate shall be 12½ per centum.

SEC. [1511.] *25*. Determination of compensation—

The compensation of an employee representative for the purpose of ascertaining the tax thereon shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in section [1532] *1* (a).

SEC. [1512.] *26*. Nondeductibility of tax from net income—

For the purposes of the income tax imposed by chapter 1 or by any Act of Congress in substitution therefor, the taxes imposed by section [1510] *24* shall not be allowed as a deduction to the taxpayer in computing his net income.

PART III—TAX ON EMPLOYERS

SEC. [1520.] *27*. Rate of tax—

In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of so much of the compensation as is not [in excess of $300 for any calendar month paid by him to any employee,] *with respect to any employee, in excess of $300 multiplied by the number of months in the calendar year in which the employee was in his service, paid by him* for services rendered to him after [December 31, 1936] *June 30, 1945*: *Provided, however*, That if an employee is paid compensation by more than one employer with respect to any such calendar month, the tax imposed

by this section shall apply to not more than [$300] *$300 multiplied by the number of months in the calendar year in which the employee will have been in the service of an employer,* of the aggregate compensation paid to said employee by all said employers with respect to such calendar [month, and each such employer shall be liable for that proportion of the tax with respect to such compensation which his payment to the employee with respect to such calendar month bears to the aggregate compensation paid to such employee by all employers with respect to such calendar month:] *year, and each employer other than a subordinate unit of a national railway-labor-orgdnization employer shall be liable for that proportion of the tax which the compensation paid by him to the employee bears to the total compensation paid to the employee by all such employers; and in the event that the compensation paid by such employers to the employee is less than $300 multiplied by the number of calendar months in such year in which the employee will have been in the service of an employer each subordinate unit railway-labor-organization employer shall be liable for such proportion of any additional tax as the compensation paid by such employer bears to the compensation paid by all such employers:*

[1. With respect to compensation paid to employees for services rendered during the calendar year 1939, the rate shall be 2¾ per centum;

[2. With respect to compensation paid to employees for services rendered during the calendar years 1940, 1941, and 1942, the rate shall be 3 per centum;

[3. With respect to compensation paid to employees for services rendered during the calendar years 1943, 1944, and 1945, the rate shall be 3¼ per centum;

[4. With respect to compensation paid to employees for services rendered during the calendar years 1946, 1947, and 1948, the rate shall be 3½ per centum;

[5. With respect to compensation paid to employees for services rendered after December 31, 1948, the rate shall be 3¾ per centum.]

1. With respect to compensation payable between June 30, 1945, and January 1, 1946, and compensation paid during 1946, 1947, and 1948, the rate shall be 5¾ per centum;

2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 6 per centum;

3. With respect to compensation paid after December 31, 1951, the rate shall be 6¼ per centum.

SEC. [1521.] *28.* Adjustments—

If more or less than the correct amount of the tax imposed by section [1520] *27* is paid with respect to any compensation payment, then, under regulations made by the [Commissioner] *Board,* [with the approval of the Secretary,] proper adjustments with respect to the tax shall be made, without interest, in connection with subsequent excise-tax payments made by the same employer.

SEC. [1522.] *29.* Overpayments and underpayments—

If more or less than the correct amount of the tax imposed by section [1520] *27* is paid or deducted with respect to any compensation payment and the overpayment or underpayment of the tax cannot be adjusted under section [1521] *28,* the amount of the overpayment shall be refunded, or the amount of the underpayment shall be collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations under this [subchapter] *title* as made by the [Commissioner] *Board.* [with the approval of the Secretary.]

PART IV—GENERAL PROVISIONS

[SEC. 1530.] *30.* Collection and payment of taxes—

(a) Administration. The taxes imposed by this [subchapter] *title* shall be collected by the [Bureau of Internal Revenue] *Board* and shall be paid into the Treasury of the United States [as internal revenue collections.] *together with any interest, penalties, and additions to the taxes, to the credit of the railroad retirement account. All moneys so paid into the treasury are hereby permanently appropriated to the railroad retirement account: Provided, however, That the appropriation herein made of moneys paid in for the fiscal year 1946 shall be (A) increased, from moneys in the general fund of the Treasury not otherwise appropriated, by an amount by which (i) the sum of all amounts heretofore or hereafter collected under the Carriers' Taxing Act of 1937, and subchapter B of chapter 9 of the Internal Revenue Code may exceed (ii) the sum of all appropriations made to the railroad retirement account (exclusive of the appropriations for crediting military service) and all appropriations made to the Board pursuant to section 16, whether heretofore or hereafter made, or (B) decreased by payment into the general fund of the Treasury of an amount by which the sum computed in clause (ii) may exceed the sum computed in clause (i). There*

is hereby authorized to be appropriated from the Railroad Retirement Account such sums as may be necessary to provide for the expenses of the Board in administering both titles of this Act and the Railroad Retirement Act of 1935. Any part of any appropriation so made which may at any time lapse shall revert to the credit of the Railroad Retirement Account.

(b) Time and manner of payment. The taxes imposed by this [subchapter] *title* shall be collected and paid quarterly or at such other times and in such manner and under such conditions not inconsistent with this [subchapter] *title* as may be prescribed by the [Commissioner] *Board* [with the approval of the Secretary.]

(c) Addition to tax in case of delinquency. If a tax imposed by this [subchapter] *title* is not paid when due, there shall be added as part of the tax (except in the case of adjustments made in accordance with the provisions of this [subchapter] *title*) interest at the rate of 6 per centum per annum from the date the tax became due until paid.

(d) Fractional parts of a cent. In the payment of any tax under this [subchapter] *title*, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

[SEC. 1531. Erroneous payments—

[Any tax paid under this subchapter by a taxpayer with respect to any period with respect to which he is not liable to tax under this subchapter shall be credited against the tax, if any, imposed by subchapter A upon such taxpayer, and the balance, if any, shall be refunded.

[SEC. 1532. Definitions as used in this subchapter—

[(a) Employer. The term "employer" means any carrier (as defined in subsection (h) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term "employer" shall not include any street interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Commissioner of Internal Revenue, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities

[(b) Employee. The term "employee" means any person in the service of one or more employers for compensation: *Provided, however,* That the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual is in the employment relation to a carrier if he is on furlough, subject to call for service within or outside the United States and ready and willing to serve, or on leave of absence, or absent on account of sickness or disability; all in accordance with the established rules and practices in effect on the carrier: *Provided, however,* That an individual shall not be deemed to be in the employment relation to a carrier unless during the last pay-roll period in which he rendered service to it he was with respect to that service in the service of an employer in accordance with subsection (d) of this section.

[The term "employee" includes an officer of an employer.

[The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

[(c) Employee representative. The term "employee representative" means any officer or official representative of a railway labor organization other than a a labor organization included in the term "employer" as defined in subsection (a), who before or after June 29, 1937, was in the service of an employer as defined in subsection (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, 44 Stat. 577 (U. S. C., title 45, c. 18), as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

[(d) Service. An individual is in the service of an employer whether his service is rendered within or without the United States if he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, which service he renders for compensation: *Provided, however*, That an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clauses (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to subsection (c) of section 1 of the Railroad Retirement Act of 1937 shall be applicable: *Provided further*, That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

[(e) Compensation. The term "compensation" means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips, or the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 1500. Compensation which is earned during the period for which the Commissioner shall require a return of taxes under this subchapter to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only. For the purpose of determining the amount of taxes under sections 1500 and 1520, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $3 and (1) such compensation is earned before April 1, 1940, and the taxes thereon under such sections are not paid before July 1, 1940, or (2) such compensation is earned after March 31, 1940.

[(f) United States. The term "United States" when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.

[(g) Company. The term "company" includes corporations, associations, and joint-stock companies.

[(h) Carrier. The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.

[(i) Person. The term "person" means an individual, a partnership, an association, a joint-stock company, or a corporation.

[SEC. 1534. Court jurisdiction—

[The several district courts of the United States and the District Court of the United States for the District of Columbia, respectively, shall have jurisdiction to entertain an application by the Attorney General on behalf of the Commissioner to compel an employee or other person residing within the jurisdiction of the court or an employer subject to service of process within its jurisdiction to comply with any obligations imposed on such employee, employer, or other person under the provisions of this subchapter. The jurisdiction herein specifically conferred upon such Federal courts shall not be held exclusive of any jurisdiction otherwise possessed by such courts to entertain actions at law or suits in equity in aid of the enforcement of rights or obligations arising under the provisions of this subchapter.

[SEC. 1535. Rules and regulations—

[The Commissioner, with the approval of the Secretary, shall make and publish such rules and regulations as may be necessary for the enforcement of this subchapter.]

SEC. [1536.] *31.* Other laws applicable—

[All provisions of law, including penalties, applicable with respect to any tax imposed by section 2700 or section 1800, and the provisions of section 3661, insofar as applicable and not inconsistent with the provisions of this subchapter, shall be applicable with respect to the taxes imposed by this subchapter.]

All provisions of law applicable with respect to the contributions imposed by section 8 of the Railroad Unemployment Insurance Act shall be applicable with respect to the taxes imposed by this title.

[SEC. 1537. Effective date of subchapter—

[This subchapter shall take effect on the first day of that quarter of the calendar year occurring next after the enactment of this title.]

(The amendments made by this section shall become effective on January 1, 1946, except those relating to the rate of taxation which shall become effective July 1, 1945. Effective January 1, 1946, sections 1500 to 1530, inclusive, and section 1536 of the Internal Revenue Code are removed from the Internal Revenue Code and shall constitute title II of the Railroad Retirement Act of 1937, being renumbered sections 20 through 32 with appropriate renumbering of all cross-references therein contained, said title to be in the words and marks: "Carriers' Taxing Act of 1945"; effective also on that date all other provisions of subchapter B of chapter 9 of the Internal Revenue Code shall be repealed. The provisions of this section becoming effective on January 1,1946, shall not affect any rights or liabilities accrued before January 1, 1946.)

RAILROAD UNEMPLOYMENT INSURANCE ACT

DEFINITIONS

SECTION 1. For the purposes of this Act, except when used in amending the provisions of other Acts—

[(a) The term "employer" means any carrier (as defined in subsection (b) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "employer" shall also

include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies, and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.]

(a) The term "employer", except as otherwise provided in this subsection, shall mean—

(1) Any carrier: A "carrier" is any express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act;

(2) Any person, other than a carrier regulated under part I of the Interstate Commerce Act, which, pursuant to arrangements with a carrier or otherwise, performs, for hire, with respect to passengers or property transported, being transported, or to be transported by a carrier, any service included within the term "transportation" as defined in section 1 (3) of the Interstate Commerce Act, whether or not such service is offered under railroad tariffs;

(3) Any freight forwarder: A "freight forwarder" is any person, other than a carrier, which holds itself out to the general public to transport, or provide transportation of property for hire, and which in the ordinary and usual course of its undertaking assembles and consolidates, or provides for assembling and consolidating, shipments of such property, and performs, or provides for the performing of, break-bulk and distributing operations with respect to such consolidated shipments, and assumes responsibility for the transportation of such property from point of receipt to point of destination, and regularly and substantially utilizes, for the transportation of such shipments, the services of one or more carriers;

(4) Any person engaged in rendering, pursuant to any arrangement for one or more carriers, any service which (i) is of such a nature as to be susceptible of indefinitely continuous performance and (ii) constitutes a part of or is necessary or incidental to the operation or maintenance of way, equipment, or structures devoted to transportation use, or constitutes a clerical, sales, accounting, protective, or communications service necessary or incidental to the conduct of transportation carrried on by a carrier, or is rendered with respect to passengers or property transported by railroad, at point of departure or shipment or at destination or between such points;

(5) Any person which, through any form of property interest, is directly or indirectly subject to control by or to common control with a carrier and which (i) is engaged in acquiring or holding title to managing, maintaining, or operating any property devoted substantially to use in the transportation conducted by such carriers; or (ii) is engaged in performing services necessary or incidental to the conduct of the transportation carried on by such carrier, or services in the manufacture of equipment or equipment parts or in the processing of materials for use in the operation, servicing, or maintenance of way, structures or equipment devoted to use in transportation, or services in connection with the storage, elevation, or handling of property transported, being transported, or to be transported if such storage, elevation, or handling services are provided with respect to property accorded privileges of storage in transit, or for the promotion or facilitation of transportation conducted by such carrier; or (iii) is engaged in transportation by motor vehicle;

(6) Any railroad association, traffic association, tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency, and other association, bureau, agency, or organization controlled and maintained wholly or principally by two or more employers and engaged in the performance of services in connection with or incidental to railroad transportation;

(7) Any railway labor organization, national in scope, which will have been or may be organized in accordance with the Railway Labor Act, and such organization's State and National legislative committees, general committees, insurance departments, and local lodges and divisions, established pursuant to the constitution and bylaws of such organization;

(8) Any organization maintained or controlled by one or more employers, and principally engaged in furnishing medical, hospital, educational, recreational, or other welfare services to employees, or in providing for the payment of life, sick, accident,

or other benefits to such employees or the dependents or survivors of such employees; and

(9) Any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property, or operating all or any part of the business of an employer as defined herein.

(10) Exclusions: Except with respect to persons covered by clause (iii) of paragraph (5), the term "employer" shall not include any person (i) by reason of operations in the conduct of which such person holds itself out directly to the public as a common carrier by water, air, or motor or animal-drawn vehicle, or as a contract carrier by any of such means, other than contract carrier service regularly offered to railroad passengers, shippers, or consignees pursuant to arrangements with an employer such as defined herein; or (ii) by reason of the performance of any operation which is insubstantial or is so irregular or infrequent as to afford no substantial basis for an inference that such operation will be repeated; or (iii) by reason of its being engaged in the mining of coal, the supplying of coal to an employer such as herein defined where delivery is not beyond the mine tipple, and in the operation of equipment or facilities therefor, or in any of such activities, or in logging or the milling of lumber to standard commercial sizes, or in furnishing supplies to a carrier; or (iv) by reason of the operation of a street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, or is a part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed, upon request of the Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this clause. The term "employer" shall not include any individual by reason of the performance of any service by such individual personally.

(11) Segregation: Any person who is an employer as defined in this subsection shall be an employer with respect to all activities carried on by it, except that (i) any person who is an employer by reason of paragraph (9) shall be an employer only in the capacity described in that paragraph; (ii) if the Board finds that a person is principally engaged in activities other than employer activities and that its employer activities are conducted as an operation or operations separate and distinct from the operations in which it is principally engaged, such person shall be an employer only with respect to such employer operation or operations; and (iii) if the Board finds that a person who is an employer solely by reason of paragraph (2) or (4) of this subsection, is principally engaged in activities other than employer activities but does not, pursuant to clause (ii) find that the employer activities of such person are conducted as an operation or operations separate and distinct from the operations in which it is principally engaged, such person shall be an employer only with respect to all work performed in its employ by individuals who regularly and substantially perform work on property structures or equipment devoted to transportation use. If to a substantial extent the individuals working in employer activities regularly work also in the operations in which a person is principally engaged, such employer activities shall not be deemed to be conducted as an operation or operations separate and distinct from the operations in which such person is principally engaged. For the purposes of this subsection, a person shall be deemed to be principally engaged in activities other than employer activities if the man-hours devoted to such other activities are more than one-half of the total man-hours devoted to all activities carried on by such person, except that if the Board finds that a determination on such basis is impracticable or inappropriate the Board shall make the determination on the basis of such factors as in its judgment are relevant and appropriate. The term "employer activities" as used in this subsection shall mean all such activities as are conducted by a person as a carrier, or as are described in paragraph (2), (3), (4), (5), (6), or (8). When a final determination will have been made as to whether a person is principally engaged in employer activities, the matter shall not be redetermined except upon the basis of operations conducted for a period of not less than three years following the last operations considered in making the previous determination, unless the Board finds that substantial activities will have been abandoned or substantial new activities will have been undertaken. Upon any such redetermination the conclusion shall be governed by the previous determination, unless the Board finds that on the basis of the factors on which such previous determination will have been based, the activities in which the person previously was principally engaged constitute less than 40 per centum of such person's activities.

[(b) The term "carrier" means an express company, sleeping car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.]

(c) The term "company" includes corporations, associations, and joint-stock companies.

(d) The term "employee" (except when used in phrases establishing a different meaning) means any individual who is or has been (i) in the service of one or more employers for compensation, or (ii) an employee representative. The term "employee" shall include an employee of a local lodge or division defined as an employer in section 1 (a) only if he was in the service of a carrier on or after August 29, 1935. The term "employee" includes an officer of an employer.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(e) An individual is in the service of an employer whether his service is rendered within or without the United States if (*i*) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, [which service he renders for compensation:] *or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, or he is personally performing for an employer any service by reason of which, except for the last sentence of paragraph (10) of subsection (a), he would be an employer, and (ii) he renders such service for compensation: Provided, however,* That an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clauses (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case the Board may prescribe such other formula as it finds to be equitable, *and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation: Provided further,* That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof.

(f) The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term employer as defined in section 1 (a) who before or after August 29, 1935, was in the service of an employer as defined in section 1 (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(g) The term "employment" means service performed as an employee. For the purposes of determining eligibility for and the amount of benefits and the amount of contributions due pursuant to this Act, employment after June 30, 1940 in the service of a local lodge or division of a railway-labor-organization employer or as an employee representative shall be disregarded.

(h) The term "registration period" means, with respect to any employee, the period which begins with the first day for which such employee registers at an employment office in accordance with such regulations as the Board may prescribe, and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day for which he next registers at a different

employment office; and thereafter each period which begins with the first day for which he next registers at an employment office after the end of his last preceding registration period *which began with a day for which he registered at an employment office* and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day for which he next registers at a different employment office. *The term "registration period" means also, with respect to any employee, the period which begins with the first day with respect to which a statement of sickness is filed in his behalf in accordance with such regulations as the Board may prescribe, or the first such day after the end of a registration period which will have begun with a day with respect to which a statement of sickness was filed in his behalf, and ends with the thirteenth day thereafter.*

(i) The term "compensation" means any form of money remuneration, including pay for time lost but excluding tips, [payable] *paid* for services rendered as an employee to one or more employers, or as an employee representative: [*Provided, however,*, That in computing the compensation payable to any employee with respect to any calendar month, no part of any compensation in excess of $300 shall be recognized.] *A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1946 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1945 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 8, the period during which such compensation will have been earned.*

(j) The term "remuneration" means pay for services for hire, including pay for time lost, and tips, but pay for time lost shall be deemed earned on the day on which such time is lost. The term "remuneration" includes also earned income other than for services for hire if the accrual thereof in whole or in part is ascertainable with respect to a particular day or particular days. The term "remuneration" does not include (i) the voluntary payment by another, without deduction from the pay of an employee, of any tax or contribution now or hereafter imposed with respect to the remuneration of such employee, or (ii) any money payments received pursuant to any nongovernmental plan for unemployment insurance, *maternity insurance, or sickness insurance.*

(k) Subject to the provisions of section 4 of this Act, *(1)* a day of unemployment, with respect to any employee, means a calendar day on which he is able to work and is available for work and with respect to which (i) no remuneration is payable or accrues to him, and (ii) he has, in accordance with such regulations as the Board may prescribe, registered at an employment office; *and (2) a "day of sickness", with respect to any employee, means a calendar day on which because of any physical, mental, psychological, or nervous injury, illness, sickness, or disease he is not able to work or which is included in a maternity period, and with respect to which (i) no remuneration is payable or accrues to him, and (ii) in accordance with such regulations as the Board may prescribe, a statement of sickness is filed within such reasonable period, not in excess of ten days, as the Board may prescribe: Provided, however,* That "subsidiary remuneration", as hereinafter defined in this subsection, shall not be considered remuneration for the purpose of this subsection, except with respect to an employee whose base-year compensation, exclusive from the earnings from the position or occupation in which he earned such subsidiary remuneration, is less than $150: *Provided, further,* That remuneration for a working day which includes a part of each of two consecutive calendar days shall be deemed to have been earned on the second of such two days, and any individual who takes work for such working day shall not by reason thereof be deemed not available for work on the first of such calendar days.

For the purpose of this subsection, the term "subsidiary remuneration" means, with respect to any employee, remuneration not in excess of an average of one dollar a day for the period with respect to which such remuneration is payable or accrues, if the work from which the remuneration is derived (i) requires substantially less than full time as determined by generally prevailing standards, and (ii) is susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another occupation.

[(l) The term "benefits" (except when used in the term "unemployment benefits") means the money payments payable to an employee as provided in this Act, with respect to his unemployment.]

(l) The term "benefits" (except in phrases clearly designating other payments) means the money payments payable to an employee as provided in this Act, with respect to his unemployment or sickness.

(l–1) The term "statement of sickness" means a statement with respect to days of sickness of an employee, and the term "statement of maternity sickness" means a statement with respect to a maternity period of a female employee, in each case executed in such manner and form by an individual duly authorized pursuant to section 12 (i) to execute such statements, and filed as the Board may prescribe by regulations.

(l–2) The term "maternity period" means the period beginning fifty-seven days prior to the date stated by the doctor of a female employee to be the expected date of the birth of the employee's child and ending with the one hundred and fifteenth day after it begins or with the thirty-first day after the day of the birth of the child, whichever is later.

(m) The term "benefit year" means the twelve-month period beginning July 1 of any year and ending June 30 of the next year, except that a registration period beginning in June and ending in July shall be deemed to be in the benefit year ending in such month of June.

(n) The term "base year" means the completed calendar year immediately preceding the beginning of the benefit year.

(o) The term "employment office" means a free employment office operated by the Board, or designated as such by the Board pursuant to section 12 (i) of this Act.

(p) The term "account" means the railroad unemployment insurance account established pursuant to section 10 of this Act in the unemployment trust fund.

(q) The term "fund" means the railroad unemployment insurance administration fund, established pursuant to section 11 of this Act.

(r) The term "Board" means the Railroad Retirement Board.

(s) The term "United States", when used in a geographical sense, means the States, Alaska, Hawaii, and the District of Columbia.

(t) The term "State" means any of the States, Alaska, Hawaii, or the District of Columbia.

(u) Any reference in this Act to any other Act of Congress, including such reference in amendments to other Acts, includes a reference to such other Act as amended from time to time.

BENEFITS

SEC. 2. (a) [Benefits shall be payable to any qualified employee (as defined in section 3 of this Act) (i) for each day of unemployment in excess of seven during the first registration period, within a benefit year, in which he has seven or more days of unemployment, and (ii) for each day of unemployment in excess of four during any subsequent registration period beginning in the same benefit year.]

Benefits shall be payable to any qualified employee (i) for each day of unemployment in excess of seven during the first registration period, within a benefit year, in which he will have had seven or more days of unemployment, and for each day of unemployment in excess of four during any subsequent registration period in the same benefit year, and (ii) for each day of sickness (other than a day of sickness in a maternity period) in excess of seven during the first registration period, within a benefit year, in which he will have had seven or more such days of sickness, and for each such day of sickness in excess of four during any subsequent registration period in the same benefit year, and (iii) for each day of sickness in a maternity period.

The benefits payable to any such employee for each such day of unemployment *or sickness* shall be the amount appearing in the following table in column II on the line on which, in column I, appears the compensation range containing [the

total amount of compensation payable to him with respect to employment] *his total compensation (not in excess of $300 multiplied by the number of calendar months in which the employee will have had employment)* in his base year:

Column I *Total compensation*	*Column II* *Daily benefit rate*
$150 to $199.99	$1.75
$200 to $474.99	2.00
$475 to $749.99	2.25
$750 to $999.99	2.50
$1,000 to $1,299.99	3.00
$1,300 to $1,599.99	3.50
[$1,600 and over	4.00]
$1,600 to $1,999.99	*4.00*
$2,000 to $2,499.99	*4.50*
$2,500 and over	*5.00*

The amount of benefits payable for the first fourteen days in each maternity period, and for the first fourteen days in a maternity period after the birth of the child, shall be one and one-half times the amount otherwise payable under this subsection. Benefits shall not be paid for more than eighty-four days of sickness in a maternity period prior to the birth of the child. Qualification for and rate of benefits for days of sickness in a maternity period shall not be affected by the expiration of the benefit year in which the maternity period will have begun unless in such benefit year the employee will not have been a qualified employee.

In computing benefits to be paid, days of unemployment shall not be combined with days of sickness in the same registration period.

(b) The benefits provided for in this section shall be paid to an employee at such reasonable intervals as the Board may prescribe.

(c) The maximum number of days of unemployment within a benefit year for which benefits may be paid to an employee shall be *one hundred and thirty, and the maximum number of days of sickness, other than days of sickness in a maternity period, within a benefit year for which benefits may be paid to an employee shall be one hundred and thirty.*

(d) If the Board finds that at any time more than the correct amount of benefits has been paid to an individual under this Act or a payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940), recovery by adjustments in subsequent payments to which such individual is entitled under this Act or any other Act administered by the Board may, except as otherwise provided in this subsection, be made under regulations prescribed by the Board. If such individual dies before recovery is completed, recovery may be made by set-off or adjustments, under regulations prescribed by the Board, in subsequent payments due, under this Act or any other Act administered by the Board, to the estate, designee, next of kin, legal representative, or surviving spouse of such individual, with respect to the employment of such individual.

Adjustments under this subsection may be made either by deductions from subsequent payments or, with respect to payments which are to be made during a lifetime or lifetimes, by subtracting the total amount of benefits paid in excess of the proper amount from the actuarial value, as determined by the Board, of such payments to be made during a lifetime or lifetimes and recertifying such payments on the basis of the reduced actuarial value. In the latter case, recovery shall be deemed to have been completed upon such recertification.

There shall be no recovery in any case in which more than the correct amount of benefits has been paid to an individual or payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940) who, in the judgment of the Board, is without fault when, in the judgment of the Board, recovery would be contrary to the purpose of this Act or would be against equity or good conscience.

No certifying or disbursing officer shall be held liable for any amount certified or paid by him in good faith to any person where the recovery of such amount is waived under the third paragraph of this subsection or has been begun but cannot be completed under the first paragraph of this subsection.

(e) No benefits shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated.

(f) If (i) benefits are paid to any employee with respect to unemployment *or sickness* in any registration period, and it is later determined that remuneration

is payable to such employee with respect to any period which includes days in such registration period which had been determined to be days of unemployment *or sickness*, and (ii) the person or company from which such remuneration is payable has, before payment thereof, notice of the payment of benefits upon the basis of days of unemployment *or sickness* included in such period, the remuneration so payable shall not be reduced by reason of such benefits but the remuneration so payable, to the extent to which benefits were paid upon the basis of days which had been determined to be days of unemployment *or sickness* and which are included in the period for which such remuneration is payable, shall be held to be a special fund in trust for the Board. The amount of such special fund shall be paid to the Board and in the collection thereof the Board shall have the same authority, and the same penalties shall apply, as are provided in section 8 of this Act with respect to contributions. The proceeds of such special fund shall be credited to the account. Such benefits, to the extent that they are represented in such a special fund which has been collected by the Board, shall be disregarded for the purposes of subsection (c) of this section.

(g) Benefits accrued to an individual but not yet paid at death shall, upon certification by the Board, be paid, without necessity of filing further claims therefor, to the same individual or individuals to whom any death benefit that may be payable under the provisions of section 5 of the Railroad Retirement Act of 1937 or any accrued annuities under section 3 (f) of the Railroad Retirement Act of 1937 are paid; and in the event that no death benefit or accrued annuity is so paid, such benefits accrued under this Act shall be paid as though this subsection had not been enacted.

QUALIFYING CONDITION

SEC. 3. An employee shall be a "qualified employee" if the Board finds that [there was payable to him compensation of] *his compensation will have been* not less than $150 with respect to the base year.

DISQUALIFYING CONDITIONS

SEC. 4. [(a)] *(a-1)* There shall not be considered as a day of unemployment, *or as a day of sickness*, with respect to any employee—

[(i) any of the thirty days beginning with the day with respect to which the Board finds that he left work voluntarily without good cause;

[(ii) any of the thirty days beginning with the day with respect to which the Board finds that he failed, without good cause, to accept suitable work available on such day and offered to him, or to comply with instructions from the Board requiring him to apply for suitable work or to report, in person or by mail as the Board may require, to an employment office;

[(iii) subject to the provisions of subsection (b) of this section, any day with respect to which the Board finds that his unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, and the Board finds that such strike was commenced in violation of the provisions of the Railway Labor Act or in violation of the established rules and practices of a bona fide labor organization of which he was a member:]

[(iv)] *(i)* any of the seventy-five days beginning with the first day of any registration period with respect to which the Board finds that he knowingly made or aided in making or caused to be made any false or fraudulent statement or claim for the purpose of causing benefits to be paid;

[(v) any day in any period with respect to which the Board finds that he is receiving or has received annuity payments or pensions under the Railroad Retirement Act of 1935 or the Railroad Retirement Act of 1937, or insurance benefits under title II of the Social Security Act, or payments for similar purposes under any other Act of Congress, or unemployment benefits under an unemployment compensation law of any State or of the United States other than this Act: *Provided*, That if an employee receives or is held entitled to receive any such payment, other than unemployment benefits, with respect to any period which includes days of unemployment in a registration period, after benefits under this Act for such registration period have been paid, the amount by which such benefits under this Act were increased by including such days as days of unemployment shall be recoverable by the Board: *And provided further*, That if that part of any such payment or payments, other than unemployment benefits, which is apportionable to

such days of unemployment is less in amount than the benefits under this Act which, but for this paragraph, would be payable and not recoverable with respect to such days of unemployment, the preceding provisions of this paragraph shall not apply but such benefits under this Act for such days of unemployment shall be diminished or recoverable in the amount of such part of such other payment or payments;]

(ii) any day in any period with respect to which the Board finds that he is receiving or will have received annuity payments or pensions under the Railroad Retirement Act of 1935 or the Railroad Retirement Act of 1937, or insurance benefits under title II of the Social Security Act, or unemployment, maternity, or sickness benefits under an unemployment, maternity, or sickness compensation law of any State or of the United States other than this Act, or any other social-insurance payments under a law of any State or of the United States: Provided, That if an employee receives or is held entitled to receive any such payments, other than unemployment, maternity, or sickness payments, with respect to any period which include days of unemployment or sickness in a registration period, after benefits under this Act for such registration period will have been paid, the amount by which such benefits under this Act will have been increased by including such days as days of unemployment or as days of sickness shall be recoverable by the Board: Provided further, That, if that part of any such payment or payments, other than unemployment, maternity, or sickness payments, which is apportionable to such days of unemployment or days of sickness is less in amount than the benefits under this Act which, but for this paragraph, would be payable and not recoverable with respect to such days of unemployment or days of sickness, the preceding provisions of this paragraph shall not apply but such benefits under this Act for such days of unemployment or days of sickness shall be diminished or recoverable in the amount of such part of such other payment or payments;

[(vi)] *(iii)* any day in any registration period with respect to which period the Board finds that he earned, in train and engine service, yard service, dining-car service, sleeping-car service, parlor-car service, or other Pullman-car or similar service, or express service on trains, at least the equivalent of twenty times his daily benefit rate;

[(vii)] *(iv)* any day in any registration period comprising the last fourteen days of a period of twenty-eight days with respect to which period of twenty-eight days the Board finds that he earned, in train and engine service, yard service, dining-car service, sleeping-car service, parlot-car service or other Pullman-car or similar service, or express service on trains, at least the equivalent of forty times his daily benefit rate.

[(viii) any day which is a Sunday or which the Board finds is generally observed as a holiday in the locality in which he registered for such day, unless such day was immediately preceded by a day of unemployment and immediately followed by a day of unemployment or was the last day in a registration period and was immediately preceded by a day of unemployment: *Provided,* That if two or more consecutive days are a Sunday and one or more holidays, then with respect to any employee such consecutive days shall not be considered as days of unemployment unless they were immediately preceded by a day of unemployment and immediately followed by a day of unemployment or the last of such days was the last day of a registration period and such days were immediately preceded by a day of unemployment.]

(a–2) There shall not be considered as a day of unemployment, with respect to any employee—

(i) any of the thirty days beginning with the day with respect to which the Board finds that he left work voluntarily without good cause;

(ii) any of the thirty days beginning with the day with respect to which the Board finds that he failed, without good cause, to accept suitable work available on such day and offered to him, or to comply with instructions from the Board requiring him to apply for suitable work or to report, in person or by mail as the Board may require, to an employment office;

(iii) subject to the provisions of subsection (b) of this section, any day with respect to which the Board finds that his unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, and the Board finds that such strike was commenced in violation of the provisions of the Railway Labor Act or in violation of the established rules and practices of a bona fide labor organization of which he was a member;

[(viii)] *(iv)* any day which is a Sunday or which the Board finds is generally observed as a holiday in the locality in which he registered for such day, unless such day was immediately preceded by a day of unemployment and immediately followed by a day of unemployment or was the last day in a registration period and was immediately preceded by a day of unemployment: *Provided*, That if two or more consecutive days are a Sunday and one or more holidays, then with respect to any employee such consecutive days shall not be considered as days of unemployment unless they were immediately preceded by a day of unemployment and immediately followed by a day of unemployment or the last of such days was the last day of a registration period and such days were immediately preceded by a day of unemployment.

(b) The disqualification provided in section 4 *(a–2)* (iii) of this Act shall not apply if the Board finds that—

(i) the employee is not participating in or financing or directly interested in the strike which causes the stoppage of work: *Provided*, That payment of regular union dues shall not be construed to constitute financing a strike or direct interest in a strike within the meaning of this and the following paragraphs; and

(ii) he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed in the establishment, premises, or enterprise at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: *Provided*, That if separate types of work are commonly conducted in separate departments of a single enterprise, each such department shall, for the purposes of this subsection, be deemed to be a separate establishment, enterprise, or other premises.

(c) No work shall be deemed suitable for the purposes of section 4 [(a)] *(a-2)* (ii) of this Act, and benefits shall not be denied under this Act to any otherwise qualified employee for refusing to accept work if—

(i) the position offered is vacant due directly to a strike, lock-out, or other labor dispute;

(ii) the remuneration, hours, or other conditions of work offered are substantially less favorable to the employee than those prevailing for similar work in the locality, or the rate of remuneration is less than the union wage rate, if any, for similar work in the locality;

(iii) as a condition of being employed he would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(iv) acceptance of the work would require him to engage in activities in violation of law or which, by reason of their being in violation of reasonable requirements of the constitution, bylaws, or similar regulations of a bona fide labor organization of which he is a member, would subject him to expulsion from such labor organization; or

(v) acceptance of the work would subject him to loss of substantial seniority rights under any collective bargaining agreement between a railway labor organization, organized in accordance with the provisions of the Railway Labor Act, and any other employer.

(d) In determining, within the limitations of section 4 (c) of this Act, whether or not any work is suitable for an employee for the purposes of section 4 [(a)] *(a–2)* (ii) of this Act, the Board shall consider, in addition to such other factors as it deems relevant, (i) the current practices recognized by management and labor with respect to such work; (ii) the degree of risk involved to such employee's health, safety, and morals; (iii) his physical fitness and prior training; (iv) his experience and prior earnings; (v) his length of unemployment and prospects for securing work in his customary occupation; and (vi) the distance of the available work from his residence and from his most recent work.

(e) For the purposes of section 4 [(a)] *(a–2)* (i) of this Act, no voluntary leaving of work shall be deemed to have been without good cause if the Board finds that such work would not have been suitable for the purposes of section 4 [(a)] *(a–2)* (ii) of this Act.

CLAIMS FOR BENEFITS

SEC. 5. (a) Claims for benefits and appeals from determinations with respect thereto shall be made in accordance with such regulations as the Board shall prescribe. Each employer shall post and maintain, in places readily accessible to employees in his service, such printed statements concerning such regulations as

the Board supplies to him for such purpose, and shall keep available to his employees copies of such printed statements. Such printed statements shall be supplied by the Board to each employer without cost to him.

(b) The Board is authorized and directed to make findings of fact with respect to any claim for benefits and to make decisions as to the right of any claimant to benefits. The Board is further authorized to hold such hearings, to conduct such investigations and other proceedings, and to establish, by regulations or otherwise, such procedures as it may deem necessary or proper for the determination of a right to benefits.

(c) Each qualified employee whose claim for benefits has been denied in whole or in part upon an initial determination with respect thereto upon a basis other than one which is reviewable pursuant to one of the succeeding paragraphs of this subsection, shall be granted an opportunity for a fair hearing thereon before a [district board. The Board shall establish such district boards as it may deem necessary to provide for such hearings. Each district board shall consist of three members, one of whom shall be a representative of the Board, who shall serve as chairman, one of whom shall be appointed by the Board from recommendations made by representatives of employees, and one of whom shall be appointed by the Board from recommendations made by representatives of employers. Each of the latter two members shall not be subject to the civil service laws or rules and shall be paid a per diem salary of such amount as the Board finds reasonable for each day of active service on such district board, plus necessary expenses. The Board may designate an alternate for each member of a district board to serve in the absence or disqualification of such member. In no case shall a hearing before a district board proceed unless the chairman thereof is present. In the absence or disqualification of any other member and his alternate, the chairman shall act alone as the district board.] *referee or such other reviewing body as the Board may establish or assign thereto.*

Any claimant whose claim for benefits has been denied in an initial determination with respect thereto upon the basis of his not being a qualified employee, and any claimant who contends that under an initial determination of his claim he has been awarded benefits at less than the proper rate, may appeal to the Board for the review of such determination. Thereupon the Board shall review the determination and for such review may designate one of its officers or employees to receive evidence and to report to the Board thereon together with recommendations. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the appeals provided for in this paragraph and for decisions upon such appeal.

In any case in which benefits are awarded to a claimant in whole or in part upon the basis of pay earned in the service of a person or company found by the Board to be an employer as defined in this Act but which [does not comply with the provisions of this Act and] denies that it is such an employer, such benefits awarded on such basis shall be paid to such claimant subject to a right of recovery of such benefits. The Board shall thereupon designate one of its officers or employees to receive evidence and to report to the Board on whether such benefits should be repaid. *The Board may also designate one of its officers or employees to receive evidence and report to the Board whether or not any person or company is entitled to a refund of contributions or should be required to pay contributions under this Act, regardless of whether or not any claims for benefits will have been filed upon the basis of service in the employ of such person or company, and shall follow such procedure if contributions are assessed and payment is refused or payment is made and a refund claimed upon the basis that such person or company is or will not have been liable for such contributions.* In any case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the proceedings provided for in this paragraph and for decisions upon such proceedings.

Final decision of the Board in the cases provided for in the preceding two paragraphs shall be communicated to the claimant and to the other interested parties within fifteen days after it is made. Any properly interested party notified, as hereinabove provided, of his right to participate in the proceedings may

obtain a review of any such decision by which he claims to be aggrieved or the determination of any issue therein in the manner provided in subsection (f) of this section with respect to the review of the Board's decisions upon claims for benefits and subject to all provisions of law applicable to the review of such decisions. Subject only to such review, the decision of the Board upon all issues determined in such decision shall be final and conclusive for all purposes and shall conclusively establish all rights and obligations, arising under this Act, of every party notified as hereinabove provided of his right to participate in the proceedings.

Any issue determinable pursuant to this subsection and subsection (f) of this section shall not be determined in any manner other than pursuant to this subsection and subsection (f).

(d) The Board shall prescribe regulations governing the filing of cases with and the decision of cases by [district boards] *reviewing bodies*, and the review of such decisions. The Board may provide for intermediate reviews of such decisions by such bodies as the Board may establish or assign thereto. The Board may (i) on its own motion review a decision of [a district board or of] an intermediate reviewing body on the basis of the evidence previously submitted in such case, and may direct the taking of additional evidence, or (ii) permit such parties as it finds properly interested in the proceedings to take appeals to the Board. Unless a review or an appeal is had pursuant to this subsection, the decision of [a district board or of] an intermediate reviewing body shall, subject to such regulations as the Board may prescribe, be deemed to be the final decision of the Board.

(e) In any proceeding other than a court proceeding, [upon a claim for benefits,] the rules of evidence prevailing in courts of law or equity shall not be controlling, but a full and complete record shall be kept of all proceedings and testimony, and the Board's final determination [allowing or denying benefits,] together with its findings of fact and conclusions of law in connection therewith, shall be communicated to the [claimant] *parties* within fifteen days after the date of such final determination.

[(f) Any claimant, and any railway labor organization organized in accordance with the provisions of the Railway Labor Act, of which such claimant is a member, may, only after all administrative remedies within the Board have been availed of and exhausted, obtain a review of any final decision of the Board with reference to a claim for benefits by filing a petition for review within ninety days after the mailing of notice of such decision to the claimant, or within such further time as the Board may allow, in the United States district court for the judicial district in which the claimant resides, or in the United States District Court for the District of Columbia.]

(f) Any claimant, or any railway labor organization organized in accordance with the provisions of the Railway Labor Act, of which claimant is a member, or any other party aggrieved by a final decision under subsection (c) of this section, may, only after all administrative remedies within the Board will have been availed of and exhausted, obtain a review of any final decision of the Board by filing a petition for review within ninety days after the mailing of notice of such decision to the claimant or other party, or within such further time as the Board may allow, in the United States circuit court of appeals for the circuit in which the claimant or other party resides or will have had his principal place of business or principal executive office, or in the United States Circuit Court of Appeals for the Seventh Circuit or in the Court of Appeals for the District of Columbia. A copy of such petition, together with initial process, shall forthwith be served upon the Board or any officer designated by it for such purpose. Service may be made upon the Board by registered mail addressed to the Chairman. Within fifteen days after receipt of service, or within such additional time as the court may allow, the Board shall certify and file with the court in which such petition has been filed a transcript of the record upon which the findings and decision complained of are based. Upon such filing the court shall have exclusive jurisdiction of the proceeding and of the question determined therein, and shall give precedence in the adjudication thereof over all other civil cases not otherwise entitled by law to precedence. It shall have power to enter upon the pleadings and transcript of the record a decree affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for rehearing. The findings of the Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive. No additional evidence shall be received by the Court, but the court may order additional evidence to be taken before the Board, and the Board may, after hearing such additional evidence, modify its findings of fact and conclusions and file such additional or modified findings and conclusions with the

court, and the Board shall file with the court a transcript of the additional record. The judgment and decree of the court shall be final, subject to reivew as in equity cases.

An applicant for review of a final decision of the Board concerning a claim for benefits shall not be liable for costs, including costs of service, or costs of printing records, except that costs may be assessed by the court against such applicant if the court determines that the proceedings for such review have been instituted or continued without reasonable ground.

(g) Findings of fact and conclusions of law of the Board in the determination of any claim for [benefits or refund and] *benefits or refund, the determination of any other matter pursuant to subsection (c) of this section, and* the determination of the Board that the unexpended funds in the account are available for the payment of any claim for benefits or refund under this Act, shall be, except as provided in subsection (f) of this section, binding and conclusive for all purposes and upon all persons, including the Comptroller General and any other administrative or accounting officer, employee, or agent of the United States, and shall not be subject to review in any manner other than that set forth in subsection (f) of this section.

(h) Except as may be otherwise prescribed by regulations of the Board, benefits payable with respect to any period prior to the date of a final decision of the Board with respect to a claim therefor, shall be paid only after such final decision.

(i) No claimant *or other properly interested person* claiming benefits shall be charged fees of any kind by the Board, its employees or representatives, with respect to such claim. Any such claimant *or other properly interested person* may be represented by counsel or other duly authorized agent, in any proceeding before the Board or its representatives or a court, but no such counsel or agent *for a claimant* shall either charge or receive for such services more than an amount approved by the Board or by the court before whom the proceedings of the Board are reviewed. Any person who violates any provision of this subsection shall be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year.

CONCLUSIVENESS OF RETURNS OF COMPENSATION AND OF FAILURE TO MAKE RETURNS OF COMPENSATION

SEC. 6. Employers shall file with the Board, in such manner and at such times as the Board by regulations may prescribe, returns under oath of compensation of employees, and, if the Board shall so require, shall distribute to employees annual statements of compensation: *Provided*, That no returns shall be required of employers which would duplicate information contained in similar returns required under any other Act of Congress administered by the Board. The Board's record of the compensation so returned shall, for the purpose of determining eligibility for and the amount of benefits, be conclusive as to the amount of compensation [earned by] *paid to* an employee during the period covered by the return, and the fact that the Board's records show that no return was made of the compensation claimed to [be earned by] *have been paid to* an employee during a particular period shall, for the purposes of determining eligibility for and the amount of benefits, be taken as conclusive that no compensation was [earned by] *paid to* such employee during that period, unless the error in the amount of compensation in the one case, or failure to make or record return of the compensation in the other case, is called to the attention of the Board within eighteen months after the date on which the last return covering any portion of the calendar year which includes such period is required to have been made.

FREE TRANSPORTATION

SEC. 7. It shall not be unlawful for carriers to furnish free transportation to employees qualified for benefits or serving waiting periods under this Act.

CONTRIBUTIONS

SEC. 8. (a) Every employer shall pay a contribution, with respect to having employees in his service, equal to 3 per centum of so much of the compensation as is not in excess of [$300 for any calendar month] *$300 multiplied by the number of calendar months in the calendar year in which the employee will have had employment* [payable] *paid* by him to any employee with respect to employment after June 30, 1939: *Provided, however*, That if compensation is [payable] *paid* to an

employee by more than one employer with respect to any such calendar month, the contributions required by this subsection shall apply to not more than [$300] *$300 multiplied by the number of calendar months in the calendar year in which the employee had employment* of the aggregate compensation [payable] *paid* to said employee by all said employers with respect to such calendar [month, and each such employer shall be liable for that proportion of the contribution with respect to such compensation which the amount payable by him to the employee with respect to such calendar month bears to the aggregate compensation payable to such employee by all employers with respect to such calendar month] *year, and each employer other than a subordinate unit of a national-railway-labor-organization employer shall be liable for that proportion of the contribution which the compensation paid by him to the employee bears to the total compensation paid to the employee by all such employers; and in the event that the compensation paid by such employers to the employee is less than $300 multiplied by the number of calendar months in such year in which the employee will have had employment each subordinate-unit-railway-labor-organization employer shall be liable for such proportion of any additional contribution as the compensation paid by such employer bears to the compensation paid by all such employers.*

(b) Each employee representative shall pay, with respect to his income, a contribution equal to 3 per centum of so much of the compensation of such employee representative as is not in excess of $300 for any calendar month, paid to him for services performed as an employee representative after June 30, 1939. The compensation of an employee representative and the contribution with respect thereto shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in this Act.

(c) In the payment of any contribution under this Act, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(d) If more or less than the correct amount of the contribution required by this section is paid with respect to any compensation, then, under regulations prescribed under this Act by the Board, proper adjustments with respect to the contribution shall be made, without interest, in connection with subsequent contribution payments made under this Act by the same employer or employee representative.

(e) If more or less than the correct amount of the contribution required by this section is paid with respect to any compensation and the overpayment or underpayment of the contribution cannot be adjusted under subsection (d) of this section, the amount of the overpayment shall be refunded from the account, or the amount of the underpayment shall be collected, in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations of the Board.

(f) The contributions required by this Act shall be collected by the Board and shall be deposited by it with the Secretary of the Treasury of the United States, 90 per centum thereof to the credit of the account and 10 per centum thereof to the credit of the fund.

(g) The contributions required by this Act shall be collected and paid quarterly or at such other times and in such manner and under such conditions not inconsistent with this Act as may be prescribed by regulations of the Board, and shall not be deducted, in whole or in part, from the compensation of employees in the employers' employ. If a contribution required by this Act is not paid when due, there shall be added to the amount payable (except in the case of adjustments made in accordance with the provisions of this Act) interest at the rate of 1 per centum per month or fraction of a month from the date the contribution became due until paid. Any interest collected pursuant to this subsection shall be credited to the account.

(h) All provisions of law, including penalties, applicable with respect to any tax imposed by section 600 or section 800 of the Revenue Act of 1926, and the provisions of section 607 of the Revenue Act of 1934, insofar as applicable and not inconsistent with the provisions of this Act, shall be applicable with respect to the contributions required by this Act: *Provided, however*, That all authority and functions conferred by or pursuant to such provisions upon any officers or employees of the United States, except the authority to institute and prosecute, and the function of instituting and prosecuting, criminal proceedings, shall, with respect to the contributions required by this Act, be vested in and exercised by the Board or such officers and employees of the Board as it may designate therefor.

PENALTIES

SEC. 9. (a) Any officer or agent of an employer, or any employee representative, or any employee acting in his own behalf, or any person whether or not of the character hereinbefore defined, who shall willfully fail or refuse to make any report or furnish any information required by the Board in the administration of this Act, or who shall knowingly make or aid in making or cause to be made any false or fraudulent statement or report when a statement or report is required to be made for the purposes of this Act, or who shall knowingly make or aid in making or cause to be made any false or fraudulent statement or claim for the purpose of causing benefits or other payment to be made or not to be made under this Act, shall be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year, or both.

(b) Any agreement by an employee to pay all or any portion of the contribution required of his employer under this Act shall be void, and it shall be unlawful for any employer, or officer or agent of an employer, to make, require, or permit any employee to bear all or any portion of such contribution. Any employer, or officer or agent of an employer, who violates any provision of this subsection shall be punished for each such violation by a fine of not more than $10,000 or by imprisonment not exceeding one year, or both.

(c) Any person who violates any provision of this Act, the punishment for which is not otherwise provided, shall be punished for each such violation by a fine of not more than $1,000 or by imprisonment not exceeding one year, or both.

(d) All fines and penalties imposed by a court pursuant to this Act shall be paid to the court and be remitted from time to time by order of the judge to the Treasury of the United States to be credited to the account.

RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT

SEC. 10. (a) The Secretary of the Treasury shall maintain in the unemployment trust fund established pursuant to section 904 of the Social Security Act an account to be known as the railroad unemployment insurance account. This account shall consist of (i) 90 per centum of all contributions collected pursuant to section 8 of this Act, together with all interest thereon collected pursuant to section 8 of this Act; (ii) all amounts transferred or paid into the account pursuant to section 13 or section 14 of this Act; (iii) all additional amounts appropriated to the account in accordance with any provision of this Act or with any provision of law now or hereafter adopted; (iv) a proportionate part of the earnings of the unemployment trust fund, computed in accordance with the provisions of section 904 (e) of the Social Security Act; (v) all amounts realized in recoveries for overpayments or erroneous payments of benefits; (vi) all amounts transferred thereto pursuant to section 11 of this Act; (vii) all fines or penalties collected pursuant to the provisions of this Act; and (viii) all amounts credited thereto pursuant to section 2 (f) or section 12 (g) of this Act. Notwithstanding any other provision of law, all moneys credited to the account shall be mingled and undivided, and are hereby permanently appropriated to the Board to be continuously available to the Board without further appropriation, for the payment of benefits and refunds under this Act, and no part thereof shall lapse at any time, or be carried to the surplus fund or any other fund.

(b) All moneys in the account shall be used solely for the payment of the benefits and refunds provided for by this Act. The Board shall, from time to time, certify to the Secretary of the Treasury the name and address of each person or company entitled to receive benefits or a refund payment under this Act, the amount of such payment, and the time at which it shall be made. Prior to audit or settlement by the General Accounting Office, the Secretary of the Treasury, through the Division of Disbursements of the Treasury Department, shall make payments from the account directly to such person or company of the amount of benefits or refund so certified by the Board: *Provided, however,* That if the Board shall so request, the Secretary of the Treasury, through the Division of Disbursements of the Treasury Department, shall transmit benefits payments to the Board for distribution by it through employment offices or in such other manner as the Board deems proper.

(c) The Board shall include in its annual report to Congress a statement with respect to the status and operation of the account.

(d) The Secretary of the Treasury is hereby directed to advance to the credit of the account such sums, but not more than $25,000,000, as the Board requests for the purpose of paying benefits. Such sums shall be repaid from the account

on January 1, 1941, or at such earlier time as the Board may, by agreement with the Secretary of the Treasury, determine.

(e) Section 904 (a) of the Social Security Act is hereby amended to read as follows:

"There is hereby established in the Treasury of the United States a trust fund to be known as the 'unemployment trust fund', hereinafter in this title called the 'fund'. The Secretary of the Treasury is authorized and directed to receive and hold in the fund all moneys deposited therein by a State agency from a State unemployment fund, or by the Railroad Retirement Board to the credit of the railroad unemployment insurance account. Such deposit may be made directly with the Secretary of the Treasury or with any Federal Reserve bank or member bank of the Federal Reserve System designated by him for such purpose."

(f) Section 904 (e) of the Social Security Act is hereby amended to read as follows:

"The fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency and the railroad unemployment insurance account and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the fund for the quarter ending on such date."

(g) Section 904 (f) of the Social Security Act is hereby amended by adding thereto the following sentence: "The Secretary of the Treasury is authorized and directed to make such payments out of the fund as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the railroad unemployment insurance account at the time of such payment."

RAILROAD UNEMPLOYMENT INSURANCE ADMINISTRATION FUND

SEC. 11. (a) There is hereby established in the Treasury of the United States a fund to be known as the railroad unemployment insurance administration fund. This fund shall consist of (i) 10 per centum of all contributions collected pursuant to section 8 of this Act; (ii) all amounts advanced to the fund by the Secretary of the Treasury pursuant to this section; (iii) all amounts appropriated by subsection (b) of this section; and (iv) such additional amounts as Congress may appropriate for expenses necessary or incidental to administering this Act. Such additional amounts are hereby authorized to be appropriated.

(b) In addition to the other moneys herein provided for expenses necessary or incidental to administering this Act, there is hereby appropriated to the fund such amount as the Secretary of the Treasury and the Board shall jointly estimate to have been collected or to be collectible with respect to the calendar years 1936, 1937, 1938, and 1939, from employers subject to this Act, under title IX of the Social Security Act, less such amount as the Secretary of the Treasury and the Board shall jointly estimate will be appropriated or has been appropriated to States or Territories pursuant to the Act of Congress approved August 24, 1937 (Public, Numbered 353, Seventy-fifth Congress), as proceeds of taxes paid by employers pursuant to title IX of the Social Security Act.

Until the amount appropriated by this subsection is credited to the fund, the Secretary of the Treasury is hereby directed to advance to the credit of the fund such sums, but not more than $2,000,000, as the Board requests for the purpose of financing the costs of administering this Act. Such advance shall be repaid from the fund at such time after the amount appropriated by this subsection is credited to the fund as the Board by agreement with the Secretary of the Treasury may determine, but not later than January 1, 1940.

(c) Notwithstanding any other provision of law, all moneys at any time credited to the fund are hereby permanently appropriated to the Board to be continuously available to the Board without further appropriation for any expenses necessary or incidental to administering this Act, including personal services in the District of Columbia and elsewhere; travel expenses, including expenses of attendance at meetings when authorized by the Board; actual transportation expenses and not to exceed $10 per diem to cover subsistence and other expenses while in attendance at and en route to and from the place to which he is invited, to any person other than an employee of the Federal Government who may, from time to time, be invited to the city of Washington or elsewhere for conference or advisory purposes in furthering the work of the Board; when found by the Board to be in the interest of the Government, not exceeding 3 per centum, in any fiscal year, of the amounts credited during such year to the fund, for engaging persons or organizations, by contract or otherwise, for any special

technical or professional services, determined necessary by the Board, including but not restricted to accounting, actuarial, statistical, and reporting services, without regard to section 3709 of the Revised Statutes (U. S. C., title 41, sec. 5) and the provisions of other laws applicable to the employment and compensation of officers and employees of the United States; services, advertising, postage, telephone, telegraph, teletype, and other communication services and tolls; supplies; reproducing, photographing, and all other equipment, office appliances, and labor-saving devices, including devices for internal communication and conveyance; purchase and exchange, operation, maintenance and repair of motor-propelled passenger-carrying vehicles to be used only for official purposes in the District of Columbia and in the field; printing and binding; purchase and exchange of law books, books of reference, and directories; periodicals, newspapers and press clippings, in such amounts as the Board deems necessary, without regard to the provisions of section 192 of the Revised Statutes; manuscripts and special reports; membership fees or dues in organizations which issue publications to members only, or to members at a lower price than to others, payment for which may be made in advance; rentals, including garages, in the District of Columbia or elsewhere; alterations and repairs; if found by the Board to be necessary to expedite the certification to the Board by the Civil Service Commission of persons eligible to be employed by the Board, and to the extent that the Board finds such expedition necessary, meeting the expenses of the Civil Service Commission in holding examinations for testing the fitness of applicants for admission to the classified service for employment by the Board pursuant to the second paragraph of section 12 (l) of this Act, but not to exceed the additional expenses found by the Board to have been incurred by reason of the holding of such examinations; and miscellaneous items, including those for public instruction and information deemed necessary by the Board: *Provided,* That section 3709 of Revised Statutes (U. S. C., title 41, sec. 5) shall not be construed to apply to any purchase or procurement of supplies or services by the Board from moneys in the fund when the aggregate amount involved does not exceed $300. Determinations of the Board whether the fund or an appropriation for the administration of the Railroad Retirement Act of 1937 and the Railroad Retirement Act of 1935 is properly chargeable with the authorized expenses, or parts thereof, incurred in the administration of such Acts, or of this Act, shall be binding and conclusive for all purposes and upon all persons, including the Comptroller General and any other administrative or accounting officer, employee, or agent of the United States, and shall not be subject to review in any manner.

(d) So much of the balance in the fund as of June 30 of each year as is in excess of $6,000,000 shall as of such date be transferred from the fund and credited to the account.

DUTIES AND POWERS OF THE BOARD

SEC. 12. (a) For the purpose of any investigation or other proceeding relative to the determination of any right to benefits, or relative to any other matter within its jurisdiction under this Act, the Board shall have the power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence, documentary or otherwise, that relates to any matter under investigation or in question, before the Board or any member, employee, or representative thereof. Any member of the Board or any of its employees or representatives designated by it may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and production of evidence may be required from any place in the United States or any Territory or possession thereof at any designated place of hearing. All subpenas may be served and returned by anyone authorized by the Board in the same manner as is now provided by law for the service and return by United States marshals of subpenas in suits in equity. Such service may also be made by registered mail and in such case the return post-office receipt shall be proof of service. Witnesses summoned in accordance with this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(b) In case of contumacy by, or refusal to obey a subpena lawfully issued to, any person, the Board may invoke the aid of the district court of the United States or the United States courts of any Territory or possession, where such person is found or resides or is otherwise subject to service of process, or the District Court of the United States for the District of Columbia if the investigation or proceeding is being carried on in the District of Columbia, *or the District Court of the United States for the Northern District of Illinois, if the investigation or proceeding is being carried on in the Northern District of Illinois,* in requiring the

attendance and testimony of witnesses and the production of evidence. Any such court shall issue an order requiring such person to appear before the Board or its specified employee or representative at the place specified in the subpena of the Board, whether within or without the judicial district of the court, there to produce evidence, if so ordered, or there to give testimony concerning the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. All orders, writs, and processes in any such proceeding may be served in the judicial district of the district court issuing such order, writ, or process, except that the orders, writs and processes of the District Court of the United States for the District of Columbia *or of the District Court of the United States for the Northern District of Illinois* in such proceedings may run and be served anywhere in the United States.

(c) No person shall be excused from attending or testifying in obedience to a subpena issued under this Act or from complying with any subpena duces tecum issued under this Act, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, but such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(d) Information obtained by the Board in connection with the administration of this Act shall not be revealed or open to inspection nor be published in any manner revealing an employee's identity: *Provided, however,* That (i) the Board may arrange for the exchange of any information with governmental agencies engaged in functions related to the administration of this Act; (ii) the Board may disclose such information in cases in which the Board finds that such disclosure is clearly in furtherance of the interest of the employee or his estate; and (iii) any claimant of benefits under this Act shall, upon his request, be supplied with information from the Board's records pertaining to his claim.

(e) The Board shall provide for the certification of claims for benefits and refunds and may arrange total or partial settlements at such times and in such manner as may appear to the Board to be expedient. The Board shall designate and authorize one or more of its employees to sign vouchers for the payment of benefits and refunds under this Act. Each such employee shall give bond, in form and amount fixed by the Board, conditioned upon the faithful performance of his duties. The premiums due on such bonds shall be paid from the fund and deemed to be a part of the expenses of administering this Act.

(f) The Board may cooperate with or enter into agreement with the appropriate agencies charged with the administration of State, Territorial, Federal, or foreign [unemployment compensation laws] *unemployment compensation, sickness, or maternity laws* or employment offices, with respect to investigations, the exchange of information and services, the establishment, maintenance, and use of free employment service facilities, and such other matters as the Board deems expedient in connection with the administration of this Act, and may compensate such agency for services or facilities supplied to the Board in connection with the administration of this Act. The Board may enter also into agreements with any such agency, pursuant to which any [unemployment benefits] *unemployment, sickness, or maternity benefits* provided for by this Act, or any other [unemployment-compensation law] *unemployment-compensation, sickness, or maternity law,* may be paid through a single agency to persons who have, during the period on the basis of which eligibility for and duration of benefits is determined under the law administered by such agency or under this Act, or both, performed services covered by one or more of such laws, or performed services which constitute employment as defined in this Act: *Provided,* That the Board finds that any such agreement is fair and reasonable as to all affected interests.

(g) In determining whether an employee has qualified for benefits in accordance with section 3 (a) of this Act, and in determining the amount of benefits to be paid to such employee in accordance with sections 2 (a) and 2 (c) of this Act, the Board is authorized to consider as employment (and compensation therefor) services for hire other than employment (and remuneration therefor) if such services for hire are subject to an unemployment, *sickness, or maternity* compensation law of any State, provided that such State has agreed to reimburse the United States such portion of the benefits to be paid upon such basis to such employee as the Board deems equitable. Any amounts collected pursuant to this paragraph shall be credited to the account.

If a State, in determining whether an employee is eligible, [with respect to unemployment after June 30, 1939,] for unemployment, *sickness, or maternity* benefits under an unemployment, *sickness, or maternity* compensation law of such State, and in determining the amount of unemployment, *sickness, or maternity* benefits to be paid to such employee pursuant to such unemployment, *sickness, or maternity* compensation law, considers as services for hire (and remuneration therefor) included within the provisions of such unemployment-compensation law, employment (and compensation therefor), the Board is authorized to reimburse such State such portion of such unemployment, *sickness, or maternity* benefits as the Board deems equitable; such reimbursements shall be paid from the account, and are included within the meaning of the word "benefits" as used in this Act.

(h) The Board may enter into agreements or arrangements with employers, organizations of employers, and railway-labor organizations which are duly organized in accordance with the provisions of the Railway Labor Act, for securing the performance of services or the use of facilities in connection with the administration of this Act, and may compensate any such employer or organization therefor upon such reasonable basis as the Board shall prescribe, but not to exceed the additional expense incurred by such employer or organization by reason of the performance of such services or making available the use of such facilities pursuant to such agreements or arrangements. Such employers and organizations, and persons employed by either of them, shall not be subject to the Act of Congress approved March 3, 1917 (39 Stat. 1106, ch. 163, sec. 1).

(i) The Board may establish, maintain, and operate free employment offices, and may designate as free employment offices facilities maintained by (i) a railway labor organization which is duly authorized and designated to represent employees in accordance with the Railway Labor Act, or (ii) any other labor organization which has been or may be organized in accordance with the provisions of the Railway Labor Act, or (iii) one or more employers, or (iv) an organization of employers, or (v) a group of such employers and labor organizations, or (vi) a State, Territorial, foreign, or the Federal Government. The Board may also enter into agreements or arrangements with one or more employers or railway labor organizations organized in accordance with the provisions of the Railway Labor Act, pursuant to which notice of the availability of work and the rights of employees with respect to such work under agreements between such employers and railway labor organizations may be filed with employment offices and pursuant to which employees registered with employment offices may be referred to such work.

The Board shall prescribe a procedure for registration of unemployed employees at employment offices. Such procedure for registration shall be prescribed with a view to such registration affording substantial evidence of the days of unemployment of the employees who register. The Board may, when such registration is made personally by an employee, accept such registration as initial proof of unemployment sufficient to certify for payment a claim for benefits.

The Board shall provide a form or forms for statements of sickness and a procedure for the execution and filing thereof. Such forms and procedure shall be designed with a view to having such statements provide substantial evidence of the days of sickness of the employee and, in the case of maternity sickness, the expected date of birth and the actual date of birth of the child. Such statements may be executed by any doctor (authorized to practice in the State or foreign jurisdiction in which he practices his profession) or any officer or supervisory employee of a hospital, clinic, group health association, or other similar organization, who is qualified under such regulations as the Board may prescribe to execute such statements. The Board shall issue regulations for the qualification of such persons to execute such statements. When so executed by any such person, or, in the discretion of the Board, by others designated by the Board inaividually or by groups, they may be accepted as initial proof of days of sickness sufficient to certify for payment a claim for benefits.

The regulations of the Board concerning registration at employment offices by unemployed persons may provide for group registration and reporting, through employers, and need not be uniform with respect to different classes of employees.

The operation of any employment facility operated by the Board shall be directed primarily toward the reemployment of employees who have theretofore been substantially employed by employers.

(j) The Board may appoint national or local advisory councils composed of equal numbers of representatives of employers, representatives of employees, and persons representing the general public, for the purpose of discussing problems in connection with the administration of this Act and aiding the Board in

formulating policies. The members of such councils shall serve without remuneration, but shall be reimbursed for any necessary traveling and subsistence expenses or on a per diem basis in lieu of subsistence expenses.

(k) The Board, with the advice and aid of any advisory council appointed by it, shall take appropriate steps to reduce and prevent unemployment and loss of earnings; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to promote the reemployment of unemployed employees; and to these ends to carry on and publish the results of investigations and research studies.

(l) In addition to the powers and duties expressly provided, the Board shall have and exercise all the powers and duties necessary to administer or incidental to administering this Act, and in connection therewith shall have such of the powers, duties, and remedies provided in section 10 (b) (4) of the Railroad Retirement Act of 1937, with respect to the administration of said Act, as are not inconsistent with the express provisions of this Act. A person in the employ of the Board under section 205 of the Act of Congress approved June 24, 1937 (50 Stat. 307), shall acquire a competitive classified civil-service status if, after recommendation by the Board to the Civil Service Commission, he shall pass such noncompetitive tests of fitness as the Civil Service Commission may prescribe. A person in the employ of the Board on June 30, 1939, and on June 30, 1940, and who has had experience in railroad service, shall acquire a competitive classified civil-service status if, after recommendation by the Board to the Civil Service Commission, he shall pass such noncompetitive tests of fitness for the position for which the Board recommends him as the Civil Service Commission may prescribe.

The Board may employ such persons and provide for their remuneration and expenses, as may be necessary for the proper administration of this Act. Such persons shall be employed and their remuneration prescribed in accordance with the civil-service laws and the Classification Act of 1923, except that the Board may fix the salary of a Director of Unemployment Insurance at $10,000 per annum: *Provided*, That in the employment of such persons the Board shall give preference, as between applicants attaining the same grades, to persons who have had experience in railroad service, and notwithstanding any other provisions of law, rules, or regulations, no other preference shall be given or recognized: *And provided further*, That certification by the Civil Service Commission of persons for appointment to any positions at minimum salaries of $4,600 per annum, or less, shall, if the Board so requests, be upon the basis of competitive examinations, written, oral, or both, as the Board may request: *And provided further*, That, for the purpose of registering unemployed employees who reside in areas in which no employer facilities are located, or in which no employer will make facilities available for the registration of such employees, the Board may, without regard to civil-service laws and the Classification Act of 1923, appoint persons to accept, in such areas, registration of such employees and perform services incidental thereto and may compensate such persons on a piece-rate basis to be determined by the Board. Notwithstanding the provisions of the Act of June 22, 1906 (34 Stat. 449), or any other provision of law, the Board may detail employees from stations outside the District of Columbia to other stations outside the District of Columbia or to service in the District of Columbia, and may detail employees in the District of Columbia to service outside the District of Columbia: *Provided*, That all details hereunder shall be made by specific order and in no case for a period of time exceeding one hundred and twenty days. Details so made may, on expiration, be renewed from time to time by order of the Board, in each particular case, for periods not exceeding one hundred and twenty days.

(m) The Board is authorized to delegate to any member, officer, or employee of the Board any of the powers conferred upon the Board by this Act, excluding only the power to prescribe rules and regulations.

(n) Any employee claiming, entitled to, or receiving sickness benefits under this Act may be required to take such examination, physical, medical, mental, or otherwise, in such manner and at such times and by such qualified individuals, including medical officers or employees of the United States, or a State, as the Board may prescribe. The place or places of examination shall be reasonably convenient for the employee. No sickness or maternity benefits shall be payable under this Act with respect to any period during which the employee unreasonably refuses to take or willfully obstructs an examination as prescribed by the Board.

Any doctor who renders any attendance, treatment, attention, or care, or performs any examination with respect to a sickness of an employee or as to the expected date of birth of a female employee's child, or the birth of such a child, upon which a claim or right to benefits under this Act is based, shall furnish the Board, in such manner

and form and at such times as the Board by regulations may prescribe, information and reports relative thereto and to the condition of the employee. An application for sickness or maternity benefits under this Act shall contain a waiver of any doctor-patient privilege that the employee may have with respect to any sickness or maternity period upon which such application is based: Provided, That such information shall not be disclosed by the Board except in a court proceeding relating to any claim for benefits by the employee under this Act.

The Board may enter into agreements or arrangements with doctors, hospitals, clinics, or other persons for securing the examination, physical, medical, mental, or otherwise, of employees claiming, entitled to, or receiving sickness or maternity benefits under this Act and the performance of services or the use of facilities in connection with the execution of statements of sickness. The Board may compensate any such doctors, hospitals, clinics, or other persons upon such reasonable basis as the Board shall prescribe. Such doctors, hospitals, clinics, or other persons and persons employed by any of them shall not be subject to the Act of Congress approved March 3, 1917 (39 Stat. 1106, ch. 163, sec. 1). In the event that the Board pays for the physical or mental examination of an employee or for the execution of a statement of sickness and such employee's claim for benefits is based upon such examination or statement, the Board shall deduct from any sickness or maternity benefits payable to the employee pursuant to such claim such amount as, in the judgment of the Board, is a fair and reasonable charge for such examination or execution of such statement.

(o) Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimursement.

(p) The Board may, after hearing, disqualify any person from executing statements of sickness who, the Board finds, (i) will have solicited, or will have employed another to solicit, for himself or for another the execution of any such statement, or (ii) will have made false or misleading statements to the Board, to any employer, or to any employee, in connection with the awarding of any benefits under this Act, or (iii) will have failed to submit medical reports and records required by the Board under this Act, or will have failed to submit any other reports, records, or information required by the Board in connection with the administration of this Act or any other Act heretofore or hereafter administered by the Board, or (iv) will have engaged in any malpractice or other professional misconduct. No fees or charges of any kind shall accrue to any such person from the Board after his disqualification.

(q) The Board shall engage in and conduct research projects, investigations, and studies with respect to the cause, care, and prevention of, and benefits for, accidents and disabilities, and other subjects deemed by the Board to be related thereto, and shall recommend legislation deemed advisable in the light of such research projects, investigations, and studies.

EXCLUSIVENESS OF PROVISIONS; TRANSFERS FROM STATE UNEMPLOYMENT COMPENSATION ACCOUNTS TO RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT

SEC. 13. (a) Effective July 1, 1939, section 907 (c) of the Social Security Act is hereby amended by substituting a semicolon for the period at the end thereof, and by adding: "(8) service performed in the employ of an employer as defined in the Railroad Unemployment Insurance Act and service performed as an employee representative as defined in said Act."

(b) By enactment of this Act the Congress makes exclusive provision for the payment of unemployment benefits for unemployment occurring after June 30, 1939, *and for the payment of sickness and maternity benefits for sickness or for maternity periods after June 30, 1946,* based upon employment (as defined in this Act). No employee shall have or assert any right to unemployment benefits under unemployment compensation law of any State with respect to unemployment occurring after June 30, 1939, *or to sickness or maternity benefits under a sickness or maternity law of any State with respect to sickness or to maternity periods occurring after June 30, 1946,* based upon employment (as defined in this Act). The Congress finds and declares that by virtue of the enactment of this Act, the

application of State unemployment compensation laws after June 30, 1939, *or of State sickness or maternity laws after June 30, 1946*, to such employment, except pursuant to section 12 (g) of this Act, would constitute an undue burden upon, and an undue interference with the effective regulation of, interstate commerce. In furtherance of such determination, after June 30, 1939, the term "person" as used in section 906 of the Social Security Act shall not be construed to include any employer (as defined in this Act) or any person in its employ: *Provided*, That no provision of this Act shall be construed to affect the payment of unemployment benefits with respect to any period prior to July 1, 1939, under an unemployment compensation law of any State based upon employment performed prior to July 1, 1939, and prior to such date employment as defined in this Act shall not constitute "Service with respect to which unemployment compensation is payable under an [or "service under any"] unemployment compensation system [or "plan"] established by an Act of Congress" [or "a law of the United States"] or "employment in interstate commerce, of an individual who is covered by an unemployment compensation system established directly by an Act of Congress," or any term of similar import, used in any unemployment compensation law of any State.

(c) The Social Security Board is hereby directed to determine for each State, after agreement with the Railroad Retirement Board, and after consultation with such State; the total (hereinafter referred to as the "preliminary amount") of (i) the amount remaining as the balances of reserve accounts of employers as of June 30, 1939, if the unemployment compensation law of such State provides for a type of fund known as "Reserve Accounts", plus (ii) if the unemployment compensation law of such State provides for a type of fund known as "Pooled Fund" or "Pooled Account", that proportion of the balance of such fund or account of such State as of June 30, 1939, as the amount of taxes or contributions collected from employers and their employees prior to July 1, 1939, pursuant to its unemployment compensation law and credited to such fund or account bears to all such taxes or contributions theretofore collected from all persons subject to its unemployment compensation law and credited to such fund or account; and the additional amounts (hereinafter referred to as the "liquidating amount") of taxes or contributions collected from employers and their employees from July 1, 1939, to December 31, 1939, pursuant to its unemployment compensation law.

(d) The Social Security Board shall withhold from certification to the Secretary of the Treasury for payment the amounts determined by it pursuant to section 302 (a) of the Social Security Act to be necessary for the proper administration of each State's unemployment-compensation law, until an amount equal to its "preliminary amount" plus interest from July 1, 1939, at 2½ per centum per annum on such portion thereof as has not been used as the measure for withholding certification for payment, has been so withheld from certification pursuant to this paragraph: *Provided, however*, That if a State shall, prior to whichever is the later of (i) thirty days after the close of the first regular session of its legislature which begins after the approval of this Act, and (ii) July 1, 1939, authorize and direct the Secretary of the Treasury to transfer from its account in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund an amount equal to its "preliminary amount", no amount shall be withheld from certification for payment to such State pursuant to this paragraph.

The Social Security Board shall withhold from certification to the Secretary of the Treasury for payment the amounts determined by it pursuant to section 302 (a) of the Social Security Act to be necessary for the proper administration of each State's unemployment compensation law, until an amount equal to its "liquidating amount" plus interest from January 1, 1940, at 2½ per centum per annum on such portion thereof as has not been used as the measure for withholding certification for payment has been so withheld from certification pursuant to this paragraph: *Provided, however*, That if a State shall, prior to whichever is the later of (i) thirty days after the close of the first regular session of its legislature which begins after the approval of this Act, and (ii) January 1, 1940, authorize and direct the Secretary of the Treasury to transfer from its account in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund an amount equal to its "liquidating amount", no amount shall be withheld from certification for payment to such State pursuant to this paragraph.

The withholdings from certification directed in each of the foregoing paragraphs of this subsection shall begin with respect to each State when the Social Security Board finds that such State is unable to avail itself of the condition set forth in

the proviso contained in such paragraph: *Provided, however,* That if the Social Security Board finds with respect to any State that such State (1) is unable to avail itself of such conditions solely by reason of prohibitions contained in the constitution of such State, as determined by a decision of the highest court of such State declaring invalid in whole or in part the action of the legislature of the State purporting to provide for transfers from the State's account in the Unemployment Trust Fund to the railroad unemployment insurance account, and (2) for similar reasons is unable to use amounts withdrawn from its account in the Unemployment Trust Fund for the payment of expenses incurred in the administration of its State unemployment compensation law, the Social Security Board shall not begin to withhold from certification to the Secretary of the Treasury for payment to such State the amounts determined by it pursuant to section 302 of the Social Security Act and to certify to the Secretary of the Treasury for payment into the railroad unemployment insurance account the amount so withheld from such State until July 1, 1944, or until a date one hundred and eighty days after the adjournment of the first session of the legislature of such State beginning after July 1, 1942, whichever date is the earlier, and then only if the Social Security Board finds that such State had not prior thereto effectively authorized and directed the Secretary of the Treasury to transfer from such State's account in the Unemployment Trust Fund to the railroad unemployment insurance account amounts equal to such State's "preliminary amount" and "liquidating amount" less such parts thereof, if any, as the State may have, within the periods set forth in the provisos contained in the first two paragraphs of this subsection, effectively authorized and directed the Secretary of the Treasury so to transfer, plus interest on such difference, if any, with respect to each amount at 2½ per centum per annum from the date the State's "preliminary amount" or "liquidating amount", as the case may be, is determined by the Social Security Board; and with respect to any such State the amount withheld shall qual the State's "preliminary amount" and "liquidating amount" less such parts thereof, if any, as the State may have, within the periods set forth in the provisos contained in the first two paragraphs of this subsection effectively authorized and directed the Secretary of the Treasury to transfer, plus interest from July 1, 1939, at 2½ per centum per annum on so much of the "preliminary amount" and "liquidating amount", as the case may be, as has not been so transferred or has not been used as the measure for withholding. An enactment of any State legislature providing for the transfer (from the State's account in the Unemployment Trust Fund to the railroad unemployment insurance account) of all interest earned upon contributions which are collected with respect to employment occurring after such enactment by such State pursuant to its unemployment compensation law and credited to its account in the Unemployment Trust Fund (until the total of such transfers equals the amounts which otherwise would be required to be withheld from certification under this subsection), shall be deemed an effective authorization and direction to the Secretary of the Treasury as required by this subsection; and for purposes of computing the interest to be so transferred, amounts withdrawn by such State from its account in the Unemployment Trust Fund after the date of such State enactment shall be considered to be first charged against the amounts credited to such State's account prior to the date of such State enactment: *Provided, however,* That if at any time after such enactment the provision for transfer therein contained for any reason fails to be operative to effect the transfers of interest as therein prescribed, and such State has not otherwise made an effective authorization and direction to the Secretary of the Treasury as required by this subsection, the Social Security Board shall immediately after such failure or, on the date otherwise provided in this subsection for the beginning of withholdings from certification, whichever is later, begin to make the withholdings from certification provided for in this subsection in the same manner and to the same extent as if such enactment by such State had not been enacted, except that the amounts of the certifications withheld shall be reduced by the total amount, if any, which has been transferred from interest pursuant to such enactment.

(e) The transfers described in the provisos contained in the several paragraphs of subsection (d) of this section shall not be deemed to constitute a breach of the conditions set forth in sections 303 (a) (5) and 903 (a) (4) of the Social Security Act; nor shall the withdrawal by a State from its account in the unemployment trust fund of amounts, but not to exceed the total amount the Social Security Board shall have withheld from certification with respect to such State pursuant to subsection (d) of this section, be deemed to constitute a breach of the conditions set forth in sections 303 (a) (5) and 903 (a) (4) of the Social Security Act, provided

the moneys so withdrawn are expended solely for expenses which the Social Security Board determines to be necessary for the proper administration of such State's unemployment compensation law.

(f) The Social Security Board is authorized and directed to certify to the Secretary of the Treasury for payment, and the Secretary shall pay, into the railroad unemployment insurance account, such amounts as the Social Security Board withholds from certification pursuant to subsection (d) of this section and the appropriations authorized in section 301 of the Social Security Act shall be available for payments authorized by this subsection. The Secretary shall transfer from the account of a State in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund such amounts as the State authorizes and directs him so to transfer pursuant to subsection (d) of this section.

(g) Section 303 of the Social Security Act is hereby amended by adding thereto the following additional subsection:

"(c) The Board shall make no certification for payment to any State if it finds, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law—

"(1) That such State does not make its records available to the Railroad Retirement Board, and furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board such copies thereof as the Railroad Retirement Board deems necessary for its purposes; or

"(2) That such State is failing to afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law."

DISTRICT OF COLUMBIA UNEMPLOYMENT COMPENSATION ACT

SEC. 14. (a) Effective July 1, 1939, section 1 (b) of the District of Columbia Unemployment Insurance Act is amended by substituting a semicolon for the period at the end thereof and by adding: "(8) service performed in the employ of an employer as defined in the Railroad Unemployment Insurance Act and service performed as an employee representative as defined in said Act." This amendment shall not be construed to affect the payment of unemployment benefits at any time with respect to any period prior to July 1, 1939, based upon employment performed prior to July 1, 1939.

(b) The Secretary of the Treasury is authorized and directed to transfer from the account of the District of Columbia in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund, an amount equal to the "preliminary amount" and an amount equal to the "liquidating amount", whenever such amounts, respectively, have been determined, with respect to the District of Columbia, pursuant to section 13 of this Act.

TRANSITIONAL PROVISIONS

SEC. 15. The restrictions in the second sentence of section 3 (b) and in section 4 (a) (v) of this Act, insofar as they involve the receipt of unemployment benefits under an unemployment compensation law of any State, shall not be applicable to any day of unemployment which occurs after June 15, 1939, but before July 1, 1939.

SEPARABILITY

SEC. 16. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

SHORT TITLE

SEC. 17. This Act may be cited as the "Railroad Unemployment Insurance Act".

O

Union Calendar No. 581

79TH CONGRESS
2D SESSION

H. R. 1362

[Report No. 1989]

IN THE HOUSE OF REPRESENTATIVES

JANUARY 11, 1945

Mr. CROSSER introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

MAY 9, 1946

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~DIVISION I~~

~~SECTION 1. Section 1 (a) of the Railroad Retirement Act of 1937 and section 1 (a) of the Railroad Unemployment Insurance Act are amended to read as follows:~~

~~"(a) The term 'employer', except as otherwise provided in this subsection, shall mean—~~

~~"(1) Any carrier: A 'carrier' is any express company,~~

sleeping car company, or carrier by railroad, subject to part I of the Interstate Commerce Act;

"(2) Any person, other than a carrier regulated under part I of the Interstate Commerce Act, which, pursuant to arrangements with a carrier or otherwise, performs, for hire, with respect to passengers or property transported, being transported, or to be transported by a carrier, any service included within the term 'transportation' as defined in section 1 (3) of the Interstate Commerce Act, whether or not such service is offered under railroad tariffs;

"(3) Any freight forwarder: A 'freight forwarder' is any person, other than a carrier, which holds itself out to the general public to transport, or provide transportation of property for hire, and which in the ordinary and usual course of its undertaking assembles and consolidates, or provides for assembling and consolidating, shipments of such property, and performs, or provides for the performing of, break-bulk and distributing operations with respect to such consolidated shipments, and assumes responsibility for the transportation of such property from point of receipt to point of destination, and regularly and substantially utilizes, for the transportation of such shipments, the services of one or more carriers;

"(4) Any person engaged in rendering, pursuant to any arrangement for one or more carriers, any service which (i) is of such a nature as to be susceptible of indefinitely

continuous performance and (ii) constitutes a part of or is necessary or incidental to the operation or maintenance of way, equipment or structures devoted to transportation use, or constitutes a clerical, sales, accounting, protective, or communications service necessary or incidental to the conduct of transportation carried on by a carrier, or is rendered with respect to passengers or property transported by railroad, at point of departure or shipment or at destination or between such points;

"(5) Any person which, through any form of property interest, is directly or indirectly subject to control by or to common control with a carrier and which (i) is engaged in acquiring or holding title to managing, maintaining, or operating any property devoted substantially to use in the transportation conducted by such carriers; or (ii) is engaged in performing services necessary or incidental to the conduct of the transportation carried on by such carrier, or services in the manufacture of equipment or equipment parts or in the processing of materials for use in the operation, servicing, or maintenance of way, structures or equipment devoted to use in transportation, or services in connection with the storage, elevation, or handling of property transported, being transported, or to be transported if such storage, elevation, or handling services are provided with respect to property accorded privileges of storage in transit, or for the promotion

or facilitation of transportation conducted by such carrier; or (iii) is engaged in transportation by motor vehicles;

"(6) Any railroad association, traffic association, tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency, and other association, bureau, agency, or organization controlled and maintained wholly or principally by two or more employers and engaged in the performance of services in connection with or incidental to railroad transportation;

"(7) Any railway labor organization, national in scope, which will have been or may be organized in accordance with the Railway Labor Act, and such organization's State and National legislative committees, general committees, insurance departments, and local lodges and divisions, established pursuant to the constitution and bylaws of such organization;

"(8) Any organization maintained or controlled by one or more employers, and principally engaged in furnishing medical, hospital, educational, recreational, or other welfare services to employees, or in providing for the payment of life, sick, accident, or other benefits to such employees or the dependents or survivors of such employees; and

"(9) Any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property,

or operating all or any part of the business of an employer as defined herein.

"(10) Exclusions: Except with respect to persons covered by clause (iii) of paragraph (5), the term 'employer' shall not include any person (i) by reason of operations in the conduct of which such person holds itself out directly to the public as a common carrier by water, air, or motor or animal-drawn vehicle, or as a contract carrier by any of such means, other than contract carrier service regularly offered to railroad passengers, shippers, or consignees pursuant to arrangements with an employer such as defined herein; or (ii) by reason of the performance of any operation which is insubstantial or is so irregular or infrequent as to afford no substantial basis for an inference that such operation will be repeated; or (iii) by reason of its being engaged in the mining of coal, the supplying of coal to an employer such as herein defined where delivery is not beyond the mine tipple, and in the operation of equipment or facilities therefor, or in any of such activities, or in logging or the milling of lumber to standard commercial sizes, or in furnishing supplies to a carrier; or (iv) by reason of the operation of a street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, or is a part

of the general steam railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed, upon request of the Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this clause. The term 'employer' shall not include any individual by reason of the performance of any service by such individual personally.

"(11) Segregation: Any person who is an employer as defined in this subsection shall be an employer with respect to all activities carried on by it, except that (i) any person who is an employer by reason of paragraph (9) shall be an employer only in the capacity described in that paragraph; (ii) if the Board finds that a person is principally engaged in activities other than employer activities and that its employer activities are conducted as an operation or operations separate and distinct from the operations in which it is principally engaged, such person shall be an employer only with respect to such employer operation or operations; and (iii) if the Board finds that a person who is an employer solely by reason of paragraph (2) or (4) of this subsection, is principally engaged in activities other than employer activities but does not, pursuant to clause (ii) find that the employer activities of such person are

conducted as an operation or operations separate and distinct from the operations in which it is principally engaged, such person shall be an employer only with respect to all work performed in its employ by individuals who regularly and substantially perform work on property structures or equipment devoted to transportation use. If to a substantial extent the individuals working in employer activities regularly work also in the operations in which a person is principally engaged, such employer activities shall not be deemed to be conducted as an operation or operations separate and distinct from the operations in which such person is principally engaged. For the purposes of this subsection, a person shall be deemed to be principally engaged in activities other than employer activities if the man-hours devoted to such other activities are more than one-half of the total man-hours devoted to all activities carried on by such person, except that if the Board finds that a determination on such basis is impracticable or inappropriate the Board shall make the determination on the basis of such factors as in its judgment are relevant and appropriate. The term 'employer activities' as used in this subsection shall mean all such activities as are conducted by a person as a carrier, or as are described in paragraph (2), (3), (4), (5), (6), or (8). When a final determination will have been made as to whether a person is principally engaged in employer activi

~~ties, the matter shall not be redetermined except upon the basis of operations conducted for a period of not less than three years following the last operations considered in making the previous determination, unless the Board finds that substantial activities will have been abandoned or substantial new activities will have been undertaken. Upon any such redetermination the conclusion shall be governed by the previous determination, unless the Board finds that on the basis of the factors on which such previous determination will have been based. the activities in which the person previously was principally engaged constitute less than 40 per centum of such person's activities."~~

~~SEC. 2. Section 1 (c) of the Railroad Retirement Act of 1937 and section 1 (c) of the Railroad Unemployment Insurance Act are each amended as follows: After the word "if" in the first sentence insert "(i)" and for the phrase "which services he renders for compensation" substitute the following: "or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, or he is personally performing for an employer any service by reason of which, except for the last sentence of paragraph (10) of subsection (a), he would be an employer, and (ii) he renders such service for~~

compensation", and for the purpose of continuing the amendment of the Railroad Retirement Act of 1937, only, add after the word "compensation" the following: ", or a method of computing the monthly compensation for such service is provided in section 3 (e)". Said subsections are further amended by inserting at the end of the first proviso the following: ", and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation".

SEC. 3. Section 1 (h) of the Railroad Retirement Act of 1937 is amended by substituting for the words "earned by" the words "paid to", and section 1 (i) of the Railroad Unemployment Insurance Act is amended by substituting for the word "payable" the word "paid"; by striking out the proviso in said section 1 (i) of the Railroad Unemployment Insurance Act and replacing the colon with a period; and by inserting at the end of said section 1 (h) of the Railroad Retirement Act of 1937 and at the end of said section 1 (i) of the Railroad Unemployment Insurance Act, the following: "A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the

employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, 'for time lost' the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1946 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1945 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 8, the period during which such compensation will have been earned."; and in said section 1 (h), immediately after

the word "earned" at the end of this insertion, insert the following additional language: "In determining the monthly compensation, the average monthly remuneration, and quarters of coverage of any employee, there shall be attributable as compensation paid to him in each calendar month in which he is in military service creditable under section 4 the amount of $160 in addition to the compensation, if any, paid to him with respect to such month."

SEC. (1). (a) Sections from 1500 to 1530, inclusive, of the Internal Revenue Code are hereby amended by substituting "Board" for "Commissioner" and for "Bureau of Internal Revenue", "title" for "subchapter", and by deleting "with the approval of the Secretary" wherever said language appears.

(b) Sections 1500 and 1510 of the Internal Revenue Code are amended by substituting for the language, "$300 for any calendar month earned by" the language, "$300 multiplied by the number of months in the calendar year with respect to which compensation is paid, paid to". Section 1520 of the Internal Revenue Code is amended by substituting for the language, "in excess of $300 for any calendar month paid by him to any employee", the language, ", with respect to any employee, in excess of $300 multiplied by the number of months in the calendar year in which the employee was in his service, paid by him"; by substituting

for "December 31, 1936" the date "June 30, 1945"; by substituting for "$300" in the proviso the language, "$300 multiplied by the number of months in the calendar year in which the employee will have been in the service of an employer,"; and by substituting for the portion of the section beginning with the words "month, and each such" and continuing to the end of the proviso the following: "year, and each employer other than a subordinate unit of a national railway labor organization employer shall be liable for that proportion of the tax which the compensation paid by him to the employee bears to the total compensation paid to the employee by all such employers; and in the event that the compensation paid by such employers to the employee is less than $300 multiplied by the number of calendar months in such year in which the employee will have been in the service of an employer each subordinate unit railway labor organization employer shall be liable for such proportion of any additional tax as the compensation paid by such employer bears to the compensation paid by all such employers:"

(c) Sections 1500 and 1520 of the Internal Revenue Code are further amended by substituting for the numbered paragraphs the following:

"1. With respect to compensation payable between June 30, 1945, and January 1, 1946, and compensation paid

during 1946, 1947, and 1948, the rate shall be 5¾ per centum;

"2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 6 per centum;

"3. With respect to compensation paid after December 31, 1951, the rate shall be 6¼ per centum."

Section 1510 of the Internal Revenue Code is amended by substituting for the numbered paragraphs the following:

"1. With respect to compensation payable between June 30, 1945, and January 1, 1946, and compensation paid during 1946, 1947, and 1948, the rate shall be 11½ per centum.

"2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 12 per centum.

"3. With respect to compensation paid after December 31, 1951, the rate shall be 12½ per centum."

(d) Subsection (a) of section 1530 of the Internal Revenue Code is amended by substituting for the language "as internal revenue collections.", the following: "together with any interest, penalties, and additions to the taxes, to the credit of the railroad retirement account. All moneys so paid into the Treasury are hereby permanently appropriated to the railroad retirement account: *Provided, however,* That the appropriation herein made of moneys paid in for

the fiscal year 1946 shall be (A) increased, from moneys in the general fund of the Treasury not otherwise appropriated, by an amount by which (i) the sum of all amounts heretofore or hereafter collected under the Carriers Taxing Act of 1937, and subchapter B of chapter 9 of the Internal Revenue Code may exceed (ii) the sum of all appropriations made to the railroad retirement account (exclusive of the appropriations for crediting military service) and all appropriations made to the Board pursuant to section 16, whether heretofore or hereafter made, or (B) decreased by payment into the general fund of the Treasury of an amount by which the sum computed in clause (ii) may exceed the sum computed in clause (i). There is hereby authorized to be appropriated from the Railroad Retirement Account such sums as may be necessary to provide for the expenses of the Board in administering both titles of this Act and the Railroad Retirement Act of 1935. Any part of any appropriation so made which may at any time lapse shall revert to the credit of the Railroad Retirement Account."

(c) Section 1536 of the Internal Revenue Code is amended to read as follows: "All provisions of law applicable with respect to the contributions imposed by section 8 of the Railroad Unemployment Insurance Act shall be applicable with respect to the taxes imposed by this title."

(f) The amendments made by this section shall become

effective on January 1, 1946, except those relating to the rate of taxation which shall become effective July 1, 1945. Effective January 1, 1946, sections 1500 to 1530, inclusive, and section 1536 of the Internal Revenue Code are removed from the Internal Revenue Code and shall constitute title II of the Railroad Retirement Act of 1937, being renumbered sections 20 through 32 with appropriate renumbering of all cross-references therein contained, said title to be in the words and marks: "Carriers' Taxing Act of 1945"; effective also on that date all other provisions of subchapter B of chapter 9 of the Internal Revenue Code shall be repealed. The provisions of this section becoming effective on January 1, 1946, shall not affect any rights or liabilities accrued before January 1, 1946.

DIVISION II

SEC. 201. Section 1 (d) of the Railroad Retirement Act of 1937 is amended to read as follows:

"(d) An individual shall be deemed to have been in the employment relation to an employer on the enactment date of (i) he was on that date on leave of absence from his employment, expressly granted to him by the employer by whom he was employed, or by a duly authorized representative of such employer, and the grant of such leave of absence will have been established to the satisfaction of the Board before July 1946; or (ii) he was in the service of

an employer after the enactment date and before January 1945 in each of six calendar months, whether or not consecutive; or (iii) before the enactment date he did not retire and was not retired or discharged from the service of the last employer by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before the enactment date to be in the service of such employer and thereafter remained continuously disabled until he attained age sixty-five or until August 1944 or (B) solely for such last stated reason an employer by whom he was employed before the enactment date or an employer who is its successor did not on or after the enactment date and before August 1944 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in clause (ii); or (iv) he was on the enactment date absent from the service of an employer by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the employer, as wrongful, and which was followed within nine years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights: *Provided,* That an individual shall not be deemed to have been on the enactment date in the employment relation to an employer if before that date he

was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6, or if during the last pay-roll period before the enactment date in which he rendered service to an employer he was not in the service of an employer, in accordance with subsection (c), with respect to any service in such pay-roll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after the enactment date in the service of a local lodge or division defined as an employer in section 1 (a) (7).

SEC. 202. Section 1 (f) is amended by changing the period at the end of the proviso to a semicolon and adding "it may also be included as to service rendered to a person not an employer in the performance of operations involving the use of standard railroad equipment if such operations were performed by an employer on the enactment date." Section 1 (f) is further amended by substituting for the word "An" in the next to the last sentence the following: "Ultimate fractions shall be taken at their actual value, except that if the individual will have had not less than fifty-four months of service, an" and by striking out the last sentence.

SEC. 203. Section 1 (m) is amended to read as follows:

"(m) An individual shall be deemed to have 'a current connection with the railroad industry' at the time an annuity

~~begins to accrue to him and at death if, in any thirty consecutive calendar months before the month in which an annuity under section 2 begins to accrue to him (or the month in which he dies if that first occurs), he will have been in service as an employee in not less than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he will not have been engaged in any regular employment other than employment for an employer in the period before such month and after the end of such thirty months. For the purposes of section 5 only, an individual shall be deemed also to have a 'current connection with the railroad industry' if he is in all other respects completely insured but would not be fully insured under the Social Security Act, or if he is in all other respects partially insured but would be neither fully nor currently insured under the Social Security Act, or if he has no wage quarters of coverage."~~

~~SEC. 204. A new subsection is added to section 1 as follows:~~

~~"(o) The terms 'quarter' and 'calendar quarter' shall mean a period of three calendar months ending on March 31, June 30, September 30, or December 31."~~

~~SEC. 205. Section 2 (a) is amended by substituting for all that portion of the subsection after the first numbered paragraph the following:~~

"2. Women who will have attained the age of sixty and will have completed thirty years of service.

"3. Individuals who will have attained the age of sixty and will have completed thirty years of service, but the annuity of such an individual shall be reduced by one one-hundred-and-eightieth for each calendar month that he is under age sixty-five when his annuity begins to accrue.

"4. Individuals having a current connection with the railroad industry, and whose permanent physical or mental condition is such as to be disabling for work in their regular occupation, and who (i) will have completed twenty years of service or (ii) will have attained the age of sixty. The Board, with the cooperation of employers and employees, shall secure the establishment of standards determining the physical and mental conditions which permanently disqualify employees for work in the several occupations in the railroad industry, and the Board, employers, and employees shall cooperate in the promotion of the greatest practicable degree of uniformity in the standards applied by the several employers. An individual's condition shall be deemed to be disabling for work in his regular occupation if he will have been disqualified by his employer because of disability for service in his regular occupation in accordance with the applicable standards so established; if the employee will not have been so disqualified by his employer, the Board shall

determine whether his condition is disabling for work in his regular occupation in accordance with the standards generally established; and, if the employee's regular occupation is not one with respect to which standards will have been established, the standards relating to a reasonably comparable occupation shall be used. If there is no such comparable occupation, the Board shall determine whether the employee's condition is disabling for work in his regular occupation by determining whether under the practices generally prevailing in industries in which such occupation exists such condition is a permanent disqualification for work in such occupation. For the purposes of this section, an employee's 'regular occupation' shall be deemed to be the occupation in which he will have been engaged in more calendar months than the calendar months in which he will have been engaged in any other occupation during the last preceding five calendar years, whether or not consecutive, in each of which years he will have earned wages or salary; except that, if an employee establishes that during the last fifteen consecutive calendar years he will have been engaged in another occupation in one-half or more of all the months in which he will have earned wages or salary, he may claim such other occupation as his regular occupation; or

"5. Individuals whose permanent physical or mental condition is such that they are unable to engage in any

regular employment and who (i) have completed ten years of service, or (ii) have attained the age of sixty.

"Such satisfactory proof shall be made from time to time as prescribed by the Board, of the disability provided for in paragraph 4 or 5 and of the continuance of such disability (according to the standards applied in the establishment of such disability) until the employee attains the age of sixty-five. If the individual fails to comply with the requirements prescribed by the Board as to proof of the continuance of the disability until he attains the age of sixty-five years, his right to an annuity by reason of such disability shall, except for good cause shown to the Board, cease, but without prejudice to his rights to any subsequent annuity to which he may be entitled. If before attaining the age of sixty-five an employee in receipt of an annuity under paragraph 4 or 5 is found by the Board to be no longer disabled as provided in said paragraphs his annuity shall cease upon the last day of the month in which he ceases to be so disabled. An employee, in receipt of such annuity, who earns more than $75 in service for hire, or in self-employment, in each of any six consecutive calendar months, shall be deemed to cease to be so disabled in the last of such six months; and such employee shall report to the Board immediately all such service for hire, or such self-employment. If after cessation of his disability annuity the em-

ployee will have acquired additional years of service, such additional years of service may be credited to him with the same effect as if no annuity had previously been awarded to him."

SEC. 206. Section 2 (b) is amended by substituting for "2 (b)" and "3" the numbers "4" and "5", respectively.

SEC. 207. Section 3 (b) (4) is amended by substituting for the portion of the sentence following "June 30, 1937" the following: "and after the end of the calendar year in which the individual attains the age of sixty-five".

SEC. 208. Section 3 (c) is amended by substituting the phrase "paid to an employee with respect to" for the phrase "earned by an employee in".

SEC. 209. Section 3 (c) is further amended by substituting for that portion of the subsection following the phrase "and (2)" the following: "the amount of compensation paid or attributable as paid to him with respect to each month of service before September 1941 as a station employee whose duties consisted of or included the carrying of passengers' hand baggage and otherwise assisting passengers at passenger stations and whose remuneration for service to the employer was, in whole or in substantial part, in the forms of tips, shall be the monthly average of the compensation paid to him as a station employee in his months of service in the period September 1940–August 1941: *Pro-*

vided, however, That where service in the period 1921–1931 in the one case, or in the period September 1940–August 1941 in the other case, is, in the judgment of the Board, insufficient to constitute a fair and equitable basis for determining the amount of compensation paid or attributable as paid to him in each month of service before 1937, or September 1941, respectively, the Board shall determine the amount of such compensation for each such month in such manner as in its judgment shall be fair and equitable. In computing the monthly compensation, no part of any month's compensation in excess of $300 earned before 1946, and no compensation for the months of service in a calendar year after 1945 in excess of $300 multiplied by the number of months of service in such calendar year shall be recognized."

SEC. 210. Section 3 (c) is amended to read as follows:

"(c) In the case of an individual having a current connection with the railroad industry and not less than five years of service, the minimum annuity payable shall, before any reduction pursuant to subsection 2 (a) (3), be whichever of the following is the least: (1) $3 multiplied by the number of his years of service; or (2) $50; or (3) his monthly compensation."

SEC. 211. Section 3 (f) is amended to read as follows:

"Annuity payments which will have become due an individual but will not yet have been paid at death shall be

paid to the same individual or individuals who, in the event that a lump sum will have become payable pursuant to section 5 hereof upon such death, would be entitled to receive such lump sum, in the same manner as, and subject to the same limitations under which, such lump sum would be paid, except that, as determined by the Board, first, brothers and sisters of the deceased, and if there are none such, then grandchildren of the deceased, if living on the date of the determination, shall be entitled to receive payment prior to any payment being made for reimbursement of burial expenses. If there be no individual to whom payment can thus be made, such annuity payments shall escheat to the credit of the Railroad Retirement Account."

SEC. 212. Section 4 is repealed, section 3A is renumbered as section 4, subsections (h) and (m) of said section are repealed, and all references to section "3A" are changed to "4".

SEC. 213. The heading preceding section 5, and section 5 are amended to read as follows:

"ANNUITIES AND LUMP SUMS FOR SURVIVORS

"SEC. 5. (a) WIDOW'S INSURANCE ANNUITY.—A widow of a completely insured employee, who will have attained the age of sixty-five, shall be entitled during the remainder of her life or, if she remarries, then until remarriage

to an annuity for each month equal to three-fourths of such employee's basic amount.

"(b) WIDOW'S CURRENT INSURANCE ANNUITY.—A widow of a completely or partially insured employee, who is not entitled to an annuity under subsection (a) and who at the time of filing an application for an annuity under this subsection will have in her care a child of such employee entitled to receive an annuity under subsection (c) shall be entitled to an annuity for each month equal to three-fourths of the employee's basic amount. Such annuity shall cease upon her death, upon her remarriage, when she becomes entitled to an annuity under subsection (a), or when no child of the deceased employee is entitled to receive an annuity under subsection (c), whichever occurs first.

"(c) CHILD'S INSURANCE ANNUITY.—Every child of an employee who will have died completely or partially insured shall be entitled, for so long as such child lives and meets the qualifications set forth in paragraph (1) of subsection (l), to an annuity for each month equal to one-half of the employee's basic amount.

"(d) PARENT'S INSURANCE ANNUITY.—Each parent, sixty-five years of age or over, of a completely insured employee, who will have died leaving no widow and no child, shall be entitled, for life, or, if such parent remarries

after the employee's death, then until such remarriage, to an annuity for each month equal to one-half of the employee's basic amount.

"(e) When there is more than one employee with respect to whose death a parent or child is entitled to an annuity for a month, such annuity shall be one-half of whichever employee's basic amount is greatest.

"(f) LUMP-SUM PAYMENT.—Upon the death, on or after January 1, 1946, of a completely or partially insured employee who will have died leaving no widow, child, or parent who would on proper application therefor be entitled to receive an annuity under this section for the month in which such death occurred, there shall be paid a lump sum of eight times the employee's basic amount to the following person (or if more than one there shall be distributed among them) whose relationship to the deceased employee will have been determined by the Board, and who will have been living on the date of such determination: to the widow or widower of the deceased; or, if no such widow or widower be then living, to any child or children of the deceased and to any other person or persons who, under the intestacy law of the State where the deceased will have been domiciled, will have been entitled to share as distributees with such children of the deceased, in such proportions as is provided by such law; or, if no widow or widower and no such child

and no such other person be then living, to the parent or parents of the deceased, in equal shares. A person who is entitled to share as distributee with an above-named relative of the deceased shall not be precluded from receiving a payment under this subsection by reason of the fact that no such named relative will have survived the deceased or of the fact that no such named relative of the deceased will have been living on the date of such determination. If none of the persons described in this subsection be living on the date of such determination, such amount shall be paid to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the expenses of burial of the deceased. If a lump sum would be payable to a widow, child, or parent under this subsection except for the fact that a survivor will have been entitled to receive an annuity for the month in which the employee will have died, but within one year after the employee's death there will not have accrued to survivors of the employee, by reason of his death annuities which, after all deductions pursuant to paragraph (1) of subsection (i) will have been made, are equal to such lump sum, a payment to any then surviving widow, children, or parents shall nevertheless be made under this subsection equal to the amount by which such lump sum exceeds such annuities so accrued after such deductions. No payment

shall be made to any person under this subsection, unless application therefor shall have been filed, by or on behalf of any such person (whether or not legally competent), prior to the expiration of two years after the date of death of the deceased employee, except that if the deceased employee is a person to whom section 2 of the Act of March 7, 1942 (56 Stat. 143, 144), is applicable such two years shall run from the date on which the deceased employee, pursuant to said Act, is determined to be dead, and for all other purposes of this section such employee, so long as it does not appear that he is in fact alive, shall be deemed to have died on the date determined pursuant to said Act to be the date or presumptive date of death.

"(g) CORRELATION OF PAYMENTS.—(1) An individual, entitled on applying therefor to receive for a month before January 1, 1946, an insurance benefit under the Social Security Act on the basis of an employee's wages, which benefit is greater in amount than would be an annuity for such individual under this section with respect to the death of such employee, shall not be entitled to such annuity. An individual, entitled on applying therefor to any annuity or lump sum under this section with respect to the death of an employee, shall not be entitled to a lump-sum death payment or, for a month beginning on or after January 1,

1946, to any insurance benefits under the Social Security Act on the basis of the wages of the same employee.

"(2) A widow or child, otherwise entitled to an annuity under this section, shall be entitled only to that part of such annuity for a month which exceeds the total of any retirement annuity, and insurance benefit under the Social Security Act to which such widow or child would be entitled for such month on proper application therefor. A parent, otherwise entitled to an annuity under this section, shall be entitled only to that part of such annuity for a month which exceeds the total of any other annuity under this section, retirement annuity, and insurance benefit under the Social Security Act to which such parent would be entitled for such month on proper application therefor.

"(h) MAXIMUM AND MINIMUM ANNUITY TOTALS.—Whenever according to the provisions of this section as to annuities, payable for a month with respect to the death of an employee, the total of annuities is more than $20 and exceeds either (a) $120, or (b) an amount equal to twice such employee's basic amount, or with respect to employees other than those who will have been completely insured solely by virtue of subsection (l) (7) (iii), such total exceeds (c) an amount equal to 80 per centum of his average monthly remuneration, whichever of such amounts is

least, such total of annuities shall, prior to any deductions under subsection (i), be reduced to such least amount or to $20, whichever is greater. Whenever such total of annuities is less than $10, such total shall, prior to any deductions under subsection (i), be increased to $10.

"(i) DEDUCTIONS FROM ANNUITIES.—(1) Deductions shall be made from any payments under this section to which an individual is entitled, until the total of such deductions equals such individual's annuity or annuities under this section for any month in which such individual—

"(i) will have rendered compensated service within or without the United States to an employer;

"(ii) will have rendered service for wages of not less than $25;

"(iii) if a child under eighteen and over sixteen years of age, will have failed to attend school regularly and the Board finds that attendance will have been feasible; or

"(iv) if a widow otherwise entitled to an annuity under subsection (b) will not have had in her care a child of the deceased employee entitled to receive an annuity under subsection (c);

"(2) The total of deductions for all events described in paragraph (1) occurring in the same month shall be limited to the amount of such individual's annuity or annuities for

that month. Such individual (or anyone in receipt of an annuity in his behalf) shall report to the Board the occurrence of any event described in paragraph (1).

"(3) Deductions shall also be made from any payments under this section with respect to the death of an employee until such deductions total—

"(i) any death benefit, paid with respect to the death of such employee, under sections 5 of the Retirement Acts (other than a survivor annuity pursuant to an election);

"(ii) any lump sum paid, with respect to the death of such employee, under title II of the Social Security Act, or under section 203 of the Social Security Act in force prior to the date of the Social Security Act Amendments of 1939;

"(iii) any lump sum paid to such employee under section 204 of the Social Security Act in force prior to the date of the enactment of the Social Security Act Amendments of 1939, provided such lump sum will not previously have been deducted from any insurance benefit paid under the Social Security Act; and

"(iv) an amount equal to 1 per centum of any wages paid to such employee for services performed in 1939, and subsequent to his attaining age sixty-five, with respect to which the taxes imposed by section 1400

of the Internal Revenue Code will not have been deducted by his employer from his wages or paid by such employer, provided such amount will not previously have been deducted from any insurance benefit paid under the Social Security Act.

"(4) The deductions provided in this subsection shall be made in such amounts and at such time or times as the Board shall determine. Decreases or increases in the total of annuities payable for a month with respect to the death of an employee shall be equally apportioned among all annuities in such total. An annuity under this section which is not in excess of $5 may, in the discretion of the Board, be paid in a lump sum equal to its commuted value as the Board shall determine.

"(j) WHEN ANNUITIES BEGIN AND END.—No individual shall be entitled to receive an annuity under this section for any month before January 1, 1946. An application for any payment under this section shall be made and filed in such manner and form as the Board prescribes. An annuity under this section for an individual otherwise entitled thereto shall begin with the month in which such individual filed an application for such annuity: *Provided*, That such individual's annuity shall begin with the first month for which he will otherwise have been entitled to receive such annuity if he files such application prior to the end of the third

month immediately succeeding such month. No application for an annuity under this section filed prior to three months before the first month for which the applicant becomes otherwise entitled to receive such annuity shall be accepted. No annuity shall be payable for the month in which the recipient thereof ceases to be qualified therefor.

"(k) PROVISIONS FOR CREDITING RAILROAD INDUSTRY SERVICE UNDER THE SOCIAL SECURITY ACT IN CERTAIN CASES.—(1) For the purpose of determining insurance benefits under title II of the Social Security Act which would begin to accrue on or after January 1, 1946, to a widow, parent, or surviving child, and with respect to lump-sum death payments under such title payable in relation to a death occurring on or after such date, section 15 of the Railroad Retirement Act of 1935, section 209 (b) (9) of the Social Security Act, and section 17 of this Act shall not operate to exclude from 'employment', under title II of the Social Security Act, service which would otherwise be included in such 'employment' but for such sections. For such purpose, compensation paid in a calendar year shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in services as an employee.

"(2) Not later than January 1, 1950, the Board and

the Social Security Board shall make a special joint report to the President to be submitted to Congress setting forth the experience of the Board in crediting wages toward awards, and the experience of the Social Security Board in crediting compensation toward awards, and their recommendations for such legislative changes as are deemed advisable for equitable distribution of the financial burden of such awards between the retirement account and the Federal Old Age and Survivors Insurance Trust Fund.

"(3) The Board and the Social Security Board shall, upon request, supply each other with certified reports of records of compensation or wages and periods of service and of other records in their possession or which they may secure, pertinent to the administration of this section or title II of the Social Security Act as affected by paragraph (1). Such certified reports shall be conclusive in adjudication as to the matters covered therein: *Provided*, That if either board receives evidence inconsistent with a certified report and the application involved is still in course of adjudication or otherwise open for such evidence, such recertification of such report shall be made as, in the judgment of the board which made the original certification, the evidence warrants. Such recertification and any subsequent recertification shall be treated in the same manner and be subject to the same conditions as an original certification.

"(l) DEFINITIONS.—For the purposes of this section the term 'employee' includes an individual who will have been an 'employee', and—

"(1) The qualifications for 'widow', 'child', and 'parent' shall be, except for the purposes of subsection (f), those set forth in section 209 (j) and (k), and section 202 (f) (3) of the Social Security Act, respectively; and in addition—

"(i) a 'widow' shall have been living with her husband employee at the time of his death;

"(ii) a 'child' shall have been dependent upon its parent employee at the time of his death; shall not be adopted after such death; shall be unmarried; and less than eighteen years of age; and

"(iii) a 'parent' shall have been wholly dependent upon and supported at the time of his death by the employee to whom the relationship of 'parent' is claimed; and shall have filed proof of such dependency and support within two years after such date of death, or within six months after January 1, 1946.

A 'widow' or a 'child' shall be deemed to have been so living with a husband or so dependent upon a parent if the conditions set forth in section 209 (n) or section 202 (c) (3) or (4) of the Social Security Act, respectively, are fulfilled. In determining whether an applicant is the wife, widow, child, or parent of an employee as claimed, the

rules set forth in section 209 (m) of the Social Security Act shall be applied;

"(2) The term 'retirement annuity' shall mean an annuity under section 2 awarded before or after its amendment but not including an annuity to a survivor pursuant to an election of a joint and survivor annuity; and the term 'pension' shall mean a pension under section 6;

"(3) The term 'quarter of coverage' shall mean a compensation quarter of coverage or a wage quarter of coverage, and the term 'quarters of coverage' shall mean compensation quarters of coverage, or wage quarters of coverage, or both: *Provided,* That there shall be for a single employee no more than four quarters of coverage for a single calendar year;

"(4) The term 'compensation quarter of coverage' shall mean any quarter of coverage computed with respect to compensation paid to an employee after 1936 in accordance with the following table:

Months of service in a calendar year	Total compensation paid in the calendar year				
	Less than $50	$50 but less than $100	$100 but less than $150	$150 but less than $200	$200 or more
1-3	0	1	1	1	1
4-6	0	1	2	2	2
7-9	0	1	2	3	3
10-12	0	1	2	3	4

"(5) The term 'wage quarter of coverage' shall mean any quarter of coverage determined in accordance with the provisions of title II of the Social Security Act;

"(6) The term 'wages' shall mean wages as defined in section 209 (a) of the Social Security Act;

"(7) An employee will have been 'completely insured' if it appears to the satisfaction of the Board that at the time of his death, whether before or after the enactment of this section, he will have had the qualifications set forth in any one of the following paragraphs:

"(i) a current connection with the railroad industry; and a number of quarters of coverage, not less than six, and at least equal to one-half of the number of quarters, elapsing in the period after 1936, or after the quarter in which he will have attained the age of twenty-one, whichever is later, and up to but excluding the quarter in which he will have attained the age of sixty-five years or died, whichever will first have occurred (excluding from the elapsed quarters any quarter during any part of which a retirement annuity will have been payable to him); and if the number of such elapsed quarters is an odd number such number shall be reduced by one; or

"(ii) a current connection with the railroad industry; and forty or more quarters of coverage; or

"(iii) a pension will have been payable to him; or a retirement annuity based on service of not less than ten years (as computed in awarding the annuity) will have begun to accrue to him before 1947;

"(8) An employee will have been 'partially insured' if it appears to the satisfaction of the Board that at the time of his death, whether before or after the enactment of this section, he will have had (i) a current connection with the railroad industry; and (ii) six or more quarters of coverage in the period beginning with the third calendar year next preceding the year in which he will have died and ending with the quarter next preceding the quarter in which he will have died;

"(9) An employee's 'average monthly remuneration' shall mean the quotient obtained by dividing (A) the sum of the compensation and wages paid to him after 1936 and before the quarter in which he will have died, eliminating for any single calendar year, from compensation, any excess over $300 multiplied by the number of months he will have been in service as an employee, and from the sum of wages and compensation any excess over $3,000, by (B) three times the number of quarters elapsing after 1936 and before the quarter in which he will have died: *Provided*, That for the period prior to and including the calendar year in which he will have attained the age of twenty-two there shall be

included in the divisor not more than three times the number of quarters of coverage in such period: *Provided further*, That there shall be excluded from the divisor any calendar quarter during any part of which a retirement annuity will have been payable to him.

"With respect to an employee who will have been awarded a retirement annuity, the term 'compensation' shall, for the purposes of this paragraph, mean the compensation on which such annuity will have been based;

"(10) The term 'basic amount' shall mean—

"(i) for an employee who will have been partially insured, or completely insured solely by virtue of paragraph (7) (i) or (7) (ii) or both: the sum of (A) 40 per centum of his average monthly remuneration, up to and including $75, plus (B) 10 per centum of such average monthly remuneration exceeding $75 and up to and including $250, plus (C) 1 per centum of the sum of (A) plus (B) multiplied by the number of years after 1936 in each of which the compensation, wages, or both, paid to him will have been equal to $200 or more; if the basic amount, thus computed, is less than $10 it shall be increased to $10;

"(ii) for an employee who will have been completely insured solely by virtue of paragraph (7) (iii): the sum of 40 per centum of his monthly compensation

if an annuity will have been payable to him, or, if a pension will have been payable to him, 40 per centum of the average monthly earnings on which such pension was computed, up to and including $75, plus 10 per centum of such compensation or earnings exceeding $75 and up to and including $250. If the average monthly earnings on which a pension payable to him was computed are not ascertainable from the records in the possession of the Board, the amount computed under this subdivision shall be $33.33, except that if the pension payable to him was less than $25, such amount shall be four-thirds of the amount of the pension or $13.33, whichever is greater. The term 'monthly compensation' shall, for the purposes of this subdivision, mean the monthly compensation used in computing the annuity;

"(iii) for an employee who will have been completely insured under paragraph (7) (iii) and either (7) (i) or (7) (ii): the higher of the two amounts computed in accordance with subdivisions (i) and (ii)."

SEC. 214. Section 8 is amended by striking out the word "monthly" each time it appears; by substituting for the phrase "Any such return" the phrase "The Board's record of the compensation so returned"; by substituting for the phrases "earned by" and "be earned by" the phrases "paid

to" and "will have been paid to", respectively; by inserting after the phrase "the fact that" the phrase "the Board's records show that"; and by substituting for the terms "month" and "calendar month" the word "period".

SEC. 215. Section 11 is amended to read as follows:

"Decisions of the Board determining the rights or liabilities of any person under this Act shall be subject to judicial review in the same manner, subject to the same limitations, and all provisions of law shall apply in the same manner as though the decision were a determination of corresponding rights or liabilities under the Railroad Unemployment Insurance Act except that the time within which proceedings for the review of a decision with respect to an annuity, pension, or lump-sum benefit may be commenced shall be one year after the decision will have been entered upon the records of the Board and communicated to the claimant."

SEC. 216. Section 17 is amended by substituting "209" for "210"; by inserting after the word "Act," the phrase "and of section 1426 of the Internal Revenue Code"; and by inserting after the word "include" the following: "service determined pursuant to the provisions of this Act to be".

DIVISION III

The Railroad Unemployment Insurance Act is amended as follows:

SEC. 301. (a) Subsection 1 (h) is amended by insert-

ing after the phrase "last preceding registration period" the phrase "which began with a day for which he registered at an employment office".

(b) Subsection 1 (h) is further amended by adding the following sentence:

"The term 'registration period' means also, with respect to any employee, the period which begins with the first day with respect to which a statement of sickness is filed in his behalf in accordance with such regulations as the Board may prescribe, or the first such day after the end of a registration period which will have begun with a day with respect to which a statement of sickness was filed in his behalf, and ends with the thirteenth day thereafter."

SEC. 302. Subsection 1 (j) is amended by substituting for the period at the end thereof a comma and adding "maternity insurance, or sickness insurance".

SEC. 303. The first paragraph of subsection 1 (k) is amended by inserting "(1)" after the phrase "section 4 of this Act,", and by substituting for the colon before the phrase *"Provided, however,"* the following: "; and (2) a 'day of sickness', with respect to any employee, means a calendar day on which because of any physical, mental, psychological, or nervous injury, illness, sickness, or disease he is not able to work or which is included in a maternity period, and with respect to which (i) no remuneration is payable or accrues

to him, and (ii) in accordance with such regulations as the Board may prescribe, a statement of sickness is filed within such reasonable period, not in excess of ten days, as the Board may prescribe:".

SEC. 304. Subsection 1 (l) is amended by substituting therefore the following:

"(l) The term 'benefits' (except in phrases clearly designating other payments) means the money payments payable to an employee as provided in this Act, with respect to his unemployment or sickness.

"(l 1) The term 'statement of sickness' means a statement with respect to days of sickness of an employee, and the term 'statement of maternity sickness' means a statement with respect to a maternity period of a female employee, in each case executed in such manner and form by an individual duly authorized pursuant to section 12 (i) to execute such statements, and filed as the Board may prescribe by regulations.

"(l) (2) The term 'maternity period' means the period beginning fifty-seven days prior to the date stated by the doctor of a female employee to be the expected date of the birth of the employee's child and ending with the one hundred and fifteenth day after it begins or with the thirty-first day after the day of the birth of the child, whichever is later."

SEC. 305. (a) The first sentence of subsection 2 (a) is amended to read as follows: "Benefits shall be payable to any qualified employee (i) for each day of unemployment in excess of seven during the first registration period, within a benefit year, in which he will have had seven or more days of unemployment, and for each day of unemployment in excess of four during any subsequent registration period in the same benefit year, and (ii) for each day of sickness (other than a day of sickness in a maternity period) in excess of seven during the first registration period, within a benefit year, in which he will have had seven or more such days of sickness, and for each such day of sickness in excess of four during any subsequent registration period in the same benefit year, and (iii) for each day of sickness in a maternity period."

(b) Subsection 2 (a) is further amended by inserting after the word "unemployment" in the second sentence the words "or sickness", by changing the phrase "the total amount of compensation payable to him with respect to employment" to "his total compensation (not in excess of $300 multiplied by the number of calendar months in which the employee will have had employment)", by substituting the following lines for the last line of the table:

"$1,600 to $1,999.99	$4.00
$2,000 to $2,199.99	4.50
$2,500 and over	5.00"

and by adding to the subsection, after the table, the following paragraphs:

"The amount of benefits payable for the first fourteen days in each maternity period, and for the first fourteen days in a maternity period after the birth of the child, shall be one and one-half times the amount otherwise payable under this subsection. Benefits shall not be paid for more than eighty-four days of sickness in a maternity period prior to the birth of the child. Qualification for and rate of benefits for days of sickness in a maternity period shall not be affected by the expiration of the benefit year in which the maternity period will have begun unless in such benefit year the employee will not have been a qualified employee.

"In computing benefits to be paid, days of unemployment shall not be combined with days of sickness in the same registration period."

SEC. 306. Subsection 2 (c) is amended by substituting for "one hundred" at the end thereof the following: "one hundred and thirty, and the maximum number of days of sickness, other than days of sickness in a maternity period, within a benefit year for which benefits may be paid to an employee shall be one hundred and thirty".

SEC. 307. Subsection 2 (f) is amended by inserting after the word "unemployment" each time it appears the words "or sickness".

SEC. 308. Section 3 is amended by changing the phrase "there was payable to him compensation of" to "his compensation will have been".

SEC. 309. (a) Section 4 (a) is amended by redesignating it section 4 (a–1), by including therein only paragraphs (iv) to (vii), inclusive, by redesignating said paragraphs as (i) through (iv), by inserting after the phrase "day of unemployment," in the first clause thereof the phrase "or as a day of sickness,", and by changing the semicolon at the end thereof to a period.

(b) Section 4 (a–1) is further amended by changing paragraph (ii) thereof to read as follows:

"(ii) any day in any period with respect to which the Board finds that he is receiving or will have received annuity payments or pensions under the Railroad Retirement Act of 1935 or the Railroad Retirement Act of 1937, or insurance benefits under title II of the Social Security Act, or unemployment, maternity, or sickness benefits under an unemployment, maternity, or sickness compensation law of any State or of the United States other than this Act, or any other social-insurance payments under a law of any State or of the United States: *Provided*, That if an employee receives or is held entitled to receive any such payments, other than unemployment, maternity, or sickness payments, with respect

to any period which include days of unemployment or sickness in a registration period, after benefits under this Act for such registration period will have been paid, the amount by which such benefits under this Act will have been increased by including such days as days of unemployment or as days of sickness shall be recoverable by the Board: *Provided further*, That, if that part of any such payment or payments, other than unemployment, maternity, or sickness payments, which is apportionable to such days of unemployment or days of sickness is less in amount than the benefits under this Act which, but for this paragraph, would be payable and not recoverable with respect to such days of unemployment or days of sickness, the preceding provisions of this paragraph shall not apply but such benefits under this Act for such days of unemployment or days of sickness shall be diminished or recoverable in the amount of such part of such other payment or payments;".

(c) Section 4 is further amended by inserting after subsection (a–1) a subsection to be designated (a–2), in the following language: "There shall not be considered as a day of unemployment, with respect to any employee ——", by including in subsection (a–2) paragraphs (i), (ii), (iii), and (viii) of subsection 4 (a) as it existed prior to

its amendment by this Act, and by redesignating said paragraph (viii) as paragraph (iv).

SEC. 310. Subsections 4 (b) through 4 (c) are amended by substituting for the references to "4 (a) (i)", "4 (a) (ii)", and "4 (a) (iii)", references to "4 (a-2) (i)", "4 (a-2) (ii)", and "4 (a-2) (iii)", respectively.

SEC. 311. (a) The first paragraph of subsection 5 (c) is amended by striking out the phrase "district board" at the end of the first sentence thereof and substituting "referee or such other reviewing body as the Board may establish or assign thereto", and by striking out the balance thereof.

(b) The third paragraph of subsection 5 (c) is amended by deleting the phrase "does not comply with the provisions of this Act and", and by inserting between the second and third sentences thereof the following:

"The Board may also designate one of its officers or employees to receive evidence and report to the Board whether or not any person or company is entitled to a refund of contributions or should be required to pay contributions under this Act, regardless of whether or not any claims for benefits will have been filed upon the basis of service in the employ of such person or company, and shall follow such procedure if contributions are assessed and payment is refused or payment is made and a refund claimed upon the

basis that such person or company is or will not have been liable for such contributions."

Subsection 5 (c) is further amended by adding the following paragraph:

"Any issue determinable pursuant to this subsection and subsection (f) of this section shall not be determined in any manner other than pursuant to this subsection and subsection (f)."

SEC. 312. Subsection 5 (d) is amended by substituting for the phrase "district boards" the words "reviewing bodies", and by striking out the phrase "a district board or of" each time it appears.

SEC. 313. Subsection 5 (e) is amended by deleting the phrases "upon a claim for benefits," and "allowing or denying benefits", and by changing the word "claimant" to "parties".

SEC. 314. The first sentence of subsection 5 (f) is amended to read as follows:

"Any claimant, or any railway labor organization organized in accordance with the provisions of the Railway Labor Act, of which claimant is a member, or any other party aggrieved by a final decision under subsection (e) of this section, may, only after all administrative remedies within the Board will have been availed of and exhausted,

obtain a review of any final decision of the Board by filing a petition for review within ninety days after the mailing of notice of such decision to the claimant or other party, or within such further time as the Board may allow, in the United States circuit court of appeals for the circuit in which the claimant or other party resides or will have had his principal place of business or principal executive office, or in the United States Circuit Court of Appeals for the Seventh Circuit or in the Court of Appeals for the District of Columbia."

SEC. 315. Subsection 5 (g) is amended by substituting for the phrase "benefits or refund and" the words "benefits or refund, the determination of any other matter pursuant to subsection (c) of this section, and".

SEC. 316. Subsection 5 (i) is amended by inserting after the word "claimant" each time it appears the words "or other properly interested person", and by inserting after the phrase "counsel or agent" the words "for a claimant".

SEC. 317. Section 6 is amended by substituting for the phrase "earned by", each time it appears, and for the phrase "be earned by", the phrases "paid to" and "have been paid to", respectively.

SEC. 318. Subsection 8 (a) is amended by changing the phrases "$300 for any calendar month" and "$300" to "$300 multiplied by the number of calendar months in the

calendar year in which the employee will have had employment"; by changing the word "payable" to "paid" wherever it appears; and by substituting for the portion of the subsection beginning with the words "month, and each such" and continuing to the end of the subsection, the following: "year, and each employer other than a subordinate unit of a national railway labor organization employer shall be liable for that proportion of the contribution which the compensation paid by him to the employee bears to the total compensation paid to the employee by all such employers; and in the event that the compensation paid by such employers to the employee is less than $300 multiplied by the number of calendar months in such year in which the employee will have had employment each subordinate unit railway labor organization employer shall be liable for such proportion of any additional contribution as the compensation paid by such employer bears to the compensation paid by all such employers."

SEC. 319. Subsection 12 (b) is amended by inserting after the phrase "being carried on in the District of Columbia," the phrase "or the District Court of the United States for the Northern District of Illinois, if the investigation or proceeding is being carried on in the Northern District of Illinois,"; and by inserting before the phrase "in such pro-

ceedings may run" the phrase "or of the District Court of the United States for the Northern District of Illinois".

SEC. 320. Subsection 12 (f) is amended by changing the phrases "unemployment compensation laws", "unemployment benefits", and "unemployment compensation law" to "unemployment compensation, sickness, or maternity laws", "unemployment, sickness, or maternity benefits", and "unemployment compensation, sickness, or maternity law", respectively.

SEC. 321. Subsection 12 (g) is amended by inserting after the word "unemployment", each time it appears, the phrase ", sickness, or maternity", and by striking out the phrase ", with respect to unemployment after June 30, 1939,".

SEC. 322. Subsection 12 (i) is amended by inserting the following paragraph between the second and third paragraphs thereof:

"The Board shall provide a form or forms for statements of sickness and a procedure for the execution and filing thereof. Such forms and procedure shall be designed with a view to having such statements provide substantial evidence of the days of sickness of the employee and, in the case of maternity sickness, the expected date of birth and the actual date of birth of the child. Such statements may be executed by any doctor (authorized to practice in the State or foreign

jurisdiction in which he practices his profession) or any officer or supervisory employee of a hospital, clinic, group health association, or other similar organization, who is qualified under such regulations as the Board may prescribe to execute such statements. The Board shall issue regulations for the qualification of such persons to execute such statements. When so executed by any such person, or, in the discretion of the Board, by others designated by the Board individually or by groups, they may be accepted as initial proof of days of sickness sufficient to certify for payment a claim for benefits."

SEC. 323. Section 12 is further amended by adding thereto the following subsections:

"(n) Any employee claiming, entitled to, or receiving sickness benefits under this Act may be required to take such examination, physical, medical, mental, or otherwise, in such manner and at such times and by such qualified individuals, including medical officers or employees of the United States or a State, as the Board may prescribe. The place or places of examination shall be reasonably convenient for the employee. No sickness or maternity benefits shall be payable under this Act with respect to any period during which the employee unreasonably refuses to take or willfully obstructs an examination as prescribed by the Board.

"Any doctor who renders any attendance, treatment,

attention, or care, or performs any examination with respect to a sickness of an employee or as to the expected date of birth of a female employee's child, or the birth of such a child, upon which a claim or right to benefits under this Act is based, shall furnish the Board, in such manner and form and at such times as the Board by regulations may prescribe, information and reports relative thereto and to the condition of the employee. An application for sickness or maternity benefits under this Act shall contain a waiver of any doctor-patient privilege that the employee may have with respect to any sickness or maternity period upon which such application is based: *Provided*, That such information shall not be disclosed by the Board except in a court proceeding relating to any claim for benefits by the employee under this Act.

"The Board may enter into agreements or arrangements with doctors, hospitals, clinics, or other persons for securing the examination, physical, medical, mental, or otherwise, of employees claiming, entitled to, or receiving sickness or maternity benefits under this Act and the performance of services or the use of facilities in connection with the execution of statements of sickness. The Board may compensate any such doctors, hospitals, clinics, or other persons upon such reasonable basis as the Board shall prescribe. Such doctors, hospitals, clinics, or other persons and persons employed by any of them shall not be subject to the Act of

Congress approved March 3, 1917 (39 Stat. 1106, ch. 163, sec. 1). In the event that the Board pays for the physical or mental examination of an employee or for the execution of a statement of sickness and such employee's claim for benefits is based upon such examination or statement, the Board shall deduct from any sickness or maternity benefits payable to the employee pursuant to such claim such amount as, in the judgment of the Board, is a fair and reasonable charge for such examination or execution of such statement.

"(o) Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement.

"(p) The Board may, after hearing, disqualify any person from executing statements of sickness who, the Board finds, (i) will have solicited, or will have employed another to solicit, for himself or for another the execution of any such statement, or (ii) will have made false or misleading statements to the Board, to any employer, or to any employee, in connection with the awarding of any benefits under this Act, or (iii) will have failed to submit medical reports and records required by the Board under this Act, or will have failed to submit any other reports, records, or information required by the Board in connection with the administration of this Act or any other Act heretofore or hereafter administered by the Board, or (iv) will have engaged in any malpractice or other professional misconduct. No fees or charges of any kind shall accrue to any such person from the Board after his disqualification.

"(q) The Board shall engage in and conduct research projects, investigations, and studies with respect to the cause, care, and prevention of, and benefits for, accidents and disabilities and other subjects deemed by the Board to be related thereto, and shall recommend legislation deemed advisable in the light of such research projects, investigations, and studies."

SEC. 324. Subsection 13 (b) is amended by inserting after "1939," in the first, second, and third sentences thereof,

"and for the payment of sickness and maternity benefits for sickness or for maternity periods after June 30, 1946,", "or to sickness or maternity benefits under a sickness or maternity law of any State with respect to sickness or to maternity periods occurring after June 30, 1946,", and "or of State sickness or maternity laws after June 30, 1946", respectively.

DIVISION IV

SEC. 401. Except as otherwise provided in this Act, the provisions thereof shall become effective upon approval.

SEC. 402. Sections 203, 205, 206, 207, 210, 211, 213, 306, and 318 shall become effective on January 1, 1946.

SEC. 403. Sections 301, 302, 303, 304, 305 (except for the revision of the table which shall be effective July 1, 1945), 307, 308, 309, and 310 shall become effective on July 1, 1946.

SEC. 404. Except as hereinafter provided, the rights of persons to whom pensions or annuities were awarded before the date of approval of this Act shall continue to be governed by the provisions of law applicable thereto prior to the approval of this Act. In the award of annuities or increases in annuities after the date of approval of this Act on applications on which no award or a partial award has been made prior to said date, service prior to 1937 (and the compensation therefor) shall be credited only if such service is creditable under the amendments made by sec-

tion 201. No annuity or increase in annuity so awarded crediting such service shall begin to accrue prior to the date of approval of this Act.

SEC. 405. The election of a joint and survivor annuity made before the date of approval of this Act by an individual to whom an annuity accrues before January 1, 1946, shall be given effect as though the provisions of law under which the election was made had continued to be operative unless no annuity was awarded to such individual prior to the date of approval of this Act and, within one year after the approval of this Act, he revokes the election in such form and manner as the Board may prescribe. Such election by an individual to whom no annuity accrues before January 1, 1946, shall also be given such effect if the individual, before January 1, 1947, reaffirms the election in such form and manner as the Board may prescribe.

SEC. 406. Payments upon death as provided in sections 5 of the Railroad Retirement Acts of 1935 and 1937, other than survivor annuities pursuant to an election, shall be made only with respect to deaths occurring before January 1, 1946.

SEC. 407. An individual to whom an annuity accrued prior to January 1, 1946, and who would as of the date of initial accrual have been entitled to an annuity in a greater amount by reason of the amendments made by

section 201, 202, 205, or 210 had such amendments been in effect at the date of initial accrual (or, in the case of a survivor annuity, at the date of initial accrual of the annuity from which it derives), shall, without further application therefor other than a statement of any service claimed under section 202, be awarded an annuity in such greater amount beginning as of the date the applicable amendment shall have become operative: *Provided, however,* That, in such award service before 1937 (and the compensation therefor) shall not be credited if such service would not be creditable upon application of all the amendments made by this Act. In determinations made pursuant to this section any individual to whom an annuity based on not less than five years of service accrues before January 1, 1946, shall be deemed to have a "current connection with the railroad industry". If an annuity increased pursuant to this section is a joint and survivor annuity, the increase shall be in the same form, the actuarial value being computed as of the date the increase begins, unless on that date there is no spouse living for whom the election was made, in which case the increase shall be awarded on a single life basis. If the increase herein provided effects a survivor annuity only, the increase shall be so determined as to bear the same ratio to the survivor annuity, as the increase in the basic annuity would bear

~~to such basic annuity, if the employee annuitant were living and had made no joint and survivor election.~~

~~SEC. 408. No annuities accruing after the month in which this Act is approved shall be reduced under section 2 (a) 3 of the Railroad Retirement Act of 1937 to compensate for an annuity terminated by recovery from disability.~~

~~SEC. 409. In the application of section 6 of the Railroad Retirement Act of 1937 with respect to persons who were not employers before the enactment of section 1 of this Act, the dates January 1, 1945, and January 1, 1946, shall be substituted for March 1, 1937, and July 1, 1937, respectively.~~

~~SEC. 410. The enactment of section 1 of this Act shall cause subsection 1 (b) of the Railroad Unemployment Insurance Act to be superseded.~~

TITLE I—AMENDMENTS TO RAILROAD RETIREMENT ACT OF 1937

ADDITION OF CERTAIN DEFINITIONS

SECTION 1. Section 1 of the Railroad Retirement Act of 1937, as amended, is amended by adding at the end thereof the following new subsections:

"(o) An individual has 'a current connection with the railroad industry' on a particular date if, in any thirty consecutive calendar months before the month in which such date occurs, he was in service as an employee in not less

than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he was not engaged in any regular employment other than employment for an employer in the period before such month and after the end of such thirty calendar months.

"(p) The term 'occupational injury or disease' means (1) accidental injury arising out of and in the course of employment as an employee, (2) such occupational disease or infection as arises out of such employment or as naturally or unavoidably results from such accidental injury, or (3) injury caused by the willful act of a third person directed against an individual because of his employment as an employee.

"(q) The term 'wages' (except when used in section 5 (d) (1)) means all compensation earned by an employee after December 31, 1936, excluding that part of such compensation which, after compensation equal to $3,000 had been earned by an employee during any calendar year, was earned by such employee during such calendar year; but in computing such compensation no part of any month's compensation in excess of $300, earned before January 1, 1947, shall be recognized.

"(r) The term 'survivor benefit credit' means an amount equal to the sum of the following—

"(1) (A) 40 per centum of the amount of an in-

dividual's average monthly wage if such average monthly wage does not exceed $50, or (B) if such average monthly wage exceeds $50, 40 per centum of $50, plus 10 per centum of the amount by which such average monthly wage exceeds $50 and does not exceed $250, and

"(2) an amount equal to 1 per centum of the amount computed under paragraph (1) multiplied by the number of years in which $200 or more of wages were earned by such individual.

Where the survivor benefit credit thus computed is less than $10, such credit shall be $10.

"(s) The term 'average monthly wage' means the quotient obtained by dividing the total wages earned by an individual before the quarter in which he died, became entitled to receive an annuity under paragraph 1 of section 2 (a), or attained the age of sixty-five if he became entitled to receive an annuity under section 2 (a) before attaining the age of sixty-five, whichever first occurred, by three times the number of quarters elapsing after 1936 and before such quarter in which he died, became so entitled, or so attained the age of sixty-five, excluding any quarter prior to the quarter in which he attained the age of twenty-two during which he earned less than $50 of wages.

"(t) The term 'completely insured individual' means

any individual with respect to whom it appears to the satisfaction of the Board that—

"(1) He had not less than one quarter of coverage for each two of the quarters elapsing after 1936, or after the quarter in which he attained the age of twenty-one, whichever quarter is later, and up to but excluding the quarter in which he attained the age of sixty-five, or died, whichever first occurred, and in no case less than six quarters of coverage; or

"(2) He had at least forty quarters of coverage.

As used in this subsection, and in subsections (u) and (v) of this section, the term 'quarter' and the term 'calendar quarter' mean a period of three calendar months ending on March 31, June 30, September 30, or December 31. When the number of quarters specified in paragraph (1) of this subsection is an odd number, for purposes of such paragraph such number shall be reduced by one. In any case where an individual has earned in a calendar year $3,000 or more in wages, each quarter of such year following his first quarter of coverage shall be deemed a quarter of coverage, excepting any quarter in such year in which such individual dies or (having attained the age of sixty-five) is or becomes entitled to receive an annuity under section 2 and any quarter succeeding such quarter in which he died or was or became so entitled.

"(u) The term 'partially insured individual' means any individual with respect to whom it appears to the satisfaction of the Board that he earned wages of not less than $50 in each of not less than six of the twelve calendar quarters immediately preceding the quarter in which he died.

"(v) The term 'quarter of coverage' means a calendar quarter in which the individual earned not less than $50 in wages; except that for each calendar year during the period beginning January 1, 1937, and ending December 31, 1946, an individual's number of quarters of coverage shall be determined in accordance with the following table:

If during the calendar year the individual earned wages in the following number of calendar months—	*And the total wages earned during such calendar year is—*			
	$50 but less than $100	*$100 but less than $150*	*$150 but less than $200*	*$200 or more*
	Then the quarters of coverage for such calendar year shall be—			
1 but not more than 3	*1*	*1*	*1*	*1*
4 but not more than 6	*1*	*2*	*2*	*2*
7 but not more than 9	*1*	*2*	*3*	*3*
10 or more	*1*	*2*	*3*	*4*

For the purposes of subsections (s) and (u) of this section if an individual's quarters of coverage in any calendar year before 1947, as determined from the table—

"(1) is one, his wages for such year shall be deemed to have been earned in the last calendar quarter of such year;

"(2) are two, one-half of his wages for such year shall be deemed to have been earned in each of the last two calendar quarters of such year;

"(3) are three, one-third of his wages for such year shall be deemed to have been earned in each of the last three calendar quarters of such year; and

"(4) are four, one-fourth of his wages for such year shall be deemed to have been earned in each calendar quarter of such year.

"(w) The term 'widow' (except when used in section 4 (e)) means the surviving wife of an individual who either (1) is the mother of such individual's son or daughter, or (2) was married to him prior to the beginning of the twelfth month before the month in which he died.

"(x) The term 'child' (except when used in section 4 (e)) means the child of an individual, and the stepchild of an individual by a marriage contracted prior to the date upon which he attained the age of sixty and prior to the beginning of the twelfth month before the month in which he died, and a child legally adopted by an individual prior to the date upon which he attained the age of sixty and prior to the beginning of the twelfth month before the month in which he died.

"(y) In determining whether an applicant is the widow, child, or parent of a completely insured or partially

insured individual, the Board shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual was domiciled at the time of his death, or if such insured individual was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a widow, child, or parent shall be deemed such.

"(z) A widow shall be deemed to have been living with her husband at the time of his death if they were both members of the same household on the date of his death, or she was receiving regular contributions from him toward her support on such date, or he had been ordered by any court to contribute to her support."

AMENDMENT TO SECTION 2 OF RAILROAD RETIREMENT ACT OF 1937

SEC. 2. Section 2 of the Railroad Retirement Act of 1937, as amended, is amended to read as follows:

"ANNUITIES

"SEC. 2. (a) The following-described individuals, if they shall have been employees on or after August 29, 1935, shall, subject to the conditions set forth in subsections (b), (c), (d), and (e), be eligible for annuities after they shall have ceased to render compensated service to any

person, whether or not an employer as defined in section 1 (a), (but with the right to engage in other employment to the extent not prohibited by subsection (e)):

"1. Individuals who on or after August 29, 1935, shall be sixty-five years of age or over.

"2. Women who on or after January 1, 1947, shall be sixty years of age or over and have completed thirty years of service.

"3. Individuals (other than those covered by paragraph 2) who on or after August 29, 1935, shall be sixty years of age or over and have completed thirty years of service, but the annuity of such an individual shall be reduced by one one-hundred-and-eightieth for each calendar month that such individual is under age sixty-five when the annuity begins to accrue.

"4. Individuals who on or after August 29, 1935, shall be either sixty years of age or over or shall have completed thirty years of service, and whose permanent physical or mental condition is such that they are unable to engage in any regular employment for hire.

"5. Individuals who on or after January 1, 1947, have completed ten years of service and whose permanent physical or mental condition, as the result of occupational injury or disease, is such that they are unable to engage in any regular employment for hire.

"6. Individuals who on or after January 1, 1947, have, on the date as of which the annuity begins to acrue, a current connection with the railroad industry and, on such date, either have completed twenty years of service or have attained the age of sixty, and whose permanent physical or mental condition, as the result of occupational injury or disease, is such as to be disabling for work in their regular occupation as employees. The Board, with the cooperation of employers and employees, shall secure for purposes of this paragraph the establishment of standards determining the physical and mental conditions which are permanently disabling for work in the several occupations in the railroad industry, and the Board, employers, and employees shall cooperate in the promotion of the greatest practicable degree of uniformity in the standards applied by the several employers. An individual's condition shall be deemed to be disabling for work in his regular occupation as an employee if he has been disqualified by his employer because of disability for service in his regular occupation as an employee in accordance with the applicable standards so established; but if the employee has not been so disqualified by his employer, the Board shall determine whether his condition is disabling for work in his regular occupation as an employee in accordance with the standards generally established; and, if the employee's regular occupation as an

employee is not one with respect to which standards have been established, the standards relating to a reasonably comparable occupation shall be used. If there is no such comparable occupation, the Board shall determine whether the employee's condition is disabling for work in his regular occupation as an employee by determining whether under the practices generally prevailing in industries in which such occupation exists such condition is a permanent disqualification for work in such occupation. For the purposes of this section, an employee's 'regular occupation' shall be deemed to be the occupation in which he has been engaged as an employee in more calendar months than the calendar months in which he has been engaged in any other occupation as an employee during the last preceding five calendar years, whether or not consecutive, in each of which years he has earned compensation, except that, if an employee establishes that during the last fifteen consecutive calendar years he has been engaged in another occupation as an employee in one-half or more of all the months in which he has earned compensation, he may claim such other occupation as his regular occupation as an employee.

"(b) Such satisfactory proof shall be made, as prescribed by the Board, of the physical or mental condition referred to in paragraph 4, 5, or 6 of subsection (a), and from time to time, of the continuance of such condition

(determined in accordance with the tests applied in the original determination of such condition) until the employee attains the age of sixty-five. If the individual fails to comply with the requirements prescribed by the Board as to proof of the continuance of such condition until he attains the age of sixty-five years, his right to an annuity by reason thereof shall, except for good cause shown to the Board, cease, but without prejudice to his rights to have subsequently awarded to him any annuity to which he may be entitled. If before attaining the age of sixty-five an individual in receipt of an annuity under paragraph 4, 5, or 6 of subsection (a) is found by the Board to be no longer in the physical or mental condition referred to in such paragraph his annuity shall cease upon the last day of the month in which such condition is found by the Board to have ceased to exist, but without prejudice to his rights to have subsequently awarded to him any annuity to which he may be entitled.

"(c) An annuity shall be paid only if the applicant has relinquished such rights as he may have had to return to the service of an employer and of the person by whom he was last employed; but this requirement shall not apply to the individuals mentioned in paragraphs 4, 5, or 6 of subsection (a) prior to attaining the age of sixty-five.

"(d) An annuity shall begin to accrue as of a date to

be specified in a written application (to be made in such manner and form as may be prescribed by the Board and to be signed by the individual entitled thereto), but—

"(1) not before the date following the last day of compensated service of the applicant, and

"(2) not more than sixty days before the filing of the application.

"(e) No annuity shall be paid with respect to any month in which an individual in receipt of an annuity hereunder (1) renders compensated service to an employer, (2) renders compensated service to the last person by whom he was employed prior to the date on which the annuity begins to accrue, or (3) in the case of an annuity under paragraph 6 of subsection (a), earns more than $75 in service for hire or in self-employment. Individuals receiving annuities shall report to the Board immediately all such compensated service and earnings."

PROVISION RELATING TO MINIMUM ANNUITIES

SEC. 3. Subsection (e) of section 3 of the Railroad Retirement Act of 1937, as amended, is amended to read as follows:

"(e) If an individual entitled to an annuity—

"(1) was an employee when he attained age sixty-five and has completed twenty years of service, or

"(2) had, on the date as of which such annuity

began to accrue, a current connection with the railroad industry and had, on such date, completed five years of service,

the minimum annuity payable shall, before any reduction pursuant to paragraph 3 of section 2 (a), be whichever of the following is the least: (1) $3 multiplied by the number of his years of service, (2) $50, or (3) his monthly compensation."

REPEAL OF SECTIONS 4 AND 5; ADDITION OF SECTIONS PROVIDING FOR SURVIVOR BENEFITS

SEC. 4. The Railroad Retirement Act of 1937, as amended, is amended by striking out sections 4 and 5 thereof, and by inserting in lieu of such sections the following:

"SURVIVOR BENEFITS

"Child's Insurance Benefits

"SEC. 4. (a) (1) Every child (as defined in section 1 (x)) of an individual who died a completely or partially insured individual (as defined in section 1 (t) and (u)) after December 31, 1946, if such child (A) has filed application for child's insurance benefits, (B) at the time such application was filed was unmarried and had not attained the age of 18, and (C) was dependent upon such individual at the time of such individual's death, shall be entitled to receive a child's insurance benefit for each month, beginning with the month in which such child becomes so entitled to

such insurance benefits, and ending with the month immediately preceding the first month in which any of the following occurs: such child dies, marries, is adopted, or attains the age of eighteen.

"(2) Such child's insurance benefit for each month shall be equal to one-half of the survivor benefit credit (as defined in section 1 (r)) of the individual with respect to whose wages the child is entitled to receive such benefit, except that, when there is more than one such individual such benefit shall be equal to one-half of whichever survivor benefit credit is greatest.

"(3) A child shall be deemed to have been dependent upon a father or adopting father at the time of the death of such individual unless, at the time of such death, such individual was not living with or contributing to the support of such child and—

"(A) such child is neither the legitimate nor adopted child of such individual, or

"(B) such child had been adopted by some other individual, or

"(C) such child was living with and supported by such child's stepfather.

"(4) A child shall be deemed to have been dependent upon a mother, adopting mother, or stepparent at the time of the death of such individual only if, at the time of such

death, no parent other than such individual was contributing to the support of such child and such child was not living with its father or adopting father.

"Widow's Insurance Benefits

"(b) (1) Every widow (as defined in section 1 (w)) of an individual who died a completely insured individual after December 31, 1946, if such widow (A) has not remarried, (B) has attained the age of sixty-five, (C) has filed application for widow's insurance benefits, (D) was living with such individual at the time of his death, and (E) is not entitled to receive an annuity under section B, or is entitled to receive an annuity under section 2 which is less than three-fourths of the survivor benefit credit of her husband, shall be entitled to receive a widow's insurance benefit for each month, beginning with the month in which she becomes so entitled to such insurance benefits and ending with the month immediately preceding the first month in which any of the following occurs: she rem rries, dies, or becomes entitled to receive an annuity under section 2 equal to or exceeding three-fourths of the survivor benefit credit of her husband.

"(2) Such widow's insurance benefit for each month shall be equal to three-fourths of the survivor benefit credit of her deceased husband, except that, if she is entitled to receive an annuity under section 2 for any month, such

widow's insurance benefit for such month shall be reduced by an amount equal to the annuity under section 2 to which such widow is entitled.

"Widow's Current Insurance Benefits

"(c) (1) Every widow (as defined in section 1 (w)) of an individual who died a completely or partially insured individual after December 31, 1946, if such widow (A) has not remarried, (B) is not entitled to receive a widow's insurance benefit, and is not entitled to receive an annuity under section 2, or is entitled to receive an annuity under section 2 which is less than three-fourths of the survivor benefit credit of her husband, (C) was living with such individual at the time of his death, (D) has filed application for widow's current insurance benefits, and (E) at the time of filing such application has in her care a child of such deceased individual entitled to receive a child's insurance benefit, shall be entitled to receive a widow's current insurance benefit for each month, beginning with the month in which she becomes so entitled to such current insurance benefits and ending with the month immediately preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to receive a child's insurance benefit, she becomes entitled to receive an annuity under paragraph 1 or 2 of section 2 (a) equal to or exceeding three-fourths of the survivor

benefit credit of her deceased husband, she becomes entitled to receive a widow's insurance benefit, she remarries, she dies.

"(2) Such widow's current insurance benefit for each month shall be equal to three-fourths of the survivor benefit credit of her deceased husband, except that, if she is entitled to receive an annuity under section 2 for any month, such widow's current insurance benefit for such month shall be reduced by an amount equal to the annuity under section 2 to which such widow is entitled or by an amount equal to such current insurance benefit, whichever amount is less.

"Parent's Insurance Benefit

"(d) (1) Every parent (as defined in this subsection) of an individual who died a completely insured individual after December 31, 1946, leaving no widow and no unmarried surviving child under the age of eighteen, if such parent (A) has attained the age of sixty-five, (B) was wholly dependent upon and supported by such individual at the time of such individual's death and filed proof of such dependency and support within two years of such date of death, (C) has not married since such individual's death, (D)is not entitled to receive any other insurance benefits under this section or any annuity under section 2, or is entitled to receive one or more of such benefits or annuity

for a month, but the total for such month is less than one-half of the survivor benefit credit of such deceased individual, and (E) has filed application for parent's insurance benefits, shall be entitled to receive a parent's insurance benefit for each month, beginning with the month in which such parent becomes so entitled to such parent's insurance benefits and ending with the month immediately preceding the first month in which any of the following occurs: such parent dies, marries, or becomes entitled to receive for any month an insurance benefit or benefits (other than a benefit under this subsection) or an annuity under section 2 in a total amount equal to or exceeding one-half of the survivor benefit credit of such deceased individual.

"(2) Such parent's insurance benefit for each month shall be equal to one-half of the survivor benefit credit of such deceased individual, except that, if such parent is entitled to receive an insurance benefit or benefits for any month (other than a benefit under this subsection) or an annuity under section 2, such parent's insurance benefit for such month shall be reduced by an amount equal to the total of such other benefit or benefits or annuity for such month. When there is more than one such individual with respect to whose wages the parent is entitled to receive a parent's insurance benefit for a month, such benefit shall be equal to one-half of whichever survivor benefit credit is greatest.

"(3) As used in this subsection, the term 'parent' means the mother or father of an individual, a stepparent of an individual by a marriage contracted before such individual attained the age of sixteen, or an adopting parent by whom an individual was adopted before he attained the age of sixteen.

"Lump-Sum Death Payments

"(e) Upon the death, after December 31, 1946, of an individual who died a completely or partially insured individual leaving no surviving widow, child, or parent who would, on filing application in the month in which such individual died, be entitled to a benefit for such month under subsection (a), (b), (c), or (d) of this section, an amount equal to six times the survivor benefit credit of such individual shall be paid in a lump-sum to the following person (or if more than one, shall be distributed among them) whose relationship to the deceased is determined by the Board, and who is living on the date of such determination: To the widow or widower of the deceased; or, if no such widow or widower be then living, to any child or children of the deceased and to any other person or persons who are, under the intestacy law of the State where the deceased was domiciled, entitled to share as distributees with such children of the deceased, in such proportions as is provided by such law; or, if no widow or widower and no such child

and no such other person be then living, to the parent or to the parents of the deceased, in equal shares. A person who is entitled to share as distributee with an above-named relative of the deceased shall not be precluded from receiving a payment under this subsection by reason of the fact that no such named relative survived the deceased or of the fact that no such named relative of the deceased was living on the date of such determination. If none of the persons described in this subsection be living on the date of such determination, such amount shall be paid to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the expenses of burial of the deceased. No payment shall be made to any person under this subsection, unless application therefor shall have been filed, by or on behalf of any such person (whether or not legally competent), prior to the expiration of two years after the date of death of such individual.

"Application

"(f) (1) An individual who would have been entitled to a benefit under subsection (a), (b), (c), or (d) for any month had he filed application therefor prior to the end of such month, shall be entitled to such benefit for such month if he files application therefor prior to the end of the third month immediately succeeding such month.

"(2) No application for any benefit under this section

filed prior to three months before the first month for which the applicant becomes entitled to receive such benefit shall be accepted as an application for the purposes of this section.

"(3) An application for any payment or benefit under this section shall be made and filed in such manner as the Board may by regulation prescribe.

"Family Payments

"(g) The Board may, in its discretion, certify to the Secretary of the Treasury any two or more individuals of the same family for joint payment of the total benefits and annuities payable to such individuals under this Act.

"Benefits Due But Not Paid at Death

"(h) The amount of any monthly benefit or lump sum due any individual under this section but not paid to such individual before his death shall be paid to the same persons, and subject to the same conditions and limitations, as though (1) such amount constituted a lump sum payable under subsection (e) by reason of the death of the individual with respect to whose wages such amount was payable, and (2) the individual with respect to whose wages such amount was payable had died on the date of the death of the individual to whom such amount was due.

"Assignment

"(i) The right of any individual to any future payment under this section shall not be transferable or assignable at

law or in equity, and none of the moneys paid or payable or rights existing under this section shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

"When an Individual Is Deemed Entitled to Receive an Annuity

"(j) For the purposes of this section and subsections (s) and (t) of section 1, an individual shall be deemed to be entitled to receive an annuity for any month if an annuity is, or thereafter becomes, payable to him for the accrual during such month.

"REDUCTION AND INCREASE OF INSURANCE BENEFITS

"SEC. 5. (a) Whenever the total of benefits under section 4, payable for a month with respect to an individual's wages, is more than $20 and exceeds (1) $85, or (2) an amount equal to twice the survivor benefit credit of such individual, or (3) an amount equal to 80 per centum of his average monthly wage (as defined in section 1 (s)), whichever of such three amounts is least, such total of benefits shall, prior to any deductions under subsection (d), be reduced to such least amount or to $20, whichever is greater.

"(b) Whenever the benefit or total of benefits under section 4, payable for a month with respect to an individual's wages, is less than $10, such benefit or total of benefits shall,

prior to any deductions under subsection (d), be increased to $10.

"(c) Whenever a decrease or increase of the total of benefits for a month is made under subsection (a) or (b) of this section, each benefit shall be proportionately decreased or increased, as the case may be.

"(d) Deductions, in such amounts and at such time or times as the Board shall determine, shall be made from any payment or payments under section 4 to which an individual is entitled, until the total of such deductions equals such individual's benefit or benefits for any month in which such individual:

"(1) rendered services for wages (as defined in section 209 (a) of the Social Security Act, as amended) of not less than $15; or

"(2) if a child under eighteen and over sixteen years of age, failed to attend school regularly and the Board finds that attendance was feasible; or

"(3) if a widow entitled to a widow's current insurance benefit, did not have in her care a child of her deceased husband entitled to receive a child's insurance benefit.

"(e) If more than one event occurs in any one month which would occasion deductions equal to a benefit for such

month, only an amount equal to such benefit shall be deducted.

"(f) Any individual in receipt of benefits subject to deduction under subsection (d) (or who is in receipt of such benefits on behalf of another individual), because of the occurrence of an event enumerated therein, shall report such occurrence to the Board prior to the receipt and acceptance of an insurance benefit for the second month following the month in which such event occurred. Any such individual having knowledge thereof, who fails to report any such occurrence, shall suffer an additional deduction equal to that imposed under subsection (d)."

RETURNS AND RECORDS AS TO COMPENSATION EMPLOYEES

SEC. 5. Section 8 of the Railroad Retirement Act of 1937, as amended, is amended to read as follows:

"RETURNS OF COMPENSATION AND CONCLUSIVENESS OF RECORDS OF COMPENSATION

SEC. 8. Employees shall file with the Board, in such manner and form and at such times as the Board by rules and regulations may prescribe, returns under oath of compensation of employees, and, if the Board shall so require, shall furnish employees with statements of their compensation as reported to the Board. The Board's record of the

compensation so returned shall be conclusive as to the amount of compensation earned by an employee during each month covered by the return, and the fact that the Board's records show that no return was made of the compensation claimed to be earned by an employee during a particular calendar month shall be taken as conclusive that no compensation was earned by such employee during that month, unless the error in the amount of compensation in the one case, or failure to make or record return of the compensation in the other case, is called to the attention of the Board within four years after the last date on which return of the compensation was required to be made."

CHANGES IN EXISTING LAW MADE NECESSARY BY PRECEDING AMENDMENTS

SEC. 6. (a) The third sentence of paragraph (h) of section 1 of the Railroad Retirement Act of 1937, as amended, is amended by striking out "for the purposes of subsections (a), (c), and (d) of section 2 and subsection (a) of section 5" and inserting in lieu thereof "for the purposes of subsections (a), (d), and (e) of section 2, and for the purposes of section 4,".

(b) Subsection (f) of section 3 of the Railroad Retirement Act of 1937, as amended, is amended to read as follows:

"(f) Annuity payments due any individual but not paid to such individual before his death shall be paid to the same

persons, and subject to the same conditions and limitations, as though such payments constituted a lump sum payable under section 4 (e) with respect to the death of such individual."

(c) Subsection (h) of section 3 of the Railroad Retirement Act of 1937, as amended, is amended by striking out "except as provided in subdivision 3 of section 2 (a)" and inserting in lieu thereof "except that if, under subsection (b) of section 2, an individual's annuity ceases the provisions of this subsection shall not apply with respect to any annuity subsequently awarded to which such individual may be entitled".

(d) Subsection (m) of section 3A of the Railroad Retirement Act of 1937, as amended, is hereby repealed.

(e) (1) Subsection (n) of section 3A of the Railroad Retirement Act of 1937, as amended, is amended by striking out the phrase "annuities, pensions and death benefits" and inserting in lieu thereof the following: "annuities, pensions, death benefits, insurance benefits, and lump sum payments".

(2) Section 9 of such Act is amended by striking out the phrase "annuities, pensions, or death benefits" wherever it appears in such section, and inserting in lieu thereof the following: "annuities, pensions, death benefits, insurance benefits, or lump sum payments".

(3) Subsection (b) 1 of section 10 of such Act is

amended by striking out the phrase "pensions, annuities, or death benefits" and inserting in lieu thereof the following: "annuities, pensions, death benefits, insurance benefits, or lump sum payments".

(4) Subsection (b) 5 of section 10 of such Act is amended by striking out the phrase "annuities or death benefits" and inserting in lieu thereof the following: "annuities, death benefits, insurance benefits, or lump sum payments".

(5) The third sentence of section 11 of such Act is amended by striking out the phrase "annuity, pension, or death benefit" wherever it appears in such sentence and inserting in lieu thereof the following: "annuity, pension, death benefit, insurance benefit, or lump sum payment".

(6) Subsections (a) and (b) of section 15 of such Act are amended by striking out the phrase "annuities, pensions, and death benefits" wherever it appears in such subsections, and inserting in lieu thereof the following: "annuities, pensions, death benefits, insurance benefits, and lump sum payments".

SAVING PROVISIONS

SEC. 7. (a) The provisions of paragraphs 2 and 4 of section 2 (a), and of section 3 (e), of the Railroad Retirement Act of 1937, as in force after this title takes effect, shall be applicable to individuals who became eligible for annuities

before January 1, 1947, without further application therefor, but such provisions shall not result in the payment of any annuity, with respect to any calendar month prior to January 1, 1947, in a higher amount than would be payable under the Railroad Retirement Act of 1937 as in force prior to the date on which this title takes effect. If an annuity increased pursuant to such provisions is a joint and survivor annuity, the increase shall be in the same form, the actuarial value being computed as of the date the increase begins, unless on that date there is no spouse living for whom the election was made, in which case the increase shall be awarded on a single life basis. If the increase affects a survivor annuity only, the increase shall be so determined as to bear the same ratio to the survivor annuity as the increase in the basic annuity would bear to such basic annuity if the employee annuitant were living and had made no joint and survivor election. For the purposes of section 3 (e) of the Railroad Retirement Act of 1937, as amended by this Act, an individual to whom an annuity began to accrue before January 1, 1947, if such annuity was based on not less than five years of service, shall be deemed to have had a current connection with the railroad industry on the date as of which such annuity began to accrue.

(b) Notwithstanding the amendment by this Act of section 3 (f) of the Railroad Retirement Act of 1937, in

any case in which the individual referred to in such section died before January 1, 1947, such section shall continue in effect as though this Act had not been enacted.

(c) Notwithstanding the repeal by this Act of section 4 of the Railroad Retirement Act of 1937, in any case where an election was made under such section 4 prior to January 1, 1947, the election shall be given effect as though this Act had not been enacted; except that—

(1) If the annuity of the individual who made the election did not begin to accrue before January 1, 1947, the election shall be considered not to have been made unless the individual, prior to January 1, 1948, reaffirms such election in such manner as the Railroad Retirement Board shall by regulations prescribe.

(2) If the annuity of the individual who made the election began to accrue, but was not awarded, before January 1, 1947, the election shall be considered not to have been made if such individual, prior to January 1, 1948, revokes such election in such manner as the Railroad Retirement Board shall by regulations prescribe.

(d) Notwithstanding the repeal by this Act of section 3A (m) and section 5 of the Railroad Retirement Act of 1937, such section 3A (m) and such section 5 shall continue in effect with respect to compensation earned after December 31, 1936, and before January 1, 1947, by an individual as

an employee, as though this Act had not been enacted, in the following cases:

(1) If such individual dies before January 1, 1947.

(2) If such individual dies on or after January 1, 1947, and died neither completely nor partially insured within the meaning of subsection (t) or (u) of section 1 of the Railroad Retirement Act, as amended by this Act.

(3) If such individual dies on or after January 1, 1947, and a lump-sum death payment under section 4 (e) of the Railroad Retirement Act of 1937, as amended by this Act, is payable, except that the death benefit shall be reduced by the amount of such lump-sum death payment.

(4) If such individual dies on or after January 1, 1947, leaving a surviving widow, child, or parent who would, on filing application in the month in which such individual died, be entitled to a benefit for such month under subsection (a), (b), (c), or (d) of section 4 of the Railroad Retirement Act of 1937, as amended by this Act, except that (A) the death benefit, if any, shall not be due before (i) the first day of the month next following the last month with respect to which any benefits under such subsection (a), (b), (c), or (d), based on an application filed in the month in which such individual dies, would be payable, or (ii)

the first day of the month next following the month of the death of a spouse entitled to a survivor annuity pursuant to an election made under the provisions of section 4 of the Railroad Retirement Act of 1937 before its amendment by this Act, whichever is later; and the two year period within which an application for the death benefit, if any, must be filed pursuant to the provisions of such section 5, shall not begin before such first day of the month described in clauses (i) and (ii) above, and (B) the death benefit shall be reduced by the aggregate amount of benefits paid, or due but not paid, under section 4 of the Railroad Retirement Act of 1937, as amended by this Act, on the basis of such individual's death.

(c) Notwithstanding the amendment made by this Act to section 8 of the Railroad Retirement Act of 1937, as amended, a return made in accordance with such section, covering monthly compensation of an employee, with respect to any period before January 1, 1947, shall be conclusive (in the same manner and to the same extent as provided under such section 8 prior to its amendment by this Act) as to the amount of compensation earned by such employee during each month covered by the return; except that after March 31, 1951, the Railroad Retirement Board's record of the amount of the compensation earned by such employee

during each month covered by any such return shall be conclusive.

TITLE II—AMENDMENTS TO RAILROAD UNEMPLOYMENT INSURANCE ACT

TERMINATION OF PERIOD WITH RESPECT TO WHICH CONTRIBUTIONS SHALL BE PAYABLE

SEC. 201. So much of the first sentence of subsection (a) of section 8 of the Railroad Unemployment Insurance Act, as amended, as precedes the proviso is amended to read as follows: "Every employer shall pay a contribution, with respect to having employees in his service, equal to 3 per centum of so much of the compensation as is not in excess of $300 for any calendar month payable by him to any employee with respect to employment after June 30, 1939, and before January 1, 1947:"

AMENDMENTS RELATING TO RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT

SEC. 202. (a) Subsection (a) of section 10 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"(a) The Secretary of the Treasury shall maintain in the unemployment trust fund established pursuant to section 904 of the Social Security Act an account to be known as the railroad unemployment insurance account. This account shall consist of (i) 90 per centum of all contributions

collected pursuant to section 8 of this Act, together with all interest collected pursuant to section 8 of this Act, and 90 per centum of all taxes (together with all interest, civil fines, civil penalties, additional amounts, and additions to the tax) collected pursuant to the Railroad Unemployment Tax Act (part II, subchapter B, chapter 9, Internal Revenue Code); (ii) all amounts transferred or paid into the account pursuant to section 13 or section 14 of this Act; (iii) all additional amounts appropriated to the account in accordance with any provision of this Act or with any provision of law now or hereafter adopted; (iv) a proportionate part of the earnings of the unemployment trust fund, computed in accordance with the provisions of section 904 (e) of the Social Security Act; (v) all amounts realized in recoveries for overpayments or erroneous payments of benefits; (vi) all amounts transferred thereto pursuant to section 11 of this Act; (vii) all fines or penalties collected pursuant to the provisions of this Act and all criminal fines or criminal penalties collected with respect to the tax imposed under the Railroad Unemployment Tax Act; and (viii) all amounts credited thereto pursuant to section 2 (f) or section 12 (g) of this Act. Notwithstanding any other provision of law, all moneys at any time standing to the credit of the account shall be mingled and undivided, and are hereby permanently appropriated to the

Board and to the Bureau of Internal Revenue to be continuously available to the Board and to the Bureau of Internal Revenue, without further appropriation, for the payment of benefits provided for by this Act, and for the payment of refunds (including interest thereon) pursuant to this Act or the Railroad Unemployment Tax Act, and no part thereof shall lapse at any time, or be carried to the surplus fund or any other fund."

(b) Subsection (b) of section 10 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"(b) All moneys in the account shall be used solely for the payment of the benefits provided for by this Act, and for the payment of refunds (including interest thereon) pursuant to this Act or the Railroad Unemployment Tax Act. The Board shall, from time to time, certify to the Secretary of the Treasury the name and address of each person or company entitled to receive benefits or a refund payment under this Act, the amount of such payment, and the time at which it shall be made. The Commissioner of Internal Revenue shall from time to time, furnish to the Secretary of the Treasury a schedule of overpayments in respect of the tax (or any interest, penalty, additional amount, or addition to the tax) under the Railroad Unemployment Tax Act for the purpose of causing refunds

under such Act to be made from the account. Prior to audit or settlement by the General Accounting Office, the Secretary of the Treasury, through the Division of Disbursement of the Treasury Department, shall make payments from the account directly to such person or company of the amount of benefits or refund so certified by the Board and to the person or company shown to be entitled thereto of the amount of the refund under the Railroad Unemployment Tax Act so scheduled by the Commissioner of Internal Revenue: Provided, however, That if the Board shall so request, the Secretary of the Treasury, through the Division of Disbursement of the Treasury Department, shall transmit benefit payments to the Board for distribution by it through employment offices or in any such other manner as the Board deems proper."

(c) The second sentence of subsection (a) of section 904 of the Social Security Act, as amended, is amended by inserting after the word "Board" the words "or the Bureau of Internal Revenue".

(d) Subsection (f) of section 904 of the Social Security Act, as amended, is amended by striking out the last sentence thereof and by inserting in lieu thereof the following sentence: "The Secretary of the Treasury is authorized and directed to make out of the fund such payments as the Railroad Retirement Board may duly certify and such refunds

under the Railroad Unemployment Tax Act (part II, subchapter B, chapter 9, Internal Revenue Code) as may be duly scheduled for payment by the Commissioner of Internal Revenue, not exceeding the amount standing to the credit of the railroad unemployment insurance account at the time of such payment or refund.".

AMENDMENT RELATING TO THE RAILROAD UNEMPLOYMENT INSURANCE ADMINISTRATION FUND

SEC. 203. The second sentence of subsection (a) of section 11 of the Railroad Unemployment Insurance Act, as amended, is amended by inserting immediately before the semicolon at the end of clause (i) of such sentence the following: ", and 10 per centum of all taxes (exclusive of all interest, fines, penalties, additional amounts, and additions to the tax) collected pursuant to the Railroad Unemployment Tax Act (part II, subchapter B, chapter 9, Internal Revenue Code)".

CHANGES IN EXISTING LAW MADE NECESSARY BY PRECEDING AMENDMENTS

SEC. 204. (a) Subsection (g) of secton 2 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"(g) Benefits accrued to an individual but not yet paid at death shall, upon certification by the Board, be paid, without necessity of filing further claims therefor, to the same

person or persons, and subject to the same conditions and limitations, as though such benefits constituted a lump sum payable under the provisions of section 4 (e) of the Railroad Retirement Act of 1937, as amended, with respect to the death of such individual."

(b) Subsection (g) of section 5 of the Railroad Unemployment Insurance Act, as amended, is amended by inserting after the word "refund" where it first appears in such subsection the words "under this Act".

(c) Subsection (h) of section 8 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"(h) All provisions of law, including penalties, applicable with respect to any tax imposed by section 1800 or 2700 of the Internal Revenue Code, and the provisions of section 3661 of such code, insofar as applicable and not inconsistent with the provisions of this Act, shall be applicable with respect to the contributions required by this Act and the payments required by the second sentence of section 2 (f) of this Act: Provided, That all authority and functions conferred by or pursuant to such provisions upon any officer or employee of the United States, except the authority to institute and prosecute, and the function of instituting and prosecuting, criminal proceedings, shall, with respect to such contributions and payments, be vested in

and exercised by the Board or such officers and employees of the Board as it may designate therefor."

(d) Subsection (d) of section 9 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"(d) All fines and penalties imposed by a court pursuant to this Act and all criminal fines and criminal penalties imposed by a court with respect to the tax imposed under the Railroad Unemployment Tax Act (part II, subchapter B, chapter 9, Internal Revenue Code) shall be paid to the court and remitted from time to time by order of the judge to the Treasury of the United States to be credited to the account."

(e) Subsection (e) of section 12 of the Railroad Unemployment Insurance Act, as amended, is amended by inserting after the word "refunds" where it first appears in such subsection the words "under this Act".

SAVING PROVISION

SEC. 205. Notwithstanding the amendment made by this Act to subsection (g) of section 2 of the Railroad Unemployment Insurance Act, in any case in which the individual referred to in such subsection died before January 1, 1947, the accrued benefits referred to in such subsection shall be paid in accordance with the provisions of that

subsection as it was in effect before it was amended by this Act; and the references in that subsection, as it was in effect before such amendment, to sections 3 (f) and 5 of the Railroad Retirement Act of 1937 shall be considered to be references to such sections as they were in force before the date on which title I of this Act takes effect.

TITLE III—AMENDMENTS TO INTERNAL REVENUE CODE

INCREASE IN RAILROAD RETIREMENT TAX RATES

Rate of Employees' Tax

SEC. 301. (a) Section 1500 of the Internal Revenue Code is amended by striking out clauses numbered 4 and 5 and by inserting in lieu thereof the following:

"4. With respect to compensation earned during the calendar year 1946, the rate shall be 3½ per centum;

"5. With respect to compensation earned after December 31, 1946, the rate shall be 6 per centum."

Rate of Employee Representatives' Tax

(b) Section 1510 of the Internal Revenue Code is amended by striking out clauses numbered 4 and 5 and by inserting in lieu thereof the following:

"4. With respect to compensation earned during the calendar year 1946, the rate shall be 7 per centum;

"5. With respect to compensation earned after December 31, 1946, the rate shall be 12 per centum."

Rate of Employers' Tax

(c) Section 1520 of the Internal Revenue Code is amended by striking out clauses numbered 4 and 5 and by inserting in lieu thereof the following:

"4. With respect to compensation paid to employees for services rendered during the calendar year 1946, the rate shall be 3½ per centum;

"5. With respect to compensation paid to employees for services rendered after December 31, 1946, the rate shall be 6 per centum."

RAILROAD UNEMPLOYMENT TAX

Technical Amendments

SEC. 302. (a) Subchapter B of chapter 9 of the Internal Revenue Code, as amended, is further amended:

(1) By striking out the words and figures "Part I", "Part II", "Part III", and "Part IV" in the subheadings in such subchapter and by inserting in lieu thereof "Subpart I", "Subpart II", "Subpart III", and "Subpart IV", respectively;

(2) By striking out the word "SUBCHAPTER" in the heading of section 1537 of such subchapter and by inserting in lieu thereof "PART";

(3) By striking out the words "this subchapter" wherever they appear in such subchapter and by inserting in lieu thereof "this part";

(4) By inserting immediately after the heading of such subchapter the following new subheading:

"Part I—Railroad Retirement Tax Act";

(5) By adding at the end of such subchapter the following:

"SEC. 1538. TITLE OF PART.

"This part may be cited as the 'Railroad Retirement Tax Act'."

Railroad Unemployment Tax Act

(b) Subchapter B of chapter 9 of the Internal Revenue Code, as amended, is further amended by adding at the end thereof the following:

"Part II—Railroad Unemployment Tax Act

"SEC. 1550. RATE OF TAX ON EMPLOYERS.

"In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his service, equal to the percentages set forth in the following table of so much of the compensation as is not in excess of $300 for any calendar month payable by him to any employee for services rendered to him after December 31, 1946: Provided, however, That if compensation is payable to an employee by more than one employer with respect to any such calendar month, the tax imposed by this section shall apply to not more than $300 of the aggregate compensation payable to said employee by all said employers with respect

to such calendar month, and each such employer shall be liable for that proportion of the tax with respect to such compensation which the amount payable by him to the employee with respect to such calendar month bears to the aggregate compensation payable to such employee by all employers with respect to such calendar month:

If the balance to the credit of the account as of the close of business on September 30 of any year, as determined by the Secretary, is:	*The rate with respect to compensation payable to employees for services rendered during the next succeeding calendar year shall be:*
$350,000,000 or more	*½ percent*
$300,000,000 or more but less than $350,000,000	*1 percent*
$250,000,000 or more but less than $300,000,000	*1½ percent*
$200,000,000 or more but less than $250,000,000	*2 percent*
$150,000,000 or more but less than $200,000,000	*2½ percent*
Less than $150,000,000	*3 percent*

On or before December 31, 1946, and on or before December 31 of each succeeding year, the Secretary shall determine and proclaim the balance to the credit of the account as of the close of business on September 30 of such year.

"SEC. 1551. ADJUSTMENTS.

"*If more or less than the correct amount of the tax imposed by section 1550 is paid with respect to any compensation, then, under regulations made by the Commissioner, with the approval of the Secretary, proper adjustments with respect to the tax shall be made, without interest, in connection with subsequent payments of tax under this part made by the same employer.*

"SEC. 1552. OVERPAYMENTS AND UNDERPAYMENTS.

"If more or less than the correct amount of the tax imposed by section 1550 is paid with respect to any compensation and the overpayment or underpayment of the tax cannot be adjusted under section 1551, the amount of the overpayment shall be refunded, or the amount of the underpayment shall be collected, in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations under this part as made by the Commissioner, with the approval of the Secretary.

"SEC. 1553. COLLECTION AND PAYMENT OF TAX.

"(a) ADMINISTRATION.—The tax imposed by this part shall be collected by the Bureau of Internal Revenue and shall be deposited by it with the Secretary, 90 per centum thereof to the credit of the account and 10 per centum thereof to the credit of the fund; except that 100 per centum of the interest, civil fines, civil penalties, additional amounts, and additions to the tax, collected pursuant to this part, shall be credited to the account.

"(b) TIME AND MANNER OF PAYMENT.—The tax imposed by this part shall be collected and paid quarterly or at such other times and in such manner and under such conditions not inconsistent with this part as may be prescribed by regulations made by the Commissioner, with the approval of the Secretary.

"(c) ADDITION TO TAX IN CASE OF DELINQUENCY.—If the tax imposed by this part is not paid when due, there shall be added as part of the tax (except in the case of adjustments made in accordance with the provisions of section 1551) interest at the rate of 1 per centum per month or fraction of a month from the date the tax became due until paid.

"(d) FRACTIONAL PARTS OF A CENT.—In the payment of any tax under this part, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

"SEC. 1554. DEFINITIONS.

"As used in this part—

"(a) EMPLOYER.—The term 'employer' means any carrier (as defined in subsection (b)), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or oper-

ating all or any part of the business of any such employer: Provided, however, That the term 'employer' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Commissioner of Internal Revenue, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term 'employer' shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies, and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws

of such organizations. The term 'employer' shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

"(b) CARRIER.—The term 'carrier' means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act, as amended.

"(c) COMPANY.—The term 'company' includes corporations, associations, and joint-stock companies.

"(d) EMPLOYEE.—The term 'employee' means any individual in the service of one or more employers for compensation: Provided, however, That the term 'employee' shall not include any individual in the service of a local lodge or division defined as an employer in subsection (a). The term 'employee' includes an officer of an employer. The term 'employee' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

"(e) SERVICE.—An individual is in the service of an employer whether his service is rendered within or without the United States if he is subject to the continuing authority

of the employer to supervise and direct the manner of rendition of his service, which service he renders for compensation: Provided, however, That an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clauses (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such gen-

eral committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to subsection (e) of section 1 of the Railroad Unemployment Insurance Act, as amended, shall be applicable: Provided further, That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof.

"(f) COMPENSATION.—The term 'compensation' means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, including remuneration for time lost as an employee, but remuneration for time lost shall be deemed earned on the day on which such time is lost. Such term does not include tips, or the voluntary payment by an employer, without

deduction from the remuneration of the employee, of the tax imposed on such employee by section 1500.

"(g) ACCOUNT.—The term 'account' means the railroad unemployment insurance account established pursuant to section 10 of the Railroad Unemployment Insurance Act, as amended, in the unemployment trust fund.

"(h) FUND.—The term 'fund' means the railroad unemployment insurance administration fund established pursuant to section 11 of the Railroad Unemployment Insurance Act, as amended.

"(i) UNITED STATES.—The term 'United States', when used in a geographical sense, means the States, Alaska, Hawaii, and the District of Columbia.

"(j) STATE.—The term 'State' means any of the States, Alaska, Hawaii, or the District of Columbia.

"SEC. 1555. PENALTIES.

"(a) PROHIBITION ON DEDUCTION OF TAX.—The tax imposed by this part shall not be deducted by the employer, in whole or in part, from the compensation of employees in his employ. Any employer, or officer or agent of an employer, who violates any provision of this subsection shall, upon conviction, be punished for each such violation by a fine of not more than $1,000 or by imprisonment not exceeding one year, or both.

"(b) PROHIBITION ON REQUIRING EMPLOYEE TO

BEAR TAX.—Any agreement by an employee to pay all or any portion of the tax imposed on his employer by this part shall be void, and it shall be unlawful for any employer, or officer or agent of an employer, to make, require, or permit any employee to bear all or any portion of such tax. Any employer, or officer or agent of an employer, who violates any provision of this subsection shall, upon conviction, be punished for each such violation by a fine of not more than $10,000 or by imprisonment not exceeding one year, or both.

"SEC. 1556. RULES AND REGULATIONS.

"The Commissioner, with the approval of the Secretary, shall make and publish such rules and regulations as may be necessary for the enforcement of this part.

"SEC. 1557. OTHER LAWS APPLICABLE.

"All provisions of law, including penalties, applicable with respect to any tax imposed by section 2700 or section 1800, insofar as applicable and not inconsistent with the provisions of this part, shall be applicable with respect to the tax imposed by this part.

"SEC. 1558. TITLE OF PART.

"This part may be cited as the 'Railroad Unemployment Tax Act'."

DEPOSIT OF COLLECTIONS

SEC. 303. Section 3971 (b) of the Internal Revenue

Code is amended by adding at the end thereof the following paragraph:

"(4) TAX COLLECTED UNDER RAILROAD UNEMPLOYMENT TAX ACT.—The gross amount of all taxes (including all interest, civil fines, civil penalties, additional amounts, and additions to the tax) collected pursuant to the Railroad Unemployment Tax Act shall be deposited directly with the Secretary, or with any Federal Reserve bank or member bank of the Federal Reserve system designated by him to receive such deposits, by the officer receiving or collecting the same, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description, to be credited in accordance with section 1553 (a)." A certificate of such deposit, stating the name of the depositor and the specific account on which the deposit was made, signed by the Secretary, designated depositary, or proper officer of a deposit bank, shall be transmitted to the Commissioner.

TITLE IV—EFFECTIVE DATES OF TITLES I AND II

SEC. 401. Titles I and II of this Act shall take effect January 1, 1947.

Amend the title so as to read: "A bill to amend the Railroad Retirement Act of 1937 and the Railroad Unemployment Insurance Act, and for other purposes."

Union Calendar No. 581

79TH CONGRESS
2D SESSION

H. R. 1362

[Report No. 1989]

A BILL

To amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes.

By Mr. CROSSER

JANUARY 11, 1945

Referred to the Committee on Interstate and Foreign Commerce

MAY 9, 1946

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

Union Calendar No. 581

79TH CONGRESS
2D SESSION

H. R. 1362

[Report No. 1989]

IN THE HOUSE OF REPRESENTATIVES

JANUARY 11, 1945

Mr. CROSSER introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

MAY 9, 1946

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~DIVISION I~~

~~SECTION 1. Section 1 (a) of the Railroad Retirement Act of 1937 and section 1 (a) of the Railroad Unemployment Insurance Act are amended to read as follows:~~

~~"(a) The term 'employer', except as otherwise provided in this subsection, shall mean—~~

~~"(1) Any carrier: A 'carrier' is any express company,~~

sleeping car company, or carrier by railroad, subject to part I of the Interstate Commerce Act;

"(2) Any person, other than a carrier regulated under part I of the Interstate Commerce Act, which, pursuant to arrangements with a carrier or otherwise, performs, for hire, with respect to passengers or property transported, being transported, or to be transported by a carrier, any service included within the term 'transportation' as defined in section 1 (3) of the Interstate Commerce Act, whether or not such service is offered under railroad tariffs;

"(3) Any freight forwarder: A 'freight forwarder' is any person, other than a carrier, which holds itself out to the general public to transport, or provide transportation of property for hire, and which in the ordinary and usual course of its undertaking assembles and consolidates, or provides for assembling and consolidating, shipments of such property, and performs, or provides for the performing of, break-bulk and distributing operations with respect to such consolidated shipments, and assumes responsibility for the transportation of such property from point of receipt to point of destination, and regularly and substantially utilizes, for the transportation of such shipments, the services of one or more carriers;

"(4) Any person engaged in rendering, pursuant to any arrangement for one or more carriers, any service which (i) is of such a nature as to be susceptible of indefinitely

continuous performance and (ii) constitutes a part of or is necessary or incidental to the operation or maintenance of way, equipment or structures devoted to transportation use, or constitutes a clerical, sales, accounting, protective, or communications service necessary or incidental to the conduct of transportation carried on by a carrier, or is rendered with respect to passengers or property transported by railroad, at point of departure or shipment or at destination or between such points;

"(5) Any person which, through any form of property interest, is directly or indirectly subject to control by or to common control with a carrier and which (i) is engaged in acquiring or holding title to managing, maintaining, or operating any property devoted substantially to use in the transportation conducted by such carriers; or (ii) is engaged in performing services necessary or incidental to the conduct of the transportation carried on by such carrier, or services in the manufacture of equipment or equipment parts or in the processing of materials for use in the operation, servicing, or maintenance of way, structures or equipment devoted to use in transportation, or services in connection with the storage, elevation, or handling of property transported, being transported, or to be transported if such storage, elevation, or handling services are provided with respect to property accorded privileges of storage in transit, or for the promotion

or facilitation of transportation conducted by such carrier; or (iii) is engaged in transportation by motor vehicles;

"(6) Any railroad association, traffic association, tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency, and other association, bureau, agency, or organization controlled and maintained wholly or principally by two or more employers and engaged in the performance of services in connection with or incidental to railroad transportation;

"(7) Any railway labor organization, national in scope, which will have been or may be organized in accordance with the Railway Labor Act, and such organization's State and National legislative committees, general committees, insurance departments, and local lodges and divisions, established pursuant to the constitution and bylaws of such organization;

"(8) Any organization maintained or controlled by one or more employers, and principally engaged in furnishing medical, hospital, educational, recreational, or other welfare services to employees, or in providing for the payment of life, sick, accident, or other benefits to such employees or the dependents or survivors of such employees; and

"(9) Any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property,

or operating all or any part of the business of an employer as defined herein.

"(10) Exclusions: Except with respect to persons covered by clause (iii) of paragraph (5), the term 'employer' shall not include any person (i) by reason of operations in the conduct of which such person holds itself out directly to the public as a common carrier by water, air, or motor or animal-drawn vehicle, or as a contract carrier by any of such means, other than contract carrier service regularly offered to railroad passengers, shippers, or consignees pursuant to arrangements with an employer such as defined herein; or (ii) by reason of the performance of any operation which is insubstantial or is so irregular or infrequent as to afford no substantial basis for an inference that such operation will be repeated; or (iii) by reason of its being engaged in the mining of coal, the supplying of coal to an employer such as herein defined where delivery is not beyond the mine tipple, and in the operation of equipment or facilities therefor, or in any of such activities, or in logging or the milling of lumber to standard commercial sizes, or in furnishing supplies to a carrier; or (iv) by reason of the operation of a street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, or is a part

of the general steam railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed, upon request of the Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this clause. The term 'employer' shall not include any individual by reason of the performance of any service by such individual personally.

"(11) Segregation: Any person who is an employer as defined in this subsection shall be an employer with respect to all activities carried on by it, except that (i) any person who is an employer by reason of paragraph (9) shall be an employer only in the capacity described in that paragraph; (ii) if the Board finds that a person is principally engaged in activities other than employer activities and that its employer activities are conducted as an operation or operations separate and distinct from the operations in which it is principally engaged, such person shall be an employer only with respect to such employer operation or operations; and (iii) if the Board finds that a person who is an employer solely by reason of paragraph (2) or (4) of this subsection, is principally engaged in activities other than employer activities but does not, pursuant to clause (ii) find that the employer activities of such person are

conducted as an operation or operations separate and distinct from the operations in which it is principally engaged, such person shall be an employer only with respect to all work performed in its employ by individuals who regularly and substantially perform work on property structures or equipment devoted to transportation use. If to a substantial extent the individuals working in employer activities regularly work also in the operations in which a person is principally engaged, such employer activities shall not be deemed to be conducted as an operation or operations separate and distinct from the operations in which such person is principally engaged. For the purposes of this subsection, a person shall be deemed to be principally engaged in activities other than employer activities if the man-hours devoted to such other activities are more than one-half of the total man-hours devoted to all activities carried on by such person, except that if the Board finds that a determination on such basis is impracticable or inappropriate the Board shall make the determination on the basis of such factors as in its judgment are relevant and appropriate. The term 'employer activities' as used in this subsection shall mean all such activities as are conducted by a person as a carrier, or as are described in paragraph (2), (3), (4), (5), (6), or (8). When a final determination will have been made as to whether a person is principally engaged in employer activi

~~ties, the matter shall not be redetermined except upon the basis of operations conducted for a period of not less than three years following the last operations considered in making the previous determination, unless the Board finds that substantial activities will have been abandoned or substantial new activities will have been undertaken. Upon any such redetermination the conclusion shall be governed by the previous determination, unless the Board finds that on the basis of the factors on which such previous determination will have been based. the activities in which the person previously was principally engaged constitute less than 40 per centum of such person's activities."~~

~~SEC. 2. Section 1 (c) of the Railroad Retirement Act of 1937 and section 1 (c) of the Railroad Unemployment Insurance Act are each amended as follows: After the word "if" in the first sentence insert "(i)" and for the phrase "which services he renders for compensation" substitute the following: "or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, or he is personally performing for an employer any service by reason of which, except for the last sentence of paragraph (10) of subsection (a), he would be an employer, and (ii) he renders such service for~~

compensation", and for the purpose of continuing the amendment of the Railroad Retirement Act of 1937, only, add after the word "compensation" the following: ", or a method of computing the monthly compensation for such service is provided in section 3 (e)". Said subsections are further amended by inserting at the end of the first proviso the following: ", and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation".

SEC. 3. Section 1 (h) of the Railroad Retirement Act of 1937 is amended by substituting for the words "earned by" the words "paid to", and section 1 (i) of the Railroad Unemployment Insurance Act is amended by substituting for the word "payable" the word "paid"; by striking out the proviso in said section 1 (i) of the Railroad Unemployment Insurance Act and replacing the colon with a period; and by inserting at the end of said section 1 (h) of the Railroad Retirement Act of 1937 and at the end of said section 1 (i) of the Railroad Unemployment Insurance Act, the following: "A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the

employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, 'for time lost' the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1946 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1945 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 8, the period during which such compensation will have been earned."; and in said section 1 (h), immediately after

the word "earned" at the end of this insertion, insert the following additional language: "In determining the monthly compensation, the average monthly remuneration, and quarters of coverage of any employee, there shall be attributable as compensation paid to him in each calendar month in which he is in military service creditable under section 4 the amount of $160 in addition to the compensation, if any, paid to him with respect to such month."

SEC. (1). (a) Sections from 1500 to 1530, inclusive, of the Internal Revenue Code are hereby amended by substituting "Board" for "Commissioner" and for "Bureau of Internal Revenue", "title" for "subchapter", and by deleting "with the approval of the Secretary" wherever said language appears.

(b) Sections 1500 and 1510 of the Internal Revenue Code are amended by substituting for the language, "$300 for any calendar month earned by" the language, "$300 multiplied by the number of months in the calendar year with respect to which compensation is paid, paid to". Section 1520 of the Internal Revenue Code is amended by substituting for the language, "in excess of $300 for any calendar month paid by him to any employee", the language, ", with respect to any employee, in excess of $300 multiplied by the number of months in the calendar year in which the employee was in his service, paid by him"; by substituting

for "December 31, 1936" the date "June 30, 1945"; by substituting for "$300" in the proviso the language, "$300 multiplied by the number of months in the calendar year in which the employee will have been in the service of an employer,"; and by substituting for the portion of the section beginning with the words "month, and each such" and continuing to the end of the proviso the following: "year, and each employer other than a subordinate unit of a national railway labor organization employer shall be liable for that proportion of the tax which the compensation paid by him to the employee bears to the total compensation paid to the employee by all such employers; and in the event that the compensation paid by such employers to the employee is less than $300 multiplied by the number of calendar months in such year in which the employee will have been in the service of an employer each subordinate unit railway labor organization employer shall be liable for such proportion of any additional tax as the compensation paid by such employer bears to the compensation paid by all such employers:"

(c) Sections 1500 and 1520 of the Internal Revenue Code are further amended by substituting for the numbered paragraphs the following:

"1. With respect to compensation payable between June 30, 1945, and January 1, 1946, and compensation paid

during 1946, 1947, and 1948, the rate shall be 5¾ per centum;

"2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 6 per centum;

"3. With respect to compensation paid after December 31, 1951, the rate shall be 6¼ per centum."

Section 1510 of the Internal Revenue Code is amended by substituting for the numbered paragraphs the following:

"1. With respect to compensation payable between June 30, 1945, and January 1, 1946, and compensation paid during 1946, 1947, and 1948, the rate shall be 11½ per centum.

"2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 12 per centum.

"3. With respect to compensation paid after December 31, 1951, the rate shall be 12½ per centum."

(d) Subsection (a) of section 1530 of the Internal Revenue Code is amended by substituting for the language "as internal revenue collections.", the following: "together with any interest, penalties, and additions to the taxes, to the credit of the railroad retirement account. All moneys so paid into the Treasury are hereby permanently appropriated to the railroad retirement account: *Provided, however,* That the appropriation herein made of moneys paid in for

the fiscal year 1946 shall be (A) increased, from moneys in the general fund of the Treasury not otherwise appropriated, by an amount by which (i) the sum of all amounts heretofore or hereafter collected under the Carriers Taxing Act of 1937, and subchapter B of chapter 9 of the Internal Revenue Code may exceed (ii) the sum of all appropriations made to the railroad retirement account (exclusive of the appropriations for crediting military service) and all appropriations made to the Board pursuant to section 16, whether heretofore or hereafter made, or (B) decreased by payment into the general fund of the Treasury of an amount by which the sum computed in clause (ii) may exceed the sum computed in clause (i). There is hereby authorized to be appropriated from the Railroad Retirement Account such sums as may be necessary to provide for the expenses of the Board in administering both titles of this Act and the Railroad Retirement Act of 1935. Any part of any appropriation so made which may at any time lapse shall revert to the credit of the Railroad Retirement Account."

(c) Section 1536 of the Internal Revenue Code is amended to read as follows: "All provisions of law applicable with respect to the contributions imposed by section 8 of the Railroad Unemployment Insurance Act shall be applicable with respect to the taxes imposed by this title."

(f) The amendments made by this section shall become

effective on January 1, 1946, except those relating to the rate of taxation which shall become effective July 1, 1945. Effective January 1, 1946, sections 1500 to 1530, inclusive, and section 1536 of the Internal Revenue Code are removed from the Internal Revenue Code and shall constitute title II of the Railroad Retirement Act of 1937, being renumbered sections 20 through 32 with appropriate renumbering of all cross-references therein contained, said title to be in the words and marks: "Carriers' Taxing Act of 1945"; effective also on that date all other provisions of subchapter B of chapter 9 of the Internal Revenue Code shall be repealed. The provisions of this section becoming effective on January 1, 1946, shall not affect any rights or liabilities accrued before January 1, 1946.

DIVISION II

SEC. 201. Section 1 (d) of the Railroad Retirement Act of 1937 is amended to read as follows:

"(d) An individual shall be deemed to have been in the employment relation to an employer on the enactment date of (i) he was on that date on leave of absence from his employment, expressly granted to him by the employer by whom he was employed, or by a duly authorized representative of such employer, and the grant of such leave of absence will have been established to the satisfaction of the Board before July 1946; or (ii) he was in the service of

an employer after the enactment date and before January 1945 in each of six calendar months, whether or not consecutive; or (iii) before the enactment date he did not retire and was not retired or discharged from the service of the last employer by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before the enactment date to be in the service of such employer and thereafter remained continuously disabled until he attained age sixty-five or until August 1944 or (B) solely for such last stated reason an employer by whom he was employed before the enactment date or an employer who is its successor did not on or after the enactment date and before August 1944 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in clause (ii); or (iv) he was on the enactment date absent from the service of an employer by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the employer, as wrongful, and which was followed within nine years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights: *Provided,* That an individual shall not be deemed to have been on the enactment date in the employment relation to an employer if before that date he

was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6, or if during the last pay-roll period before the enactment date in which he rendered service to an employer he was not in the service of an employer, in accordance with subsection (c), with respect to any service in such pay-roll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after the enactment date in the service of a local lodge or division defined as an employer in section 1 (a) (7).

SEC. 202. Section 1 (f) is amended by changing the period at the end of the proviso to a semicolon and adding "it may also be included as to service rendered to a person not an employer in the performance of operations involving the use of standard railroad equipment if such operations were performed by an employer on the enactment date." Section 1 (f) is further amended by substituting for the word "An" in the next to the last sentence the following: "Ultimate fractions shall be taken at their actual value, except that if the individual will have had not less than fifty-four months of service, an" and by striking out the last sentence.

SEC. 203. Section 1 (m) is amended to read as follows:

"(m) An individual shall be deemed to have 'a current connection with the railroad industry' at the time an annuity

~~begins to accrue to him and at death if, in any thirty consecutive calendar months before the month in which an annuity under section 2 begins to accrue to him (or the month in which he dies if that first occurs), he will have been in service as an employee in not less than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he will not have been engaged in any regular employment other than employment for an employer in the period before such month and after the end of such thirty months. For the purposes of section 5 only, an individual shall be deemed also to have a 'current connection with the railroad industry' if he is in all other respects completely insured but would not be fully insured under the Social Security Act, or if he is in all other respects partially insured but would be neither fully nor currently insured under the Social Security Act, or if he has no wage quarters of coverage."~~

~~SEC. 204. A new subsection is added to section 1 as follows:~~

~~"(o) The terms 'quarter' and 'calendar quarter' shall mean a period of three calendar months ending on March 31, June 30, September 30, or December 31."~~

~~SEC. 205. Section 2 (a) is amended by substituting for all that portion of the subsection after the first numbered paragraph the following:~~

"2. Women who will have attained the age of sixty and will have completed thirty years of service.

"3. Individuals who will have attained the age of sixty and will have completed thirty years of service, but the annuity of such an individual shall be reduced by one one-hundred-and-eightieth for each calendar month that he is under age sixty-five when his annuity begins to accrue.

"4. Individuals having a current connection with the railroad industry, and whose permanent physical or mental condition is such as to be disabling for work in their regular occupation, and who (i) will have completed twenty years of service or (ii) will have attained the age of sixty. The Board, with the cooperation of employers and employees, shall secure the establishment of standards determining the physical and mental conditions which permanently disqualify employees for work in the several occupations in the railroad industry, and the Board, employers, and employees shall cooperate in the promotion of the greatest practicable degree of uniformity in the standards applied by the several employers. An individual's condition shall be deemed to be disabling for work in his regular occupation if he will have been disqualified by his employer because of disability for service in his regular occupation in accordance with the applicable standards so established; if the employee will not have been so disqualified by his employer, the Board shall

determine whether his condition is disabling for work in his regular occupation in accordance with the standards generally established; and, if the employee's regular occupation is not one with respect to which standards will have been established, the standards relating to a reasonably comparable occupation shall be used. If there is no such comparable occupation, the Board shall determine whether the employee's condition is disabling for work in his regular occupation by determining whether under the practices generally prevailing in industries in which such occupation exists such condition is a permanent disqualification for work in such occupation. For the purposes of this section, an employee's 'regular occupation' shall be deemed to be the occupation in which he will have been engaged in more calendar months than the calendar months in which he will have been engaged in any other occupation during the last preceding five calendar years, whether or not consecutive, in each of which years he will have earned wages or salary; except that, if an employee establishes that during the last fifteen consecutive calendar years he will have been engaged in another occupation in one-half or more of all the months in which he will have earned wages or salary, he may claim such other occupation as his regular occupation; or

"5. Individuals whose permanent physical or mental condition is such that they are unable to engage in any

regular employment and who (i) have completed ten years of service, or (ii) have attained the age of sixty.

"Such satisfactory proof shall be made from time to time as prescribed by the Board, of the disability provided for in paragraph 4 or 5 and of the continuance of such disability (according to the standards applied in the establishment of such disability) until the employee attains the age of sixty-five. If the individual fails to comply with the requirements prescribed by the Board as to proof of the continuance of the disability until he attains the age of sixty-five years, his right to an annuity by reason of such disability shall, except for good cause shown to the Board, cease, but without prejudice to his rights to any subsequent annuity to which he may be entitled. If before attaining the age of sixty-five an employee in receipt of an annuity under paragraph 4 or 5 is found by the Board to be no longer disabled as provided in said paragraphs his annuity shall cease upon the last day of the month in which he ceases to be so disabled. An employee, in receipt of such annuity, who earns more than $75 in service for hire, or in self-employment, in each of any six consecutive calendar months, shall be deemed to cease to be so disabled in the last of such six months; and such employee shall report to the Board immediately all such service for hire, or such self-employment. If after cessation of his disability annuity the em-

ployee will have acquired additional years of service, such additional years of service may be credited to him with the same effect as if no annuity had previously been awarded to him."

SEC. 206. Section 2 (b) is amended by substituting for "2 (b)" and "3" the numbers "4" and "5", respectively.

SEC. 207. Section 3 (b) (4) is amended by substituting for the portion of the sentence following "June 30, 1937" the following: "and after the end of the calendar year in which the individual attains the age of sixty-five".

SEC. 208. Section 3 (c) is amended by substituting the phrase "paid to an employee with respect to" for the phrase "earned by an employee in".

SEC. 209. Section 3 (c) is further amended by substituting for that portion of the subsection following the phrase "and (2)" the following: "the amount of compensation paid or attributable as paid to him with respect to each month of service before September 1941 as a station employee whose duties consisted of or included the carrying of passengers' hand baggage and otherwise assisting passengers at passenger stations and whose remuneration for service to the employer was, in whole or in substantial part, in the forms of tips, shall be the monthly average of the compensation paid to him as a station employee in his months of service in the period September 1940–August 1941: *Pro-*

vided, however, That where service in the period 1921–1931 in the one case, or in the period September 1940–August 1941 in the other case, is, in the judgment of the Board, insufficient to constitute a fair and equitable basis for determining the amount of compensation paid or attributable as paid to him in each month of service before 1937, or September 1941, respectively, the Board shall determine the amount of such compensation for each such month in such manner as in its judgment shall be fair and equitable. In computing the monthly compensation, no part of any month's compensation in excess of $300 earned before 1946, and no compensation for the months of service in a calendar year after 1945 in excess of $300 multiplied by the number of months of service in such calendar year shall be recognized."

SEC. 210. Section 3 (c) is amended to read as follows:

"(c) In the case of an individual having a current connection with the railroad industry and not less than five years of service, the minimum annuity payable shall, before any reduction pursuant to subsection 2 (a) (3), be whichever of the following is the least: (1) $3 multiplied by the number of his years of service; or (2) $50; or (3) his monthly compensation."

SEC. 211. Section 3 (f) is amended to read as follows:

"Annuity payments which will have become due an individual but will not yet have been paid at death shall be

paid to the same individual or individuals who, in the event that a lump sum will have become payable pursuant to section 5 hereof upon such death, would be entitled to receive such lump sum, in the same manner as, and subject to the same limitations under which, such lump sum would be paid, except that, as determined by the Board, first, brothers and sisters of the deceased, and if there are none such, then grandchildren of the deceased, if living on the date of the determination, shall be entitled to receive payment prior to any payment being made for reimbursement of burial expenses. If there be no individual to whom payment can thus be made, such annuity payments shall escheat to the credit of the Railroad Retirement Account."

SEC. 212. Section 4 is repealed, section 3A is renumbered as section 4, subsections (h) and (m) of said section are repealed, and all references to section "3A" are changed to "4".

SEC. 213. The heading preceding section 5, and section 5 are amended to read as follows:

"ANNUITIES AND LUMP SUMS FOR SURVIVORS

"SEC. 5. (a) WIDOW'S INSURANCE ANNUITY.—A widow of a completely insured employee, who will have attained the age of sixty-five, shall be entitled during the remainder of her life or, if she remarries, then until remarriage

to an annuity for each month equal to three-fourths of such employee's basic amount.

"(b) WIDOW'S CURRENT INSURANCE ANNUITY.—A widow of a completely or partially insured employee, who is not entitled to an annuity under subsection (a) and who at the time of filing an application for an annuity under this subsection will have in her care a child of such employee entitled to receive an annuity under subsection (c) shall be entitled to an annuity for each month equal to three-fourths of the employee's basic amount. Such annuity shall cease upon her death, upon her remarriage, when she becomes entitled to an annuity under subsection (a), or when no child of the deceased employee is entitled to receive an annuity under subsection (c), whichever occurs first.

"(c) CHILD'S INSURANCE ANNUITY.—Every child of an employee who will have died completely or partially insured shall be entitled, for so long as such child lives and meets the qualifications set forth in paragraph (1) of subsection (l), to an annuity for each month equal to one-half of the employee's basic amount.

"(d) PARENT'S INSURANCE ANNUITY.—Each parent, sixty-five years of age or over, of a completely insured employee, who will have died leaving no widow and no child, shall be entitled, for life, or, if such parent remarries

after the employee's death, then until such remarriage, to an annuity for each month equal to one-half of the employee's basic amount.

"(e) When there is more than one employee with respect to whose death a parent or child is entitled to an annuity for a month, such annuity shall be one-half of whichever employee's basic amount is greatest.

"(f) LUMP-SUM PAYMENT.—Upon the death, on or after January 1, 1946, of a completely or partially insured employee who will have died leaving no widow, child, or parent who would on proper application therefor be entitled to receive an annuity under this section for the month in which such death occurred, there shall be paid a lump sum of eight times the employee's basic amount to the following person (or if more than one there shall be distributed among them) whose relationship to the deceased employee will have been determined by the Board, and who will have been living on the date of such determination: to the widow or widower of the deceased; or, if no such widow or widower be then living, to any child or children of the deceased and to any other person or persons who, under the intestacy law of the State where the deceased will have been domiciled, will have been entitled to share as distributees with such children of the deceased, in such proportions as is provided by such law; or, if no widow or widower and no such child

and no such other person be then living, to the parent or parents of the deceased, in equal shares. A person who is entitled to share as distributee with an above-named relative of the deceased shall not be precluded from receiving a payment under this subsection by reason of the fact that no such named relative will have survived the deceased or of the fact that no such named relative of the deceased will have been living on the date of such determination. If none of the persons described in this subsection be living on the date of such determination, such amount shall be paid to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the expenses of burial of the deceased. If a lump sum would be payable to a widow, child, or parent under this subsection except for the fact that a survivor will have been entitled to receive an annuity for the month in which the employee will have died, but within one year after the employee's death there will not have accrued to survivors of the employee, by reason of his death annuities which, after all deductions pursuant to paragraph (1) of subsection (i) will have been made, are equal to such lump sum, a payment to any then surviving widow, children, or parents shall nevertheless be made under this subsection equal to the amount by which such lump sum exceeds such annuities so accrued after such deductions. No payment

shall be made to any person under this subsection, unless application therefor shall have been filed, by or on behalf of any such person (whether or not legally competent), prior to the expiration of two years after the date of death of the deceased employee, except that if the deceased employee is a person to whom section 2 of the Act of March 7, 1942 (56 Stat. 143, 144), is applicable such two years shall run from the date on which the deceased employee, pursuant to said Act, is determined to be dead, and for all other purposes of this section such employee, so long as it does not appear that he is in fact alive, shall be deemed to have died on the date determined pursuant to said Act to be the date or presumptive date of death.

"(g) CORRELATION OF PAYMENTS.—(1) An individual, entitled on applying therefor to receive for a month before January 1, 1946, an insurance benefit under the Social Security Act on the basis of an employee's wages, which benefit is greater in amount than would be an annuity for such individual under this section with respect to the death of such employee, shall not be entitled to such annuity. An individual, entitled on applying therefor to any annuity or lump sum under this section with respect to the death of an employee, shall not be entitled to a lump-sum death payment or, for a month beginning on or after January 1,

1946, to any insurance benefits under the Social Security Act on the basis of the wages of the same employee.

"(2) A widow or child, otherwise entitled to an annuity under this section, shall be entitled only to that part of such annuity for a month which exceeds the total of any retirement annuity, and insurance benefit under the Social Security Act to which such widow or child would be entitled for such month on proper application therefor. A parent, otherwise entitled to an annuity under this section, shall be entitled only to that part of such annuity for a month which exceeds the total of any other annuity under this section, retirement annuity, and insurance benefit under the Social Security Act to which such parent would be entitled for such month on proper application therefor.

"(h) MAXIMUM AND MINIMUM ANNUITY TOTALS.—Whenever according to the provisions of this section as to annuities, payable for a month with respect to the death of an employee, the total of annuities is more than $20 and exceeds either (a) $120, or (b) an amount equal to twice such employee's basic amount, or with respect to employees other than those who will have been completely insured solely by virtue of subsection (l) (7) (iii), such total exceeds (c) an amount equal to 80 per centum of his average monthly remuneration, whichever of such amounts is

least, such total of annuities shall, prior to any deductions under subsection (i), be reduced to such least amount or to $20, whichever is greater. Whenever such total of annuities is less than $10, such total shall, prior to any deductions under subsection (i), be increased to $10.

"(i) DEDUCTIONS FROM ANNUITIES.—(1) Deductions shall be made from any payments under this section to which an individual is entitled, until the total of such deductions equals such individual's annuity or annuities under this section for any month in which such individual—

"(i) will have rendered compensated service within or without the United States to an employer;

"(ii) will have rendered service for wages of not less than $25;

"(iii) if a child under eighteen and over sixteen years of age, will have failed to attend school regularly and the Board finds that attendance will have been feasible; or

"(iv) if a widow otherwise entitled to an annuity under subsection (b) will not have had in her care a child of the deceased employee entitled to receive an annuity under subsection (c);

"(2) The total of deductions for all events described in paragraph (1) occurring in the same month shall be limited to the amount of such individual's annuity or annuities for

that month. Such individual (or anyone in receipt of an annuity in his behalf) shall report to the Board the occurrence of any event described in paragraph (1).

"(3) Deductions shall also be made from any payments under this section with respect to the death of an employee until such deductions total—

"(i) any death benefit, paid with respect to the death of such employee, under sections 5 of the Retirement Acts (other than a survivor annuity pursuant to an election);

"(ii) any lump sum paid, with respect to the death of such employee, under title II of the Social Security Act, or under section 203 of the Social Security Act in force prior to the date of the Social Security Act Amendments of 1939;

"(iii) any lump sum paid to such employee under section 204 of the Social Security Act in force prior to the date of the enactment of the Social Security Act Amendments of 1939, provided such lump sum will not previously have been deducted from any insurance benefit paid under the Social Security Act; and

"(iv) an amount equal to 1 per centum of any wages paid to such employee for services performed in 1939, and subsequent to his attaining age sixty-five, with respect to which the taxes imposed by section 1400

of the Internal Revenue Code will not have been deducted by his employer from his wages or paid by such employer, provided such amount will not previously have been deducted from any insurance benefit paid under the Social Security Act.

"(4) The deductions provided in this subsection shall be made in such amounts and at such time or times as the Board shall determine. Decreases or increases in the total of annuities payable for a month with respect to the death of an employee shall be equally apportioned among all annuities in such total. An annuity under this section which is not in excess of $5 may, in the discretion of the Board, be paid in a lump sum equal to its commuted value as the Board shall determine.

"(j) WHEN ANNUITIES BEGIN AND END.—No individual shall be entitled to receive an annuity under this section for any month before January 1, 1946. An application for any payment under this section shall be made and filed in such manner and form as the Board prescribes. An annuity under this section for an individual otherwise entitled thereto shall begin with the month in which such individual filed an application for such annuity: *Provided*, That such individual's annuity shall begin with the first month for which he will otherwise have been entitled to receive such annuity if he files such application prior to the end of the third

month immediately succeeding such month. No application for an annuity under this section filed prior to three months before the first month for which the applicant becomes otherwise entitled to receive such annuity shall be accepted. No annuity shall be payable for the month in which the recipient thereof ceases to be qualified therefor.

"(k) PROVISIONS FOR CREDITING RAILROAD INDUSTRY SERVICE UNDER THE SOCIAL SECURITY ACT IN CERTAIN CASES.—(1) For the purpose of determining insurance benefits under title II of the Social Security Act which would begin to accrue on or after January 1, 1946, to a widow, parent, or surviving child, and with respect to lump-sum death payments under such title payable in relation to a death occurring on or after such date, section 15 of the Railroad Retirement Act of 1935, section 209 (b) (9) of the Social Security Act, and section 17 of this Act shall not operate to exclude from 'employment', under title II of the Social Security Act, service which would otherwise be included in such 'employment' but for such sections. For such purpose, compensation paid in a calendar year shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in services as an employee.

"(2) Not later than January 1, 1950, the Board and

the Social Security Board shall make a special joint report to the President to be submitted to Congress setting forth the experience of the Board in crediting wages toward awards, and the experience of the Social Security Board in crediting compensation toward awards, and their recommendations for such legislative changes as are deemed advisable for equitable distribution of the financial burden of such awards between the retirement account and the Federal Old Age and Survivors Insurance Trust Fund.

"(3) The Board and the Social Security Board shall, upon request, supply each other with certified reports of records of compensation or wages and periods of service and of other records in their possession or which they may secure, pertinent to the administration of this section or title II of the Social Security Act as affected by paragraph (1). Such certified reports shall be conclusive in adjudication as to the matters covered therein: *Provided*, That if either board receives evidence inconsistent with a certified report and the application involved is still in course of adjudication or otherwise open for such evidence, such recertification of such report shall be made as, in the judgment of the board which made the original certification, the evidence warrants. Such recertification and any subsequent recertification shall be treated in the same manner and be subject to the same conditions as an original certification.

"(l) DEFINITIONS.—For the purposes of this section the term 'employee' includes an individual who will have been an 'employee', and—

"(1) The qualifications for 'widow', 'child', and 'parent' shall be, except for the purposes of subsection (f), those set forth in section 209 (j) and (k), and section 202 (f) (3) of the Social Security Act, respectively; and in addition—

"(i) a 'widow' shall have been living with her husband employee at the time of his death;

"(ii) a 'child' shall have been dependent upon its parent employee at the time of his death; shall not be adopted after such death; shall be unmarried; and less than eighteen years of age; and

"(iii) a 'parent' shall have been wholly dependent upon and supported at the time of his death by the employee to whom the relationship of 'parent' is claimed; and shall have filed proof of such dependency and support within two years after such date of death, or within six months after January 1, 1946.

A 'widow' or a 'child' shall be deemed to have been so living with a husband or so dependent upon a parent if the conditions set forth in section 209 (n) or section 202 (c) (3) or (4) of the Social Security Act, respectively, are fulfilled. In determining whether an applicant is the wife, widow, child, or parent of an employee as claimed, the

rules set forth in section 209 (m) of the Social Security Act shall be applied;

"(2) The term 'retirement annuity' shall mean an annuity under section 2 awarded before or after its amendment but not including an annuity to a survivor pursuant to an election of a joint and survivor annuity; and the term 'pension' shall mean a pension under section 6;

"(3) The term 'quarter of coverage' shall mean a compensation quarter of coverage or a wage quarter of coverage, and the term 'quarters of coverage' shall mean compensation quarters of coverage, or wage quarters of coverage, or both: *Provided,* That there shall be for a single employee no more than four quarters of coverage for a single calendar year;

"(4) The term 'compensation quarter of coverage' shall mean any quarter of coverage computed with respect to compensation paid to an employee after 1936 in accordance with the following table:

Months of service in a calendar year	Total compensation paid in the calendar year				
	Less than $50	$50 but less than $100	$100 but less than $150	$150 but less than $200	$200 or more
1-3	0	1	1	1	1
4-6	0	1	2	2	2
7-9	0	1	2	3	3
10-12	0	1	2	3	4

"(5) The term 'wage quarter of coverage' shall mean any quarter of coverage determined in accordance with the provisions of title II of the Social Security Act;

"(6) The term 'wages' shall mean wages as defined in section 209 (a) of the Social Security Act;

"(7) An employee will have been 'completely insured' if it appears to the satisfaction of the Board that at the time of his death, whether before or after the enactment of this section, he will have had the qualifications set forth in any one of the following paragraphs:

"(i) a current connection with the railroad industry; and a number of quarters of coverage, not less than six, and at least equal to one-half of the number of quarters, elapsing in the period after 1936, or after the quarter in which he will have attained the age of twenty-one, whichever is later, and up to but excluding the quarter in which he will have attained the age of sixty-five years or died, whichever will first have occurred (excluding from the elapsed quarters any quarter during any part of which a retirement annuity will have been payable to him); and if the number of such elapsed quarters is an odd number such number shall be reduced by one; or

"(ii) a current connection with the railroad industry; and forty or more quarters of coverage; or

"(iii) a pension will have been payable to him; or a retirement annuity based on service of not less than ten years (as computed in awarding the annuity) will have begun to accrue to him before 1947;

"(8) An employee will have been 'partially insured' if it appears to the satisfaction of the Board that at the time of his death, whether before or after the enactment of this section, he will have had (i) a current connection with the railroad industry; and (ii) six or more quarters of coverage in the period beginning with the third calendar year next preceding the year in which he will have died and ending with the quarter next preceding the quarter in which he will have died;

"(9) An employee's 'average monthly remuneration' shall mean the quotient obtained by dividing (A) the sum of the compensation and wages paid to him after 1936 and before the quarter in which he will have died, eliminating for any single calendar year, from compensation, any excess over $300 multiplied by the number of months he will have been in service as an employee, and from the sum of wages and compensation any excess over $3,000, by (B) three times the number of quarters elapsing after 1936 and before the quarter in which he will have died: *Provided*, That for the period prior to and including the calendar year in which he will have attained the age of twenty-two there shall be

included in the divisor not more than three times the number of quarters of coverage in such period: *Provided further*, That there shall be excluded from the divisor any calendar quarter during any part of which a retirement annuity will have been payable to him.

"With respect to an employee who will have been awarded a retirement annuity, the term 'compensation' shall, for the purposes of this paragraph, mean the compensation on which such annuity will have been based;

"(10) The term 'basic amount' shall mean—

"(i) for an employee who will have been partially insured, or completely insured solely by virtue of paragraph (7) (i) or (7) (ii) or both: the sum of (A) 40 per centum of his average monthly remuneration, up to and including $75, plus (B) 10 per centum of such average monthly remuneration exceeding $75 and up to and including $250, plus (C) 1 per centum of the sum of (A) plus (B) multiplied by the number of years after 1936 in each of which the compensation, wages, or both, paid to him will have been equal to $200 or more; if the basic amount, thus computed, is less than $10 it shall be increased to $10;

"(ii) for an employee who will have been completely insured solely by virtue of paragraph (7) (iii): the sum of 40 per centum of his monthly compensation

if an annuity will have been payable to him, or, if a pension will have been payable to him, 40 per centum of the average monthly earnings on which such pension was computed, up to and including $75, plus 10 per centum of such compensation or earnings exceeding $75 and up to and including $250. If the average monthly earnings on which a pension payable to him was computed are not ascertainable from the records in the possession of the Board, the amount computed under this subdivision shall be $33.33, except that if the pension payable to him was less than $25, such amount shall be four-thirds of the amount of the pension or $13.33, whichever is greater. The term 'monthly compensation' shall, for the purposes of this subdivision, mean the monthly compensation used in computing the annuity;

"(iii) for an employee who will have been completely insured under paragraph (7) (iii) and either (7) (i) or (7) (ii): the higher of the two amounts computed in accordance with subdivisions (i) and (ii)."

SEC. 214. Section 8 is amended by striking out the word "monthly" each time it appears; by substituting for the phrase "Any such return" the phrase "The Board's record of the compensation so returned"; by substituting for the phrases "earned by" and "be earned by" the phrases "paid

to" and "will have been paid to", respectively; by inserting after the phrase "the fact that" the phrase "the Board's records show that"; and by substituting for the terms "month" and "calendar month" the word "period".

SEC. 215. Section 11 is amended to read as follows:

"Decisions of the Board determining the rights or liabilities of any person under this Act shall be subject to judicial review in the same manner, subject to the same limitations, and all provisions of law shall apply in the same manner as though the decision were a determination of corresponding rights or liabilities under the Railroad Unemployment Insurance Act except that the time within which proceedings for the review of a decision with respect to an annuity, pension, or lump-sum benefit may be commenced shall be one year after the decision will have been entered upon the records of the Board and communicated to the claimant."

SEC. 216. Section 17 is amended by substituting "209" for "210"; by inserting after the word "Act," the phrase "and of section 1426 of the Internal Revenue Code"; and by inserting after the word "include" the following: "service determined pursuant to the provisions of this Act to be".

DIVISION III

The Railroad Unemployment Insurance Act is amended as follows:

SEC. 301. (a) Subsection 1 (h) is amended by insert-

ing after the phrase "last preceding registration period" the phrase "which began with a day for which he registered at an employment office".

(b) Subsection 1 (h) is further amended by adding the following sentence:

"The term 'registration period' means also, with respect to any employee, the period which begins with the first day with respect to which a statement of sickness is filed in his behalf in accordance with such regulations as the Board may prescribe, or the first such day after the end of a registration period which will have begun with a day with respect to which a statement of sickness was filed in his behalf, and ends with the thirteenth day thereafter."

SEC. 302. Subsection 1 (j) is amended by substituting for the period at the end thereof a comma and adding "maternity insurance, or sickness insurance".

SEC. 303. The first paragraph of subsection 1 (k) is amended by inserting "(1)" after the phrase "section 4 of this Act,", and by substituting for the colon before the phrase *"Provided, however,"* the following: "; and (2) a 'day of sickness', with respect to any employee, means a calendar day on which because of any physical, mental, psychological, or nervous injury, illness, sickness, or disease he is not able to work or which is included in a maternity period, and with respect to which (i) no remuneration is payable or accrues

to him, and (ii) in accordance with such regulations as the Board may prescribe, a statement of sickness is filed within such reasonable period, not in excess of ten days, as the Board may prescribe:".

SEC. 304. Subsection 1 (l) is amended by substituting therefore the following:

"(l) The term 'benefits' (except in phrases clearly designating other payments) means the money payments payable to an employee as provided in this Act, with respect to his unemployment or sickness.

"(l 1) The term 'statement of sickness' means a statement with respect to days of sickness of an employee, and the term 'statement of maternity sickness' means a statement with respect to a maternity period of a female employee, in each case executed in such manner and form by an individual duly authorized pursuant to section 12 (i) to execute such statements, and filed as the Board may prescribe by regulations.

"(l) (2) The term 'maternity period' means the period beginning fifty-seven days prior to the date stated by the doctor of a female employee to be the expected date of the birth of the employee's child and ending with the one hundred and fifteenth day after it begins or with the thirty-first day after the day of the birth of the child, whichever is later."

SEC. 305. (a) The first sentence of subsection 2 (a) is amended to read as follows: "Benefits shall be payable to any qualified employee (i) for each day of unemployment in excess of seven during the first registration period, within a benefit year, in which he will have had seven or more days of unemployment, and for each day of unemployment in excess of four during any subsequent registration period in the same benefit year, and (ii) for each day of sickness (other than a day of sickness in a maternity period) in excess of seven during the first registration period, within a benefit year, in which he will have had seven or more such days of sickness, and for each such day of sickness in excess of four during any subsequent registration period in the same benefit year, and (iii) for each day of sickness in a maternity period."

(b) Subsection 2 (a) is further amended by inserting after the word "unemployment" in the second sentence the words "or sickness", by changing the phrase "the total amount of compensation payable to him with respect to employment" to "his total compensation (not in excess of $300 multiplied by the number of calendar months in which the employee will have had employment)", by substituting the following lines for the last line of the table:

"$1,600 to $1,999.99	$4.00
$2,000 to $2,199.99	4.50
$2,500 and over	5.00"

and by adding to the subsection, after the table, the following paragraphs:

"The amount of benefits payable for the first fourteen days in each maternity period, and for the first fourteen days in a maternity period after the birth of the child, shall be one and one-half times the amount otherwise payable under this subsection. Benefits shall not be paid for more than eighty-four days of sickness in a maternity period prior to the birth of the child. Qualification for and rate of benefits for days of sickness in a maternity period shall not be affected by the expiration of the benefit year in which the maternity period will have begun unless in such benefit year the employee will not have been a qualified employee.

"In computing benefits to be paid, days of unemployment shall not be combined with days of sickness in the same registration period."

SEC. 306. Subsection 2 (c) is amended by substituting for "one hundred" at the end thereof the following: "one hundred and thirty, and the maximum number of days of sickness, other than days of sickness in a maternity period, within a benefit year for which benefits may be paid to an employee shall be one hundred and thirty".

SEC. 307. Subsection 2 (f) is amended by inserting after the word "unemployment" each time it appears the words "or sickness".

SEC. 308. Section 3 is amended by changing the phrase "there was payable to him compensation of" to "his compensation will have been".

SEC. 309. (a) Section 4 (a) is amended by redesignating it section 4 (a–1), by including therein only paragraphs (iv) to (vii), inclusive, by redesignating said paragraphs as (i) through (iv), by inserting after the phrase "day of unemployment," in the first clause thereof the phrase "or as a day of sickness,", and by changing the semicolon at the end thereof to a period.

(b) Section 4 (a–1) is further amended by changing paragraph (ii) thereof to read as follows:

"(ii) any day in any period with respect to which the Board finds that he is receiving or will have received annuity payments or pensions under the Railroad Retirement Act of 1935 or the Railroad Retirement Act of 1937, or insurance benefits under title II of the Social Security Act, or unemployment, maternity, or sickness benefits under an unemployment, maternity, or sickness compensation law of any State or of the United States other than this Act, or any other social-insurance payments under a law of any State or of the United States: *Provided*, That if an employee receives or is held entitled to receive any such payments, other than unemployment, maternity, or sickness payments, with respect

to any period which include days of unemployment or sickness in a registration period, after benefits under this Act for such registration period will have been paid, the amount by which such benefits under this Act will have been increased by including such days as days of unemployment or as days of sickness shall be recoverable by the Board: *Provided further*, That, if that part of any such payment or payments, other than unemployment, maternity, or sickness payments, which is apportionable to such days of unemployment or days of sickness is less in amount than the benefits under this Act which, but for this paragraph, would be payable and not recoverable with respect to such days of unemployment or days of sickness, the preceding provisions of this paragraph shall not apply but such benefits under this Act for such days of unemployment or days of sickness shall be diminished or recoverable in the amount of such part of such other payment or payments;".

(c) Section 4 is further amended by inserting after subsection (a–1) a subsection to be designated (a–2), in the following language: "There shall not be considered as a day of unemployment, with respect to any employee ——", by including in subsection (a–2) paragraphs (i), (ii), (iii), and (viii) of subsection 4 (a) as it existed prior to

its amendment by this Act, and by redesignating said paragraph (viii) as paragraph (iv).

SEC. 310. Subsections 4 (b) through 4 (c) are amended by substituting for the references to "4 (a) (i)", "4 (a) (ii)", and "4 (a) (iii)", references to "4 (a-2) (i)", "4 (a-2) (ii)", and "4 (a-2) (iii)", respectively.

SEC. 311. (a) The first paragraph of subsection 5 (c) is amended by striking out the phrase "district board" at the end of the first sentence thereof and substituting "referee or such other reviewing body as the Board may establish or assign thereto", and by striking out the balance thereof.

(b) The third paragraph of subsection 5 (c) is amended by deleting the phrase "does not comply with the provisions of this Act and", and by inserting between the second and third sentences thereof the following:

"The Board may also designate one of its officers or employees to receive evidence and report to the Board whether or not any person or company is entitled to a refund of contributions or should be required to pay contributions under this Act, regardless of whether or not any claims for benefits will have been filed upon the basis of service in the employ of such person or company, and shall follow such procedure if contributions are assessed and payment is refused or payment is made and a refund claimed upon the

basis that such person or company is or will not have been liable for such contributions."

Subsection 5 (c) is further amended by adding the following paragraph:

"Any issue determinable pursuant to this subsection and subsection (f) of this section shall not be determined in any manner other than pursuant to this subsection and subsection (f)."

SEC. 312. Subsection 5 (d) is amended by substituting for the phrase "district boards" the words "reviewing bodies", and by striking out the phrase "a district board or of" each time it appears.

SEC. 313. Subsection 5 (e) is amended by deleting the phrases "upon a claim for benefits," and "allowing or denying benefits", and by changing the word "claimant" to "parties".

SEC. 314. The first sentence of subsection 5 (f) is amended to read as follows:

"Any claimant, or any railway labor organization organized in accordance with the provisions of the Railway Labor Act, of which claimant is a member, or any other party aggrieved by a final decision under subsection (e) of this section, may, only after all administrative remedies within the Board will have been availed of and exhausted,

obtain a review of any final decision of the Board by filing a petition for review within ninety days after the mailing of notice of such decision to the claimant or other party, or within such further time as the Board may allow, in the United States circuit court of appeals for the circuit in which the claimant or other party resides or will have had his principal place of business or principal executive office, or in the United States Circuit Court of Appeals for the Seventh Circuit or in the Court of Appeals for the District of Columbia."

SEC. 315. Subsection 5 (g) is amended by substituting for the phrase "benefits or refund and" the words "benefits or refund, the determination of any other matter pursuant to subsection (c) of this section, and".

SEC. 316. Subsection 5 (i) is amended by inserting after the word "claimant" each time it appears the words "or other properly interested person", and by inserting after the phrase "counsel or agent" the words "for a claimant".

SEC. 317. Section 6 is amended by substituting for the phrase "earned by", each time it appears, and for the phrase "be earned by", the phrases "paid to" and "have been paid to", respectively.

SEC. 318. Subsection 8 (a) is amended by changing the phrases "$300 for any calendar month" and "$300" to "$300 multiplied by the number of calendar months in the

calendar year in which the employee will have had employment"; by changing the word "payable" to "paid" wherever it appears; and by substituting for the portion of the subsection beginning with the words "month, and each such" and continuing to the end of the subsection, the following: "year, and each employer other than a subordinate unit of a national railway labor organization employer shall be liable for that proportion of the contribution which the compensation paid by him to the employee bears to the total compensation paid to the employee by all such employers; and in the event that the compensation paid by such employers to the employee is less than $300 multiplied by the number of calendar months in such year in which the employee will have had employment each subordinate unit railway labor organization employer shall be liable for such proportion of any additional contribution as the compensation paid by such employer bears to the compensation paid by all such employers."

SEC. 319. Subsection 12 (b) is amended by inserting after the phrase "being carried on in the District of Columbia," the phrase "or the District Court of the United States for the Northern District of Illinois, if the investigation or proceeding is being carried on in the Northern District of Illinois,"; and by inserting before the phrase "in such pro-

ceedings may run" the phrase "or of the District Court of the United States for the Northern District of Illinois".

SEC. 320. Subsection 12 (f) is amended by changing the phrases "unemployment compensation laws", "unemployment benefits", and "unemployment compensation law" to "unemployment compensation, sickness, or maternity laws", "unemployment, sickness, or maternity benefits", and "unemployment compensation, sickness, or maternity law", respectively.

SEC. 321. Subsection 12 (g) is amended by inserting after the word "unemployment", each time it appears, the phrase ", sickness, or maternity", and by striking out the phrase ", with respect to unemployment after June 30, 1939,".

SEC. 322. Subsection 12 (i) is amended by inserting the following paragraph between the second and third paragraphs thereof:

"The Board shall provide a form or forms for statements of sickness and a procedure for the execution and filing thereof. Such forms and procedure shall be designed with a view to having such statements provide substantial evidence of the days of sickness of the employee and, in the case of maternity sickness, the expected date of birth and the actual date of birth of the child. Such statements may be executed by any doctor (authorized to practice in the State or foreign

jurisdiction in which he practices his profession) or any officer or supervisory employee of a hospital, clinic, group health association, or other similar organization, who is qualified under such regulations as the Board may prescribe to execute such statements. The Board shall issue regulations for the qualification of such persons to execute such statements. When so executed by any such person, or, in the discretion of the Board, by others designated by the Board individually or by groups, they may be accepted as initial proof of days of sickness sufficient to certify for payment a claim for benefits."

SEC. 323. Section 12 is further amended by adding thereto the following subsections:

"(n) Any employee claiming, entitled to, or receiving sickness benefits under this Act may be required to take such examination, physical, medical, mental, or otherwise, in such manner and at such times and by such qualified individuals, including medical officers or employees of the United States or a State, as the Board may prescribe. The place or places of examination shall be reasonably convenient for the employee. No sickness or maternity benefits shall be payable under this Act with respect to any period during which the employee unreasonably refuses to take or willfully obstructs an examination as prescribed by the Board.

"Any doctor who renders any attendance, treatment,

attention, or care, or performs any examination with respect to a sickness of an employee or as to the expected date of birth of a female employee's child, or the birth of such a child, upon which a claim or right to benefits under this Act is based, shall furnish the Board, in such manner and form and at such times as the Board by regulations may prescribe, information and reports relative thereto and to the condition of the employee. An application for sickness or maternity benefits under this Act shall contain a waiver of any doctor-patient privilege that the employee may have with respect to any sickness or maternity period upon which such application is based: *Provided*, That such information shall not be disclosed by the Board except in a court proceeding relating to any claim for benefits by the employee under this Act.

"The Board may enter into agreements or arrangements with doctors, hospitals, clinics, or other persons for securing the examination, physical, medical, mental, or otherwise, of employees claiming, entitled to, or receiving sickness or maternity benefits under this Act and the performance of services or the use of facilities in connection with the execution of statements of sickness. The Board may compensate any such doctors, hospitals, clinics, or other persons upon such reasonable basis as the Board shall prescribe. Such doctors, hospitals, clinics, or other persons and persons employed by any of them shall not be subject to the Act of

Congress approved March 3, 1917 (39 Stat. 1106, ch. 163, sec. 1). In the event that the Board pays for the physical or mental examination of an employee or for the execution of a statement of sickness and such employee's claim for benefits is based upon such examination or statement, the Board shall deduct from any sickness or maternity benefits payable to the employee pursuant to such claim such amount as, in the judgment of the Board, is a fair and reasonable charge for such examination or execution of such statement.

"(o) Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement.

"(p) The Board may, after hearing, disqualify any person from executing statements of sickness who, the Board finds, (i) will have solicited, or will have employed another to solicit, for himself or for another the execution of any such statement, or (ii) will have made false or misleading statements to the Board, to any employer, or to any employee, in connection with the awarding of any benefits under this Act, or (iii) will have failed to submit medical reports and records required by the Board under this Act, or will have failed to submit any other reports, records, or information required by the Board in connection with the administration of this Act or any other Act heretofore or hereafter administered by the Board, or (iv) will have engaged in any malpractice or other professional misconduct. No fees or charges of any kind shall accrue to any such person from the Board after his disqualification.

"(q) The Board shall engage in and conduct research projects, investigations, and studies with respect to the cause, care, and prevention of, and benefits for, accidents and disabilities and other subjects deemed by the Board to be related thereto, and shall recommend legislation deemed advisable in the light of such research projects, investigations, and studies."

SEC. 324. Subsection 13 (b) is amended by inserting after "1939," in the first, second, and third sentences thereof,

"and for the payment of sickness and maternity benefits for sickness or for maternity periods after June 30, 1946,", "or to sickness or maternity benefits under a sickness or maternity law of any State with respect to sickness or to maternity periods occurring after June 30, 1946,", and "or of State sickness or maternity laws after June 30, 1946", respectively.

DIVISION IV

SEC. 401. Except as otherwise provided in this Act, the provisions thereof shall become effective upon approval.

SEC. 402. Sections 203, 205, 206, 207, 210, 211, 213, 306, and 318 shall become effective on January 1, 1946.

SEC. 403. Sections 301, 302, 303, 304, 305 (except for the revision of the table which shall be effective July 1, 1945), 307, 308, 309, and 310 shall become effective on July 1, 1946.

SEC. 404. Except as hereinafter provided, the rights of persons to whom pensions or annuities were awarded before the date of approval of this Act shall continue to be governed by the provisions of law applicable thereto prior to the approval of this Act. In the award of annuities or increases in annuities after the date of approval of this Act on applications on which no award or a partial award has been made prior to said date, service prior to 1937 (and the compensation therefor) shall be credited only if such service is creditable under the amendments made by sec-

tion 201. No annuity or increase in annuity so awarded crediting such service shall begin to accrue prior to the date of approval of this Act.

SEC. 405. The election of a joint and survivor annuity made before the date of approval of this Act by an individual to whom an annuity accrues before January 1, 1946, shall be given effect as though the provisions of law under which the election was made had continued to be operative unless no annuity was awarded to such individual prior to the date of approval of this Act and, within one year after the approval of this Act, he revokes the election in such form and manner as the Board may prescribe. Such election by an individual to whom no annuity accrues before January 1, 1946, shall also be given such effect if the individual, before January 1, 1947, reaffirms the election in such form and manner as the Board may prescribe.

SEC. 406. Payments upon death as provided in sections 5 of the Railroad Retirement Acts of 1935 and 1937, other than survivor annuities pursuant to an election, shall be made only with respect to deaths occurring before January 1, 1946.

SEC. 407. An individual to whom an annuity accrued prior to January 1, 1946, and who would as of the date of initial accrual have been entitled to an annuity in a greater amount by reason of the amendments made by

section 201, 202, 205, or 210 had such amendments been in effect at the date of initial accrual (or, in the case of a survivor annuity, at the date of initial accrual of the annuity from which it derives), shall, without further application therefor other than a statement of any service claimed under section 202, be awarded an annuity in such greater amount beginning as of the date the applicable amendment shall have become operative: *Provided, however,* That, in such award service before 1937 (and the compensation therefor) shall not be credited if such service would not be creditable upon application of all the amendments made by this Act. In determinations made pursuant to this section any individual to whom an annuity based on not less than five years of service accrues before January 1, 1946, shall be deemed to have a "current connection with the railroad industry". If an annuity increased pursuant to this section is a joint and survivor annuity, the increase shall be in the same form, the actuarial value being computed as of the date the increase begins, unless on that date there is no spouse living for whom the election was made, in which case the increase shall be awarded on a single life basis. If the increase herein provided effects a survivor annuity only, the increase shall be so determined as to bear the same ratio to the survivor annuity, as the increase in the basic annuity would bear

~~to such basic annuity, if the employee annuitant were living and had made no joint and survivor election.~~

~~SEC. 408. No annuities accruing after the month in which this Act is approved shall be reduced under section 2 (a) 3 of the Railroad Retirement Act of 1937 to compensate for an annuity terminated by recovery from disability.~~

~~SEC. 409. In the application of section 6 of the Railroad Retirement Act of 1937 with respect to persons who were not employers before the enactment of section 1 of this Act, the dates January 1, 1945, and January 1, 1946, shall be substituted for March 1, 1937, and July 1, 1937, respectively.~~

~~SEC. 410. The enactment of section 1 of this Act shall cause subsection 1 (b) of the Railroad Unemployment Insurance Act to be superseded.~~

TITLE I—AMENDMENTS TO RAILROAD RETIREMENT ACT OF 1937

ADDITION OF CERTAIN DEFINITIONS

SECTION 1. Section 1 of the Railroad Retirement Act of 1937, as amended, is amended by adding at the end thereof the following new subsections:

"(o) An individual has 'a current connection with the railroad industry' on a particular date if, in any thirty consecutive calendar months before the month in which such date occurs, he was in service as an employee in not less

than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he was not engaged in any regular employment other than employment for an employer in the period before such month and after the end of such thirty calendar months.

"(p) The term 'occupational injury or disease' means (1) accidental injury arising out of and in the course of employment as an employee, (2) such occupational disease or infection as arises out of such employment or as naturally or unavoidably results from such accidental injury, or (3) injury caused by the willful act of a third person directed against an individual because of his employment as an employee.

"(q) The term 'wages' (except when used in section 5 (d) (1)) means all compensation earned by an employee after December 31, 1936, excluding that part of such compensation which, after compensation equal to $3,000 had been earned by an employee during any calendar year, was earned by such employee during such calendar year; but in computing such compensation no part of any month's compensation in excess of $300, earned before January 1, 1947, shall be recognized.

"(r) The term 'survivor benefit credit' means an amount equal to the sum of the following—

"(1) (A) 40 per centum of the amount of an in-

dividual's average monthly wage if such average monthly wage does not exceed $50, or (B) if such average monthly wage exceeds $50, 40 per centum of $50, plus 10 per centum of the amount by which such average monthly wage exceeds $50 and does not exceed $250, and

"(2) an amount equal to 1 per centum of the amount computed under paragraph (1) multiplied by the number of years in which $200 or more of wages were earned by such individual.

Where the survivor benefit credit thus computed is less than $10, such credit shall be $10.

"(s) The term 'average monthly wage' means the quotient obtained by dividing the total wages earned by an individual before the quarter in which he died, became entitled to receive an annuity under paragraph 1 of section 2 (a), or attained the age of sixty-five if he became entitled to receive an annuity under section 2 (a) before attaining the age of sixty-five, whichever first occurred, by three times the number of quarters elapsing after 1936 and before such quarter in which he died, became so entitled, or so attained the age of sixty-five, excluding any quarter prior to the quarter in which he attained the age of twenty-two during which he earned less than $50 of wages.

"(t) The term 'completely insured individual' means

any individual with respect to whom it appears to the satisfaction of the Board that—

"(1) He had not less than one quarter of coverage for each two of the quarters elapsing after 1936, or after the quarter in which he attained the age of twenty-one, whichever quarter is later, and up to but excluding the quarter in which he attained the age of sixty-five, or died, whichever first occurred, and in no case less than six quarters of coverage; or

"(2) He had at least forty quarters of coverage.

As used in this subsection, and in subsections (u) and (v) of this section, the term 'quarter' and the term 'calendar quarter' mean a period of three calendar months ending on March 31, June 30, September 30, or December 31. When the number of quarters specified in paragraph (1) of this subsection is an odd number, for purposes of such paragraph such number shall be reduced by one. In any case where an individual has earned in a calendar year $3,000 or more in wages, each quarter of such year following his first quarter of coverage shall be deemed a quarter of coverage, excepting any quarter in such year in which such individual dies or (having attained the age of sixty-five) is or becomes entitled to receive an annuity under section 2 and any quarter succeeding such quarter in which he died or was or became so entitled.

"(u) The term 'partially insured individual' means any individual with respect to whom it appears to the satisfaction of the Board that he earned wages of not less than $50 in each of not less than six of the twelve calendar quarters immediately preceding the quarter in which he died.

"(v) The term 'quarter of coverage' means a calendar quarter in which the individual earned not less than $50 in wages; except that for each calendar year during the period beginning January 1, 1937, and ending December 31, 1946, an individual's number of quarters of coverage shall be determined in accordance with the following table:

If during the calendar year the individual earned wages in the following number of calendar months—	*And the total wages earned during such calendar year is—*			
	$50 but less than $100	*$100 but less than $150*	*$150 but less than $200*	*$200 or more*
	Then the quarters of coverage for such calendar year shall be—			
1 but not more than 3	*1*	*1*	*1*	*1*
4 but not more than 6	*1*	*2*	*2*	*2*
7 but not more than 9	*1*	*2*	*3*	*3*
10 or more	*1*	*2*	*3*	*4*

For the purposes of subsections (s) and (u) of this section if an individual's quarters of coverage in any calendar year before 1947, as determined from the table—

"(1) is one, his wages for such year shall be deemed to have been earned in the last calendar quarter of such year;

"(2) are two, one-half of his wages for such year shall be deemed to have been earned in each of the last two calendar quarters of such year;

"(3) are three, one-third of his wages for such year shall be deemed to have been earned in each of the last three calendar quarters of such year; and

"(4) are four, one-fourth of his wages for such year shall be deemed to have been earned in each calendar quarter of such year.

"(w) The term 'widow' (except when used in section 4 (e)) means the surviving wife of an individual who either (1) is the mother of such individual's son or daughter, or (2) was married to him prior to the beginning of the twelfth month before the month in which he died.

"(x) The term 'child' (except when used in section 4 (e)) means the child of an individual, and the stepchild of an individual by a marriage contracted prior to the date upon which he attained the age of sixty and prior to the beginning of the twelfth month before the month in which he died, and a child legally adopted by an individual prior to the date upon which he attained the age of sixty and prior to the beginning of the twelfth month before the month in which he died.

"(y) In determining whether an applicant is the widow, child, or parent of a completely insured or partially

insured individual, the Board shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual was domiciled at the time of his death, or if such insured individual was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a widow, child, or parent shall be deemed such.

"(z) A widow shall be deemed to have been living with her husband at the time of his death if they were both members of the same household on the date of his death, or she was receiving regular contributions from him toward her support on such date, or he had been ordered by any court to contribute to her support."

AMENDMENT TO SECTION 2 OF RAILROAD RETIREMENT ACT OF 1937

SEC. 2. Section 2 of the Railroad Retirement Act of 1937, as amended, is amended to read as follows:

"ANNUITIES

"SEC. 2. (a) The following-described individuals, if they shall have been employees on or after August 29, 1935, shall, subject to the conditions set forth in subsections (b), (c), (d), and (e), be eligible for annuities after they shall have ceased to render compensated service to any

person, whether or not an employer as defined in section 1 (a), (but with the right to engage in other employment to the extent not prohibited by subsection (e)):

"1. Individuals who on or after August 29, 1935, shall be sixty-five years of age or over.

"2. Women who on or after January 1, 1947, shall be sixty years of age or over and have completed thirty years of service.

"3. Individuals (other than those covered by paragraph 2) who on or after August 29, 1935, shall be sixty years of age or over and have completed thirty years of service, but the annuity of such an individual shall be reduced by one one-hundred-and-eightieth for each calendar month that such individual is under age sixty-five when the annuity begins to accrue.

"4. Individuals who on or after August 29, 1935, shall be either sixty years of age or over or shall have completed thirty years of service, and whose permanent physical or mental condition is such that they are unable to engage in any regular employment for hire.

"5. Individuals who on or after January 1, 1947, have completed ten years of service and whose permanent physical or mental condition, as the result of occupational injury or disease, is such that they are unable to engage in any regular employment for hire.

"6. Individuals who on or after January 1, 1947, have, on the date as of which the annuity begins to acrue, a current connection with the railroad industry and, on such date, either have completed twenty years of service or have attained the age of sixty, and whose permanent physical or mental condition, as the result of occupational injury or disease, is such as to be disabling for work in their regular occupation as employees. The Board, with the cooperation of employers and employees, shall secure for purposes of this paragraph the establishment of standards determining the physical and mental conditions which are permanently disabling for work in the several occupations in the railroad industry, and the Board, employers, and employees shall cooperate in the promotion of the greatest practicable degree of uniformity in the standards applied by the several employers. An individual's condition shall be deemed to be disabling for work in his regular occupation as an employee if he has been disqualified by his employer because of disability for service in his regular occupation as an employee in accordance with the applicable standards so established; but if the employee has not been so disqualified by his employer, the Board shall determine whether his condition is disabling for work in his regular occupation as an employee in accordance with the standards generally established; and, if the employee's regular occupation as an

employee is not one with respect to which standards have been established, the standards relating to a reasonably comparable occupation shall be used. If there is no such comparable occupation, the Board shall determine whether the employee's condition is disabling for work in his regular occupation as an employee by determining whether under the practices generally prevailing in industries in which such occupation exists such condition is a permanent disqualification for work in such occupation. For the purposes of this section, an employee's 'regular occupation' shall be deemed to be the occupation in which he has been engaged as an employee in more calendar months than the calendar months in which he has been engaged in any other occupation as an employee during the last preceding five calendar years, whether or not consecutive, in each of which years he has earned compensation, except that, if an employee establishes that during the last fifteen consecutive calendar years he has been engaged in another occupation as an employee in one-half or more of all the months in which he has earned compensation, he may claim such other occupation as his regular occupation as an employee.

"(b) Such satisfactory proof shall be made, as prescribed by the Board, of the physical or mental condition referred to in paragraph 4, 5, or 6 of subsection (a), and from time to time, of the continuance of such condition

(determined in accordance with the tests applied in the original determination of such condition) until the employee attains the age of sixty-five. If the individual fails to comply with the requirements prescribed by the Board as to proof of the continuance of such condition until he attains the age of sixty-five years, his right to an annuity by reason thereof shall, except for good cause shown to the Board, cease, but without prejudice to his rights to have subsequently awarded to him any annuity to which he may be entitled. If before attaining the age of sixty-five an individual in receipt of an annuity under paragraph 4, 5, or 6 of subsection (a) is found by the Board to be no longer in the physical or mental condition referred to in such paragraph his annuity shall cease upon the last day of the month in which such condition is found by the Board to have ceased to exist, but without prejudice to his rights to have subsequently awarded to him any annuity to which he may be entitled.

"(c) An annuity shall be paid only if the applicant has relinquished such rights as he may have had to return to the service of an employer and of the person by whom he was last employed; but this requirement shall not apply to the individuals mentioned in paragraphs 4, 5, or 6 of subsection (a) prior to attaining the age of sixty-five.

"(d) An annuity shall begin to accrue as of a date to

be specified in a written application (to be made in such manner and form as may be prescribed by the Board and to be signed by the individual entitled thereto), but—

"(1) not before the date following the last day of compensated service of the applicant, and

"(2) not more than sixty days before the filing of the application.

"(e) No annuity shall be paid with respect to any month in which an individual in receipt of an annuity hereunder (1) renders compensated service to an employer, (2) renders compensated service to the last person by whom he was employed prior to the date on which the annuity begins to accrue, or (3) in the case of an annuity under paragraph 6 of subsection (a), earns more than $75 in service for hire or in self-employment. Individuals receiving annuities shall report to the Board immediately all such compensated service and earnings."

PROVISION RELATING TO MINIMUM ANNUITIES

SEC. 3. Subsection (e) of section 3 of the Railroad Retirement Act of 1937, as amended, is amended to read as follows:

"(e) If an individual entitled to an annuity—

"(1) was an employee when he attained age sixty-five and has completed twenty years of service, or

"(2) had, on the date as of which such annuity

began to accrue, a current connection with the railroad industry and had, on such date, completed five years of service,

the minimum annuity payable shall, before any reduction pursuant to paragraph 3 of section 2 (a), be whichever of the following is the least: (1) $3 multiplied by the number of his years of service, (2) $50, or (3) his monthly compensation."

REPEAL OF SECTIONS 4 AND 5; ADDITION OF SECTIONS PROVIDING FOR SURVIVOR BENEFITS

SEC. 4. The Railroad Retirement Act of 1937, as amended, is amended by striking out sections 4 and 5 thereof, and by inserting in lieu of such sections the following:

"SURVIVOR BENEFITS

"Child's Insurance Benefits

"SEC. 4. (a) (1) Every child (as defined in section 1 (x)) of an individual who died a completely or partially insured individual (as defined in section 1 (t) and (u)) after December 31, 1946, if such child (A) has filed application for child's insurance benefits, (B) at the time such application was filed was unmarried and had not attained the age of 18, and (C) was dependent upon such individual at the time of such individual's death, shall be entitled to receive a child's insurance benefit for each month, beginning with the month in which such child becomes so entitled to

such insurance benefits, and ending with the month immediately preceding the first month in which any of the following occurs: such child dies, marries, is adopted, or attains the age of eighteen.

"(2) Such child's insurance benefit for each month shall be equal to one-half of the survivor benefit credit (as defined in section 1 (r)) of the individual with respect to whose wages the child is entitled to receive such benefit, except that, when there is more than one such individual such benefit shall be equal to one-half of whichever survivor benefit credit is greatest.

"(3) A child shall be deemed to have been dependent upon a father or adopting father at the time of the death of such individual unless, at the time of such death, such individual was not living with or contributing to the support of such child and—

"(A) such child is neither the legitimate nor adopted child of such individual, or

"(B) such child had been adopted by some other individual, or

"(C) such child was living with and supported by such child's stepfather.

"(4) A child shall be deemed to have been dependent upon a mother, adopting mother, or stepparent at the time of the death of such individual only if, at the time of such

death, no parent other than such individual was contributing to the support of such child and such child was not living with its father or adopting father.

"Widow's Insurance Benefits

"(b) (1) Every widow (as defined in section 1 (w)) of an individual who died a completely insured individual after December 31, 1946, if such widow (A) has not remarried, (B) has attained the age of sixty-five, (C) has filed application for widow's insurance benefits, (D) was living with such individual at the time of his death, and (E) is not entitled to receive an annuity under section B, or is entitled to receive an annuity under section 2 which is less than three-fourths of the survivor benefit credit of her husband, shall be entitled to receive a widow's insurance benefit for each month, beginning with the month in which she becomes so entitled to such insurance benefits and ending with the month immediately preceding the first month in which any of the following occurs: she rem rries, dies, or becomes entitled to receive an annuity under section 2 equal to or exceeding three-fourths of the survivor benefit credit of her husband.

"(2) Such widow's insurance benefit for each month shall be equal to three-fourths of the survivor benefit credit of her deceased husband, except that, if she is entitled to receive an annuity under section 2 for any month, such

widow's insurance benefit for such month shall be reduced by an amount equal to the annuity under section 2 to which such widow is entitled.

"Widow's Current Insurance Benefits

"(c) (1) Every widow (as defined in section 1 (w)) of an individual who died a completely or partially insured individual after December 31, 1946, if such widow (A) has not remarried, (B) is not entitled to receive a widow's insurance benefit, and is not entitled to receive an annuity under section 2, or is entitled to receive an annuity under section 2 which is less than three-fourths of the survivor benefit credit of her husband, (C) was living with such individual at the time of his death, (D) has filed application for widow's current insurance benefits, and (E) at the time of filing such application has in her care a child of such deceased individual entitled to receive a child's insurance benefit, shall be entitled to receive a widow's current insurance benefit for each month, beginning with the month in which she becomes so entitled to such current insurance benefits and ending with the month immediately preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to receive a child's insurance benefit, she becomes entitled to receive an annuity under paragraph 1 or 2 of section 2 (a) equal to or exceeding three-fourths of the survivor

benefit credit of her deceased husband, she becomes entitled to receive a widow's insurance benefit, she remarries, she dies.

"(2) Such widow's current insurance benefit for each month shall be equal to three-fourths of the survivor benefit credit of her deceased husband, except that, if she is entitled to receive an annuity under section 2 for any month, such widow's current insurance benefit for such month shall be reduced by an amount equal to the annuity under section 2 to which such widow is entitled or by an amount equal to such current insurance benefit, whichever amount is less.

"Parent's Insurance Benefit

"(d) (1) Every parent (as defined in this subsection) of an individual who died a completely insured individual after December 31, 1946, leaving no widow and no unmarried surviving child under the age of eighteen, if such parent (A) has attained the age of sixty-five, (B) was wholly dependent upon and supported by such individual at the time of such individual's death and filed proof of such dependency and support within two years of such date of death, (C) has not married since such individual's death, (D)is not entitled to receive any other insurance benefits under this section or any annuity under section 2, or is entitled to receive one or more of such benefits or annuity

for a month, but the total for such month is less than one-half of the survivor benefit credit of such deceased individual, and (E) has filed application for parent's insurance benefits, shall be entitled to receive a parent's insurance benefit for each month, beginning with the month in which such parent becomes so entitled to such parent's insurance benefits and ending with the month immediately preceding the first month in which any of the following occurs: such parent dies, marries, or becomes entitled to receive for any month an insurance benefit or benefits (other than a benefit under this subsection) or an annuity under section 2 in a total amount equal to or exceeding one-half of the survivor benefit credit of such deceased individual.

"(2) Such parent's insurance benefit for each month shall be equal to one-half of the survivor benefit credit of such deceased individual, except that, if such parent is entitled to receive an insurance benefit or benefits for any month (other than a benefit under this subsection) or an annuity under section 2, such parent's insurance benefit for such month shall be reduced by an amount equal to the total of such other benefit or benefits or annuity for such month. When there is more than one such individual with respect to whose wages the parent is entitled to receive a parent's insurance benefit for a month, such benefit shall be equal to one-half of whichever survivor benefit credit is greatest.

"(3) As used in this subsection, the term 'parent' means the mother or father of an individual, a stepparent of an individual by a marriage contracted before such individual attained the age of sixteen, or an adopting parent by whom an individual was adopted before he attained the age of sixteen.

"Lump-Sum Death Payments

"(e) Upon the death, after December 31, 1946, of an individual who died a completely or partially insured individual leaving no surviving widow, child, or parent who would, on filing application in the month in which such individual died, be entitled to a benefit for such month under subsection (a), (b), (c), or (d) of this section, an amount equal to six times the survivor benefit credit of such individual shall be paid in a lump-sum to the following person (or if more than one, shall be distributed among them) whose relationship to the deceased is determined by the Board, and who is living on the date of such determination: To the widow or widower of the deceased; or, if no such widow or widower be then living, to any child or children of the deceased and to any other person or persons who are, under the intestacy law of the State where the deceased was domiciled, entitled to share as distributees with such children of the deceased, in such proportions as is provided by such law; or, if no widow or widower and no such child

and no such other person be then living, to the parent or to the parents of the deceased, in equal shares. A person who is entitled to share as distributee with an above-named relative of the deceased shall not be precluded from receiving a payment under this subsection by reason of the fact that no such named relative survived the deceased or of the fact that no such named relative of the deceased was living on the date of such determination. If none of the persons described in this subsection be living on the date of such determination, such amount shall be paid to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the expenses of burial of the deceased. No payment shall be made to any person under this subsection, unless application therefor shall have been filed, by or on behalf of any such person (whether or not legally competent), prior to the expiration of two years after the date of death of such individual.

"Application

"(f) (1) An individual who would have been entitled to a benefit under subsection (a), (b), (c), or (d) for any month had he filed application therefor prior to the end of such month, shall be entitled to such benefit for such month if he files application therefor prior to the end of the third month immediately succeeding such month.

"(2) No application for any benefit under this section

filed prior to three months before the first month for which the applicant becomes entitled to receive such benefit shall be accepted as an application for the purposes of this section.

"(3) An application for any payment or benefit under this section shall be made and filed in such manner as the Board may by regulation prescribe.

"Family Payments

"(g) The Board may, in its discretion, certify to the Secretary of the Treasury any two or more individuals of the same family for joint payment of the total benefits and annuities payable to such individuals under this Act.

"Benefits Due But Not Paid at Death

"(h) The amount of any monthly benefit or lump sum due any individual under this section but not paid to such individual before his death shall be paid to the same persons, and subject to the same conditions and limitations, as though (1) such amount constituted a lump sum payable under subsection (e) by reason of the death of the individual with respect to whose wages such amount was payable, and (2) the individual with respect to whose wages such amount was payable had died on the date of the death of the individual to whom such amount was due.

"Assignment

"(i) The right of any individual to any future payment under this section shall not be transferable or assignable at

law or in equity, and none of the moneys paid or payable or rights existing under this section shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

"When an Individual Is Deemed Entitled to Receive an Annuity

"(j) For the purposes of this section and subsections (s) and (t) of section 1, an individual shall be deemed to be entitled to receive an annuity for any month if an annuity is, or thereafter becomes, payable to him for the accrual during such month.

"REDUCTION AND INCREASE OF INSURANCE BENEFITS

"SEC. 5. (a) Whenever the total of benefits under section 4, payable for a month with respect to an individual's wages, is more than $20 and exceeds (1) $85, or (2) an amount equal to twice the survivor benefit credit of such individual, or (3) an amount equal to 80 per centum of his average monthly wage (as defined in section 1 (s)), whichever of such three amounts is least, such total of benefits shall, prior to any deductions under subsection (d), be reduced to such least amount or to $20, whichever is greater.

"(b) Whenever the benefit or total of benefits under section 4, payable for a month with respect to an individual's wages, is less than $10, such benefit or total of benefits shall,

prior to any deductions under subsection (d), be increased to $10.

"(c) Whenever a decrease or increase of the total of benefits for a month is made under subsection (a) or (b) of this section, each benefit shall be proportionately decreased or increased, as the case may be.

"(d) Deductions, in such amounts and at such time or times as the Board shall determine, shall be made from any payment or payments under section 4 to which an individual is entitled, until the total of such deductions equals such individual's benefit or benefits for any month in which such individual:

"(1) rendered services for wages (as defined in section 209 (a) of the Social Security Act, as amended) of not less than $15; or

"(2) if a child under eighteen and over sixteen years of age, failed to attend school regularly and the Board finds that attendance was feasible; or

"(3) if a widow entitled to a widow's current insurance benefit, did not have in her care a child of her deceased husband entitled to receive a child's insurance benefit.

"(e) If more than one event occurs in any one month which would occasion deductions equal to a benefit for such

month, only an amount equal to such benefit shall be deducted.

"(f) Any individual in receipt of benefits subject to deduction under subsection (d) (or who is in receipt of such benefits on behalf of another individual), because of the occurrence of an event enumerated therein, shall report such occurrence to the Board prior to the receipt and acceptance of an insurance benefit for the second month following the month in which such event occurred. Any such individual having knowledge thereof, who fails to report any such occurrence, shall suffer an additional deduction equal to that imposed under subsection (d)."

RETURNS AND RECORDS AS TO COMPENSATION EMPLOYEES

SEC. 5. Section 8 of the Railroad Retirement Act of 1937, as amended, is amended to read as follows:

"RETURNS OF COMPENSATION AND CONCLUSIVENESS OF RECORDS OF COMPENSATION

SEC. 8. Employees shall file with the Board, in such manner and form and at such times as the Board by rules and regulations may prescribe, returns under oath of compensation of employees, and, if the Board shall so require, shall furnish employees with statements of their compensation as reported to the Board. The Board's record of the

compensation so returned shall be conclusive as to the amount of compensation earned by an employee during each month covered by the return, and the fact that the Board's records show that no return was made of the compensation claimed to be earned by an employee during a particular calendar month shall be taken as conclusive that no compensation was earned by such employee during that month, unless the error in the amount of compensation in the one case, or failure to make or record return of the compensation in the other case, is called to the attention of the Board within four years after the last date on which return of the compensation was required to be made."

CHANGES IN EXISTING LAW MADE NECESSARY BY PRECEDING AMENDMENTS

SEC. 6. (a) The third sentence of paragraph (h) of section 1 of the Railroad Retirement Act of 1937, as amended, is amended by striking out "for the purposes of subsections (a), (c), and (d) of section 2 and subsection (a) of section 5" and inserting in lieu thereof "for the purposes of subsections (a), (d), and (e) of section 2, and for the purposes of section 4,".

(b) Subsection (f) of section 3 of the Railroad Retirement Act of 1937, as amended, is amended to read as follows:

"(f) Annuity payments due any individual but not paid to such individual before his death shall be paid to the same

persons, and subject to the same conditions and limitations, as though such payments constituted a lump sum payable under section 4 (e) with respect to the death of such individual."

(c) Subsection (h) of section 3 of the Railroad Retirement Act of 1937, as amended, is amended by striking out "except as provided in subdivision 3 of section 2 (a)" and inserting in lieu thereof "except that if, under subsection (b) of section 2, an individual's annuity ceases the provisions of this subsection shall not apply with respect to any annuity subsequently awarded to which such individual may be entitled".

(d) Subsection (m) of section 3A of the Railroad Retirement Act of 1937, as amended, is hereby repealed.

(e) (1) Subsection (n) of section 3A of the Railroad Retirement Act of 1937, as amended, is amended by striking out the phrase "annuities, pensions and death benefits" and inserting in lieu thereof the following: "annuities, pensions, death benefits, insurance benefits, and lump sum payments".

(2) Section 9 of such Act is amended by striking out the phrase "annuities, pensions, or death benefits" wherever it appears in such section, and inserting in lieu thereof the following: "annuities, pensions, death benefits, insurance benefits, or lump sum payments".

(3) Subsection (b) 1 of section 10 of such Act is

amended by striking out the phrase "pensions, annuities, or death benefits" and inserting in lieu thereof the following: "annuities, pensions, death benefits, insurance benefits, or lump sum payments".

(4) Subsection (b) 5 of section 10 of such Act is amended by striking out the phrase "annuities or death benefits" and inserting in lieu thereof the following: "annuities, death benefits, insurance benefits, or lump sum payments".

(5) The third sentence of section 11 of such Act is amended by striking out the phrase "annuity, pension, or death benefit" wherever it appears in such sentence and inserting in lieu thereof the following: "annuity, pension, death benefit, insurance benefit, or lump sum payment".

(6) Subsections (a) and (b) of section 15 of such Act are amended by striking out the phrase "annuities, pensions, and death benefits" wherever it appears in such subsections, and inserting in lieu thereof the following: "annuities, pensions, death benefits, insurance benefits, and lump sum payments".

SAVING PROVISIONS

SEC. 7. (a) The provisions of paragraphs 2 and 4 of section 2 (a), and of section 3 (e), of the Railroad Retirement Act of 1937, as in force after this title takes effect, shall be applicable to individuals who became eligible for annuities

before January 1, 1947, without further application therefor, but such provisions shall not result in the payment of any annuity, with respect to any calendar month prior to January 1, 1947, in a higher amount than would be payable under the Railroad Retirement Act of 1937 as in force prior to the date on which this title takes effect. If an annuity increased pursuant to such provisions is a joint and survivor annuity, the increase shall be in the same form, the actuarial value being computed as of the date the increase begins, unless on that date there is no spouse living for whom the election was made, in which case the increase shall be awarded on a single life basis. If the increase affects a survivor annuity only, the increase shall be so determined as to bear the same ratio to the survivor annuity as the increase in the basic annuity would bear to such basic annuity if the employee annuitant were living and had made no joint and survivor election. For the purposes of section 3 (e) of the Railroad Retirement Act of 1937, as amended by this Act, an individual to whom an annuity began to accrue before January 1, 1947, if such annuity was based on not less than five years of service, shall be deemed to have had a current connection with the railroad industry on the date as of which such annuity began to accrue.

(b) Notwithstanding the amendment by this Act of section 3 (f) of the Railroad Retirement Act of 1937, in

any case in which the individual referred to in such section died before January 1, 1947, such section shall continue in effect as though this Act had not been enacted.

(c) Notwithstanding the repeal by this Act of section 4 of the Railroad Retirement Act of 1937, in any case where an election was made under such section 4 prior to January 1, 1947, the election shall be given effect as though this Act had not been enacted; except that—

(1) If the annuity of the individual who made the election did not begin to accrue before January 1, 1947, the election shall be considered not to have been made unless the individual, prior to January 1, 1948, reaffirms such election in such manner as the Railroad Retirement Board shall by regulations prescribe.

(2) If the annuity of the individual who made the election began to accrue, but was not awarded, before January 1, 1947, the election shall be considered not to have been made if such individual, prior to January 1, 1948, revokes such election in such manner as the Railroad Retirement Board shall by regulations prescribe.

(d) Notwithstanding the repeal by this Act of section 3A (m) and section 5 of the Railroad Retirement Act of 1937, such section 3A (m) and such section 5 shall continue in effect with respect to compensation earned after December 31, 1936, and before January 1, 1947, by an individual as

an employee, as though this Act had not been enacted, in the following cases:

(1) If such individual dies before January 1, 1947.

(2) If such individual dies on or after January 1, 1947, and died neither completely nor partially insured within the meaning of subsection (t) or (u) of section 1 of the Railroad Retirement Act, as amended by this Act.

(3) If such individual dies on or after January 1, 1947, and a lump-sum death payment under section 4 (e) of the Railroad Retirement Act of 1937, as amended by this Act, is payable, except that the death benefit shall be reduced by the amount of such lump-sum death payment.

(4) If such individual dies on or after January 1, 1947, leaving a surviving widow, child, or parent who would, on filing application in the month in which such individual died, be entitled to a benefit for such month under subsection (a), (b), (c), or (d) of section 4 of the Railroad Retirement Act of 1937, as amended by this Act, except that (A) the death benefit, if any, shall not be due before (i) the first day of the month next following the last month with respect to which any benefits under such subsection (a), (b), (c), or (d), based on an application filed in the month in which such individual dies, would be payable, or (ii)

the first day of the month next following the month of the death of a spouse entitled to a survivor annuity pursuant to an election made under the provisions of section 4 of the Railroad Retirement Act of 1937 before its amendment by this Act, whichever is later; and the two year period within which an application for the death benefit, if any, must be filed pursuant to the provisions of such section 5, shall not begin before such first day of the month described in clauses (i) and (ii) above, and (B) the death benefit shall be reduced by the aggregate amount of benefits paid, or due but not paid, under section 4 of the Railroad Retirement Act of 1937, as amended by this Act, on the basis of such individual's death.

(c) Notwithstanding the amendment made by this Act to section 8 of the Railroad Retirement Act of 1937, as amended, a return made in accordance with such section, covering monthly compensation of an employee, with respect to any period before January 1, 1947, shall be conclusive (in the same manner and to the same extent as provided under such section 8 prior to its amendment by this Act) as to the amount of compensation earned by such employee during each month covered by the return; except that after March 31, 1951, the Railroad Retirement Board's record of the amount of the compensation earned by such employee

during each month covered by any such return shall be conclusive.

TITLE II—AMENDMENTS TO RAILROAD UNEMPLOYMENT INSURANCE ACT

TERMINATION OF PERIOD WITH RESPECT TO WHICH CONTRIBUTIONS SHALL BE PAYABLE

SEC. 201. So much of the first sentence of subsection (a) of section 8 of the Railroad Unemployment Insurance Act, as amended, as precedes the proviso is amended to read as follows: "Every employer shall pay a contribution, with respect to having employees in his service, equal to 3 per centum of so much of the compensation as is not in excess of $300 for any calendar month payable by him to any employee with respect to employment after June 30, 1939, and before January 1, 1947:"

AMENDMENTS RELATING TO RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT

SEC. 202. (a) Subsection (a) of section 10 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"(a) The Secretary of the Treasury shall maintain in the unemployment trust fund established pursuant to section 904 of the Social Security Act an account to be known as the railroad unemployment insurance account. This account shall consist of (i) 90 per centum of all contributions

collected pursuant to section 8 of this Act, together with all interest collected pursuant to section 8 of this Act, and 90 per centum of all taxes (together with all interest, civil fines, civil penalties, additional amounts, and additions to the tax) collected pursuant to the Railroad Unemployment Tax Act (part II, subchapter B, chapter 9, Internal Revenue Code); (ii) all amounts transferred or paid into the account pursuant to section 13 or section 14 of this Act; (iii) all additional amounts appropriated to the account in accordance with any provision of this Act or with any provision of law now or hereafter adopted; (iv) a proportionate part of the earnings of the unemployment trust fund, computed in accordance with the provisions of section 904 (e) of the Social Security Act; (v) all amounts realized in recoveries for overpayments or erroneous payments of benefits; (vi) all amounts transferred thereto pursuant to section 11 of this Act; (vii) all fines or penalties collected pursuant to the provisions of this Act and all criminal fines or criminal penalties collected with respect to the tax imposed under the Railroad Unemployment Tax Act; and (viii) all amounts credited thereto pursuant to section 2 (f) or section 12 (g) of this Act. Notwithstanding any other provision of law, all moneys at any time standing to the credit of the account shall be mingled and undivided, and are hereby permanently appropriated to the

Board and to the Bureau of Internal Revenue to be continuously available to the Board and to the Bureau of Internal Revenue, without further appropriation, for the payment of benefits provided for by this Act, and for the payment of refunds (including interest thereon) pursuant to this Act or the Railroad Unemployment Tax Act, and no part thereof shall lapse at any time, or be carried to the surplus fund or any other fund."

(b) Subsection (b) of section 10 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"(b) All moneys in the account shall be used solely for the payment of the benefits provided for by this Act, and for the payment of refunds (including interest thereon) pursuant to this Act or the Railroad Unemployment Tax Act. The Board shall, from time to time, certify to the Secretary of the Treasury the name and address of each person or company entitled to receive benefits or a refund payment under this Act, the amount of such payment, and the time at which it shall be made. The Commissioner of Internal Revenue shall from time to time, furnish to the Secretary of the Treasury a schedule of overpayments in respect of the tax (or any interest, penalty, additional amount, or addition to the tax) under the Railroad Unemployment Tax Act for the purpose of causing refunds

under such Act to be made from the account. Prior to audit or settlement by the General Accounting Office, the Secretary of the Treasury, through the Division of Disbursement of the Treasury Department, shall make payments from the account directly to such person or company of the amount of benefits or refund so certified by the Board and to the person or company shown to be entitled thereto of the amount of the refund under the Railroad Unemployment Tax Act so scheduled by the Commissioner of Internal Revenue: Provided, however, That if the Board shall so request, the Secretary of the Treasury, through the Division of Disbursement of the Treasury Department, shall transmit benefit payments to the Board for distribution by it through employment offices or in any such other manner as the Board deems proper."

(c) The second sentence of subsection (a) of section 904 of the Social Security Act, as amended, is amended by inserting after the word "Board" the words "or the Bureau of Internal Revenue".

(d) Subsection (f) of section 904 of the Social Security Act, as amended, is amended by striking out the last sentence thereof and by inserting in lieu thereof the following sentence: "The Secretary of the Treasury is authorized and directed to make out of the fund such payments as the Railroad Retirement Board may duly certify and such refunds

under the Railroad Unemployment Tax Act (part II, subchapter B, chapter 9, Internal Revenue Code) as may be duly scheduled for payment by the Commissioner of Internal Revenue, not exceeding the amount standing to the credit of the railroad unemployment insurance account at the time of such payment or refund.".

AMENDMENT RELATING TO THE RAILROAD UNEMPLOYMENT INSURANCE ADMINISTRATION FUND

SEC. 203. The second sentence of subsection (a) of section 11 of the Railroad Unemployment Insurance Act, as amended, is amended by inserting immediately before the semicolon at the end of clause (i) of such sentence the following: ", and 10 per centum of all taxes (exclusive of all interest, fines, penalties, additional amounts, and additions to the tax) collected pursuant to the Railroad Unemployment Tax Act (part II, subchapter B, chapter 9, Internal Revenue Code)".

CHANGES IN EXISTING LAW MADE NECESSARY BY PRECEDING AMENDMENTS

SEC. 204. (a) Subsection (g) of secton 2 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"(g) Benefits accrued to an individual but not yet paid at death shall, upon certification by the Board, be paid, without necessity of filing further claims therefor, to the same

person or persons, and subject to the same conditions and limitations, as though such benefits constituted a lump sum payable under the provisions of section 4 (e) of the Railroad Retirement Act of 1937, as amended, with respect to the death of such individual."

(b) Subsection (g) of section 5 of the Railroad Unemployment Insurance Act, as amended, is amended by inserting after the word "refund" where it first appears in such subsection the words "under this Act".

(c) Subsection (h) of section 8 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"(h) All provisions of law, including penalties, applicable with respect to any tax imposed by section 1800 or 2700 of the Internal Revenue Code, and the provisions of section 3661 of such code, insofar as applicable and not inconsistent with the provisions of this Act, shall be applicable with respect to the contributions required by this Act and the payments required by the second sentence of section 2 (f) of this Act: Provided, That all authority and functions conferred by or pursuant to such provisions upon any officer or employee of the United States, except the authority to institute and prosecute, and the function of instituting and prosecuting, criminal proceedings, shall, with respect to such contributions and payments, be vested in

and exercised by the Board or such officers and employees of the Board as it may designate therefor."

(d) Subsection (d) of section 9 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"(d) All fines and penalties imposed by a court pursuant to this Act and all criminal fines and criminal penalties imposed by a court with respect to the tax imposed under the Railroad Unemployment Tax Act (part II, subchapter B, chapter 9, Internal Revenue Code) shall be paid to the court and remitted from time to time by order of the judge to the Treasury of the United States to be credited to the account."

(e) Subsection (e) of section 12 of the Railroad Unemployment Insurance Act, as amended, is amended by inserting after the word "refunds" where it first appears in such subsection the words "under this Act".

SAVING PROVISION

SEC. 205. Notwithstanding the amendment made by this Act to subsection (g) of section 2 of the Railroad Unemployment Insurance Act, in any case in which the individual referred to in such subsection died before January 1, 1947, the accrued benefits referred to in such subsection shall be paid in accordance with the provisions of that

subsection as it was in effect before it was amended by this Act; and the references in that subsection, as it was in effect before such amendment, to sections 3 (f) and 5 of the Railroad Retirement Act of 1937 shall be considered to be references to such sections as they were in force before the date on which title I of this Act takes effect.

TITLE III—AMENDMENTS TO INTERNAL REVENUE CODE

INCREASE IN RAILROAD RETIREMENT TAX RATES

Rate of Employees' Tax

SEC. 301. (a) Section 1500 of the Internal Revenue Code is amended by striking out clauses numbered 4 and 5 and by inserting in lieu thereof the following:

"4. With respect to compensation earned during the calendar year 1946, the rate shall be 3½ per centum;

"5. With respect to compensation earned after December 31, 1946, the rate shall be 6 per centum."

Rate of Employee Representatives' Tax

(b) Section 1510 of the Internal Revenue Code is amended by striking out clauses numbered 4 and 5 and by inserting in lieu thereof the following:

"4. With respect to compensation earned during the calendar year 1946, the rate shall be 7 per centum;

"5. With respect to compensation earned after December 31, 1946, the rate shall be 12 per centum."

Rate of Employers' Tax

(c) Section 1520 of the Internal Revenue Code is amended by striking out clauses numbered 4 and 5 and by inserting in lieu thereof the following:

"4. With respect to compensation paid to employees for services rendered during the calendar year 1946, the rate shall be 3½ per centum;

"5. With respect to compensation paid to employees for services rendered after December 31, 1946, the rate shall be 6 per centum."

RAILROAD UNEMPLOYMENT TAX

Technical Amendments

SEC. 302. (a) Subchapter B of chapter 9 of the Internal Revenue Code, as amended, is further amended:

(1) By striking out the words and figures "Part I", "Part II", "Part III", and "Part IV" in the subheadings in such subchapter and by inserting in lieu thereof "Subpart I", "Subpart II", "Subpart III", and "Subpart IV", respectively;

(2) By striking out the word "SUBCHAPTER" in the heading of section 1537 of such subchapter and by inserting in lieu thereof "PART";

(3) By striking out the words "this subchapter" wherever they appear in such subchapter and by inserting in lieu thereof "this part";

(4) By inserting immediately after the heading of such subchapter the following new subheading:

"Part I—Railroad Retirement Tax Act";

(5) By adding at the end of such subchapter the following:

"SEC. 1538. TITLE OF PART.

"This part may be cited as the 'Railroad Retirement Tax Act'."

Railroad Unemployment Tax Act

(b) Subchapter B of chapter 9 of the Internal Revenue Code, as amended, is further amended by adding at the end thereof the following:

"Part II—Railroad Unemployment Tax Act

"SEC. 1550. RATE OF TAX ON EMPLOYERS.

"In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his service, equal to the percentages set forth in the following table of so much of the compensation as is not in excess of $300 for any calendar month payable by him to any employee for services rendered to him after December 31, 1946: Provided, however, That if compensation is payable to an employee by more than one employer with respect to any such calendar month, the tax imposed by this section shall apply to not more than $300 of the aggregate compensation payable to said employee by all said employers with respect

to such calendar month, and each such employer shall be liable for that proportion of the tax with respect to such compensation which the amount payable by him to the employee with respect to such calendar month bears to the aggregate compensation payable to such employee by all employers with respect to such calendar month:

If the balance to the credit of the account as of the close of business on September 30 of any year, as determined by the Secretary, is:	*The rate with respect to compensation payable to employees for services rendered during the next succeeding calendar year shall be:*
$350,000,000 or more	*½ percent*
$300,000,000 or more but less than $350,000,000	*1 percent*
$250,000,000 or more but less than $300,000,000	*1½ percent*
$200,000,000 or more but less than $250,000,000	*2 percent*
$150,000,000 or more but less than $200,000,000	*2½ percent*
Less than $150,000,000	*3 percent*

On or before December 31, 1946, and on or before December 31 of each succeeding year, the Secretary shall determine and proclaim the balance to the credit of the account as of the close of business on September 30 of such year.

"SEC. 1551. ADJUSTMENTS.

"*If more or less than the correct amount of the tax imposed by section 1550 is paid with respect to any compensation, then, under regulations made by the Commissioner, with the approval of the Secretary, proper adjustments with respect to the tax shall be made, without interest, in connection with subsequent payments of tax under this part made by the same employer.*

"SEC. 1552. OVERPAYMENTS AND UNDERPAYMENTS.

"If more or less than the correct amount of the tax imposed by section 1550 is paid with respect to any compensation and the overpayment or underpayment of the tax cannot be adjusted under section 1551, the amount of the overpayment shall be refunded, or the amount of the underpayment shall be collected, in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations under this part as made by the Commissioner, with the approval of the Secretary.

"SEC. 1553. COLLECTION AND PAYMENT OF TAX.

"(a) ADMINISTRATION.—The tax imposed by this part shall be collected by the Bureau of Internal Revenue and shall be deposited by it with the Secretary, 90 per centum thereof to the credit of the account and 10 per centum thereof to the credit of the fund; except that 100 per centum of the interest, civil fines, civil penalties, additional amounts, and additions to the tax, collected pursuant to this part, shall be credited to the account.

"(b) TIME AND MANNER OF PAYMENT.—The tax imposed by this part shall be collected and paid quarterly or at such other times and in such manner and under such conditions not inconsistent with this part as may be prescribed by regulations made by the Commissioner, with the approval of the Secretary.

"(c) ADDITION TO TAX IN CASE OF DELINQUENCY.—If the tax imposed by this part is not paid when due, there shall be added as part of the tax (except in the case of adjustments made in accordance with the provisions of section 1551) interest at the rate of 1 per centum per month or fraction of a month from the date the tax became due until paid.

"(d) FRACTIONAL PARTS OF A CENT.—In the payment of any tax under this part, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

"SEC. 1554. DEFINITIONS.

"As used in this part—

"(a) EMPLOYER.—The term 'employer' means any carrier (as defined in subsection (b)), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or oper-

ating all or any part of the business of any such employer: Provided, however, That the term 'employer' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Commissioner of Internal Revenue, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term 'employer' shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies, and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws

of such organizations. The term 'employer' shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

"(b) CARRIER.—The term 'carrier' means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act, as amended.

"(c) COMPANY.—The term 'company' includes corporations, associations, and joint-stock companies.

"(d) EMPLOYEE.—The term 'employee' means any individual in the service of one or more employers for compensation: Provided, however, That the term 'employee' shall not include any individual in the service of a local lodge or division defined as an employer in subsection (a). The term 'employee' includes an officer of an employer. The term 'employee' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

"(e) SERVICE.—An individual is in the service of an employer whether his service is rendered within or without the United States if he is subject to the continuing authority

of the employer to supervise and direct the manner of rendition of his service, which service he renders for compensation: Provided, however, That an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clauses (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such gen-

eral committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to subsection (e) of section 1 of the Railroad Unemployment Insurance Act, as amended, shall be applicable: Provided further, That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof.

"(f) COMPENSATION.—The term 'compensation' means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, including remuneration for time lost as an employee, but remuneration for time lost shall be deemed earned on the day on which such time is lost. Such term does not include tips, or the voluntary payment by an employer, without

deduction from the remuneration of the employee, of the tax imposed on such employee by section 1500.

"(g) ACCOUNT.—The term 'account' means the railroad unemployment insurance account established pursuant to section 10 of the Railroad Unemployment Insurance Act, as amended, in the unemployment trust fund.

"(h) FUND.—The term 'fund' means the railroad unemployment insurance administration fund established pursuant to section 11 of the Railroad Unemployment Insurance Act, as amended.

"(i) UNITED STATES.—The term 'United States', when used in a geographical sense, means the States, Alaska, Hawaii, and the District of Columbia.

"(j) STATE.—The term 'State' means any of the States, Alaska, Hawaii, or the District of Columbia.

"SEC. 1555. PENALTIES.

"(a) PROHIBITION ON DEDUCTION OF TAX.—The tax imposed by this part shall not be deducted by the employer, in whole or in part, from the compensation of employees in his employ. Any employer, or officer or agent of an employer, who violates any provision of this subsection shall, upon conviction, be punished for each such violation by a fine of not more than $1,000 or by imprisonment not exceeding one year, or both.

"(b) PROHIBITION ON REQUIRING EMPLOYEE TO

BEAR TAX.—Any agreement by an employee to pay all or any portion of the tax imposed on his employer by this part shall be void, and it shall be unlawful for any employer, or officer or agent of an employer, to make, require, or permit any employee to bear all or any portion of such tax. Any employer, or officer or agent of an employer, who violates any provision of this subsection shall, upon conviction, be punished for each such violation by a fine of not more than $10,000 or by imprisonment not exceeding one year, or both.

"SEC. 1556. RULES AND REGULATIONS.

"The Commissioner, with the approval of the Secretary, shall make and publish such rules and regulations as may be necessary for the enforcement of this part.

"SEC. 1557. OTHER LAWS APPLICABLE.

"All provisions of law, including penalties, applicable with respect to any tax imposed by section 2700 or section 1800, insofar as applicable and not inconsistent with the provisions of this part, shall be applicable with respect to the tax imposed by this part.

"SEC. 1558. TITLE OF PART.

"This part may be cited as the 'Railroad Unemployment Tax Act'."

DEPOSIT OF COLLECTIONS

SEC. 303. Section 3971 (b) of the Internal Revenue

Code is amended by adding at the end thereof the following paragraph:

"(4) TAX COLLECTED UNDER RAILROAD UNEMPLOYMENT TAX ACT.—The gross amount of all taxes (including all interest, civil fines, civil penalties, additional amounts, and additions to the tax) collected pursuant to the Railroad Unemployment Tax Act shall be deposited directly with the Secretary, or with any Federal Reserve bank or member bank of the Federal Reserve system designated by him to receive such deposits, by the officer receiving or collecting the same, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description, to be credited in accordance with section 1553 (a)." A certificate of such deposit, stating the name of the depositor and the specific account on which the deposit was made, signed by the Secretary, designated depositary, or proper officer of a deposit bank, shall be transmitted to the Commissioner.

TITLE IV—EFFECTIVE DATES OF TITLES I AND II

SEC. 401. Titles I and II of this Act shall take effect January 1, 1947.

Amend the title so as to read: "A bill to amend the Railroad Retirement Act of 1937 and the Railroad Unemployment Insurance Act, and for other purposes."

Union Calendar No. 581

79TH CONGRESS
2D SESSION

H. R. 1362

[Report No. 1989]

A BILL

To amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes.

By Mr. CROSSER

JANUARY 11, 1945

Referred to the Committee on Interstate and Foreign Commerce

MAY 9, 1946

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

Calendar No. 1745

79TH CONGRESS, 2d Session | SENATE | REPORT No. 1710

AMENDMENTS TO RAILROAD RETIREMENT ACTS, RAILROAD UNEMPLOYMENT INSURANCE ACT, AND RELATED PROVISIONS OF LAW

JULY 12 (legislative day, JULY 5), 1946.—Ordered to be printed

Mr. BARKLEY, from the Committee on Interstate Commerce, submitted the following

REPORT

[To accompany H. R. 1362]

The Committee on Interstate Commerce, to whom was referred the bill (H. R. 1362) to amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code, and for other purposes, having considered the same, report favorably thereon and recommend that the bill do pass without amendment.

I

The bill was passed by the House of Representatives without amendment by a vote of 235 to 49. It is identical in every respect to the bill (S. 293) introduced on January 15, 1945, by Senator Wagner for himself and Senator Wheeler. The most extensive hearings on the bill were held before the House Committee on Interstate and Foreign Commerce where three volumes of testimony were taken in hearings extending from January 31 to April 26, 1945. A subcommittee of the Committee on Interstate Commerce was appointed to consider the Senate bill. The subcommittee had before it copies of the transcript of the House hearings and in order to avoid repetition and duplication that would be wasteful of time and effort, it asked parties appearing before it to confine their testimony to summarization and supplementation. The subcommittee held hearings from July 23 to 26, 1945, in which all interested parties were afforded an opportunity to present testimony of this character and to supplement their testimony with written presentations. The proceedings before the subcommittee and the supplementary statements have been printed in a volume of 558 pages.

The subcommittee made a report to the committee presenting the issues developed in the proceedings before it. Thereafter, no further

action was taken in the Senate pending action by the House of Representatives since the bill contained taxing provisions and, under the Constitution, action by the House of Representatives must precede action in the Senate.

II

For several years it has been apparent that congressional action for the improvement of the railroad retirement and unemployment insurance systems is urgently necessary. Virtually all Members of Congress have been petitioned from time to time by individual railroad employees or groups of employees to press for the enactment of such improvements. The suggestions for change have been numerous and varied. The multiplicity of petitions is eloquent of the widespread dissatisfaction with the provisions of the present law, but the diversity of the suggestions precludes the use of this source as a helpful guide to sound and feasible legislation.

The officials of railway labor organizations have been similarly importuned by their members to press for improvements in the legislation. Some 6 years ago the Railway Labor Executives' Association established a committee for the purpose of canvassing and analyzing the multitude of recommendations with a view toward formulating a program that would reasonably meet the causes of dissatisfaction and would at the same time be sound, equitable, and financially and administratively feasible. The proposals contained in this bill represent the fruits of that committee's work. The bill was presented under the sponsorship of the Railway Labor Executives' Association representing 19 of the standard railway labor organizations, and it was subsequently also endorsed by the 2 standard railway labor organizations not represented in the association and by other labor groups as well. It is the view of the Committee on Interstate Commerce that the proposed improvements are sound and equitable and financially and administratively feasible and their enactment will go far toward eliminating the causes for widespread dissatisfaction and unrest among railroad employees. In taking action to this end Congress will be manifesting a proper concern with the effective functioning of the railroad industry, which is still the principal channel of interstate commerce.

III

The subject matter of the legislation that is to be amended by the bill is necessarily fairly technical and complex. The text of the bill consequently is likewise rather technical. However, the major subjects to which the bill is addressed are rather few and the policies underlying them are readily understood.

Finances.—The railroad retirement system at present is supported by joint contributions in the form of taxes levied in equal amounts on employers and employees based on the pay roll up to $300 per month per man. The present rate of tax is 3½ percent each, and under present law this rate automatically rises to 3¾ percent in 1949.

The actuaries have found that there is probably not a sufficiently rapid accumulation of reserves under the present tax rate to provide a full actuarial reserve for the liabilities that are accruing. It has been the desire and purpose of all concerned that full actuarial reserves

be provided. It is estimated that three-quarters of 1 percent increase in the tax on employers and a like increase in the tax on employees is necessary to provide the needed reserves.

The new benefits proposed in the bill are estimated to cost 1¾ percent of the taxable pay roll for employers and a like amount for employees. The bill, therefore, provides increased taxes on each group graduated to reach an ultimate level in 1952 of 2½ percent more than the present law provides. Thus provision is made both for adequacy of reserves to cover the present benefits and to defray the cost of the new benefits. This carries forward and reinforces the established policy of financing this system by equal contributions from the parties without support from the Public Treasury.

With respect to unemployment insurance, experience has shown that the present rate of taxation is sufficient to provide for better benefits than those now provided for. As in the case of the State unemployment insurance systems applicable to other industries, the benefits provided in the Railroad Unemployment Insurance Act were conservatively framed with the expectation that as experience showed the financing to be sufficient for the support of more liberal benefits, the benefit provisions could be progressively liberalized. In the several States this process has been carried forward, and in nearly all States some liberalization occurs at practically every session of the legislature. The Railroad Unemployment Insurance Act, however, has not been liberalized since 1940 and that circumstance, together with the high level of employment during the war years, has brought about the accumulation of a reserve of over $700,000,000. The new benefits proposed in the bill by way of amendments of the railroad unemployment insurance law have been calculated to fall safely within the present financing. Accordingly, no change of financing is proposed for these unemployment benefits.

Survivor benefits.—Section 213 of the bill sets up a system of survivor benefits patterned after and integrated with the survivor benefit provisions of the Social Security Act. Under present law the only provision that is made for monthly payments to survivors of railroad men men who die is the provision permitting a man to elect 5 years before retirement, or at retirement if he is in good health, to take an annuity that is reduced in such an amount as is actuarially calculated to cover the cost of paying an annuity after his death to his spouse if she survives him. Very few railroad employees have made such elections, since they find that the amount of the annuity left them after providing protection for a surviving spouse is insufficient. There is no monthly payment available at all for survivors of railroad men who die before retiring. The only other provision under existing law that may be of some help to survivors is the provision for a lump-sum payment roughly equivalent to a refund of contributions minus any annuities that may have been paid to the individual. Since 1939 the Social Security Act has provided, in other industries, monthly survivor benefits to widows with young children in their care, children under 18, aged widows and aged dependent parents. H. R. 1362 provides this same protection to railroad employees in substitution for both the present provisions for the lump-sum payment and the election of joint and survivor annuities. The level of benefits would be about 25 percent higher than under social security in recognition of the fact that the railroad workers would be paying six times as high a tax

rate as is levied on employees under social security; the railroad man who dies before reaching retirement age never derives any benefit from the better retirement protection that the retirement act gives, and the only way that he can be given any benefit for having paid six times as much taxes as he would if he were under social security, is by providing a somewhat higher level of survivor benefits.

The bill provides for determining survivor benefits on the basis of employment that is covered by the Railroad Retirement Act and by the Social Security Act so that there will be no duplication of benefits or failure to receive benefits by reason of having an employment record partly under one system and partly under the other. If a man has a current connection with the railroad industry when he dies, his survivors would be paid under the railroad retirement legislation; and if he has no such current connection but is fully or partially insured under the Social Security Act when he dies, his survivors would be paid under that act.

Of the increased taxes provided by the bill for the support of new benefits, 1.175 percent each on employers and employees is attributed to the additional cost of survivor benefits.

Disability.—The present law provides annuities in the case of disability retirements as well as in case of retirements for age. But under present law no disability is recognized unless the individual is permanently physically or mentally incapable of doing the work of any regular, gainful job. If he is so disabled he can get a full annuity under present law only if he has 30 years of service, and a reduced annuity only if he is 60 years of age with less than 30 years of service. Under the bill persons who are connected with the railroad industry when they become disabled would be entitled to annuities not reduced for age upon becoming permanently disabled for their regular railroad jobs, if they have 20 years of service or are 60 years old; and persons who are permanently disabled for any kind of work whatsoever would be entitled to annuities, not reduced for age, if they have 10 years of service or are 60 years old. Of the increased tax levied by the bill to defer the cost of new benefits 0.425 percent each on employers and employees is attributable to these disability provisions.

These provisions would remedy at least in part what is probably the most glaring deficiency of the present law. Men who have had long service in specialized occupations and then become disabled for work in those occupations are in every practical sense retired; yet under present law they must often eke an existence in destitution for years until they become eligible for an age-retirement annuity.

Minimum annuities.—The present law recognizes the need for providing a minimum annuity to avoid having the system fail in its purpose of providing reasonable protection in old age. It is now provided that for an individual who is an employee when he reaches 65 and who has at least 20 years of service, the minimum annuity is $40 unless his monthly compensation was under $50, in which case the minimum is 80 percent of the monthly compensation, but not less than $20 or an amount equal to the monthly compensation, whichever is less. It is further provided that in no case shall an annuity be less than the amount the railroad service would have been worth by way of additional benefits under the Social Security Act as originally enacted. The bill proposes to substitute a simpler, more flexible, and

somewhat more liberal minimum in the following terms: For persons having at least 5 years of service, who are currently connected with the industry when the annuity begins, the minimum shall be whichever is the least of (1) $3 multiplied by the number of his years of service, or (2) $50, or (3) his monthly compensation. This would work out that for persons who qualify for the minimum and who have 17 or more years in railroad service, the minimum would be $50, and if fewer years were spent in railroad service, it would be $3 times the years of service; but in no case could the minimum be more than the employee's average earnings. This revision of the minimum annuity is estimated to cost employers and employees each 0.15 percent of pay roll.

Sickness benefits.—The bill proposes to pay benefits under the Unemployment Insurance Act for unemployment due to sickness. These benefits are at the same rate and for the same maximum number of days in a benefit year as for unemployment due to there being no work available. Maternity benefits are a special form of sickness benefits payable during a period of 116 days divided as nearly equally as practicable between the period immediately preceding and immediately following the birth of the child. The present financing of the Unemployment Insurance Act is adequate to carry the sickness benefits without any increase in contributions.

There is no essential difference in principle between the compensability of unemployment due to lack of a job and the compensability of unemployment due to sickness. Both are hazards to which the railroad workers are all subject and both are conditions in which current wage income stops and the employees must look to other proceeds of employment such as savings from wages or some form of insurance to tide them over. It has come to be recognized that savings from wages and private insurance do not afford adequate protection in these conditions and publicly established insurance must provide a minimum degree of protection.

Because of the universal operation of the seniority system in the railroad industry it is particularly important in this industry that unemployment due to sickness be compensated on an equal basis with unemployment due to lack of a job.

It is primarily the younger workers who are subject to the latter hazard. As men advance in years they generally accumulate sufficient seniority to be fairly well protected against furloughs and they cease to derive any substantial advantage from the unemployment insurance system. But at the same time, they become increasingly subject to ailments that will cause them to be unemployed periodically. The provisions of the bill will give them the same protection against such unemployment that the younger men get against unemployment through furloughs.

Changes in duration and daily benefit rates for unemployment.—Under the Unemployment Insurance Act benefits are paid at daily benefit rates ranging from $1.75 to $4 and graduated to correspond to base year earnings ranging from $150 to $1,600. Benefits at the applicable rate are payable for days of unemployment in excess of 4 in a 14-day registration period. The maximum number of compensable days in a benefit year is 100. The bill proposes to raise this maximum to 130 and to graduate the daily benefit rate further in relation to base year earnings. That is to say, under present law the

$4 rate applies uniformly to all persons having base year earnings of $1,600 and over; it is proposed that the $4 rate apply to earnings of $1,600 to $2,000, that a $4.50 rate be established for base-year earnings of $2,000 to $2,500 and that a $5 rate be established for base-year earnings of $2,500 and over. The present financing of the Railroad Unemployment Insurance Act is adequate to cover these liberalizations of unemployment benefits as well as the sickness benefits without any additional contributions.

It was the original purpose of Congress in establishing the Railroad Unemployment Insurance Act that it should compare favorably in liberality with the more liberal provisions of the State laws. However, as the State laws have been progressively liberalized and no such action has been taken with respect to the Railroad Unemployment Insurance Act during the past 6 years, the railroad act has fallen behind the State systems in liberality. The provisions of the bill would tend to cure this condition by bringing the maximum weekly benefit and the maximum annual duration into line with what the Social Security Board has recommended to all the States, but the average weekly benefit payment would probably still be lower than the average weekly payment for the States as a whole.

Coverage.—The bill, in section 1, redefines the term "employer" by spelling out in more detail the application of the act to companies and associations that are a part of the railroad industry but are not technically "carriers." It was the purpose of the present law to cover not only technical "carriers" but all other elements in the railroad industry such as railroad subsidiaries engaged in performing service in connection with railroad transportation, railroad associations, tariff bureaus, demurrage bureaus, railway labor organizations, and so forth.

The bill brings under the Railroad Retirement and Unemployment Insurance Acts two new groups of employers, namely, railroad-controlled trucking companies and those freight forwarders that are not now covered. The railroad-controlled trucking companies are operated as part of the railroad plant for the performance of railroad transportation. (See *Interstate Commerce Commission et al.* v. *Harry A. Parker et al.*, Supreme Court of the United States No. 507, October term, 1944, and brief of Pennsylvania Railroad Co. filed therein.) The reason they have been heretofore treated differently from other railroad subsidiaries performing service in connection with railroad transportation is merely historical accident. The employer definition of the Railroad Retirement Act and the Railroad Unemployment Insurance Act was largely copied from the Railway Labor Act where trucking subsidiaries were excepted because at the time of the Railway Labor Act amendments of 1934 the labor relations of these companies were governed by the NRA trucking code and it was not considered desirable to disturb the then existing situation. That condition has long since passed and in any event there has never been any valid reason in principle for making a special exception of trucking subsidiaries as distinguished from other railroad subsidiaries so far as the Railroad Retirement and Unemployment Insurance Acts are concerned.

Freight forwarders are intimately associated with the railroad industry. The great bulk of their employees perform work that is indistinguishable from the handling of less than carlot lot freight by regular railroad employees. The employees are nearly all repre-

sented by a standard railway labor organization, the Brotherhood of Railway Clerks. Two of the largest of the companies are held by the Railroad Retirement Board to be railroad-controlled and, therefore, covered under present law as railroad affiliates performing services in connection with railroad transportation. The anomalous position that these companies occupied in relation to the railroad industry for regulatory purposes was brought to an end in 1940 when they were brought under regulation by the Interstate Commerce Act. They should now similarly be uniformly covered by the Railroad Retirement and Unemployment Insurance Acts.

The total number of employees brought into the system by such extensions of coverage is estimated not to exceed 10,000 as against some million and a half carrier employees currently-covered. The inclusion of these relatively few additional employees could in no event impose any ascertainable burden on the railroad retirement account as a result of their not having been subject to tax in the period since 1937; and the probabilities are that these circumstances impose no financial burden at all since the employees involved are on the whole of a younger-age group than carrier employees on the whole.

Many representations have been made to the committee indicating that persons (other than carriers subject to pt. I of the Interstate Commerce Act) engaged in manufacturing, harvesting, storing, distributing, selling, or delivering refrigeration or ice to or into equipment used for refrigeration purposes in connection with the transportation of passengers or property are included in the term "employer," and that therefore their employees will be considered to be railroad employees. The committee would like to state categorically that there is no purpose or intent to include such persons as employers under the act and that it is the unanimous understanding of the committee that such persons are not so covered. The committee also unanimously understands that notwithstanding the provisions of subsections (2) and (4) of section 1, there is no purpose or intent to include warehouse or trucking companies, or individuals carrying on either of such businesses, within the term "employer," if they are not owned or controlled, directly or indirectly, by, or under common control with, a carrier subject to part I of the Interstate Commerce Act.

Elimination of inequities and facilitation of administration.—The other changes in existing law proposed by the bill are for the purpose of eliminating inequities and facilitating administration. Most of them individually are relatively not of paramount importance although in the aggregate they form an important part of the bill. One of the more important of them may be cited as illustrative. In computing annuities under present law credit is given for service rendered prior to the enactment of the law as well as subsequent service; but eligibility for this credit is determined by the employee status of the individual on August 29, 1935, i. e., if he was on that day in active service or on furlough with rights to return to service or on leave of absence or absent on account of sickness or disability he is entitled to prior service credit. Because of the low level of employment for some years prior to August 29, 1935, there were on that date substantial numbers of railroad employees who had been furloughed and whose rights to return had expired. These men had for the most part not gone into other employment, still considered themselves part of the railroad industry, expected to return when employment improved, and

did in fact return in seniority order when the industry required their services. On the other hand, there were a substantial number of individuals who held rights to return to railroad service but who had actually left the railroad industry and who have never returned to it. These individuals have never contributed anything to the support of the system but under present law are entitled to annuities based on prior service whereas the former group that has returned and is contributing to the support of the system is denied this privilege. Both of these conditions are unjustifiable by standards of equity. The bill would correct both by extending prior service credit to those who have returned and served for at least 6 months and would deny prior service credit to those who had left the industry and have made no contribution.

The bill as a whole embodies a sound, workable, and equitable program that should be enacted into law as promptly as possible.

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Calendar No. 1745

79TH CONGRESS, 2d Session } SENATE { REPT. 1710, Part 2

AMENDMENTS TO RAILROAD RETIREMENT ACTS, RAILROAD UNEMPLOYMENT INSURANCE ACT, AND RELATED PROVISIONS OF LAW

JULY 15 (legislative day, JULY 5, 1946).—Ordered to be printed

Mr. BARKLEY, from the Committee on Interstate Commerce, submitted the following

SUPPLEMENTAL REPORT

[To accompany H. R. 1362]

The Committee on Interstate Commerce, to whom was referred the bill (H. R. 1362) to amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code, and for other purposes, submit the following supplemental report explaining in detail the provisions of the bill.

Section 1—General: This section as a whole rewrites the definition of "employer" in the Retirement and Unemployment Insurance Acts. That definition is the principal determinant of the coverage of the legislation. The acts apply to service performed as an employee of an "employer" as defined.

The principal objective in redefining the term "employer" is to settle controversies regarding coverage. It is over 9 years since the Retirement Act of 1937 was enacted, and no one can yet tell what employers are covered. With respect to most kinds of companies whose coverage is in dispute some such companies claim to be covered and others which are legally indistinguishable claim not to be covered; generally speaking, the employees involved claim to be covered. Settling all these matters by litigation of individual cases would be a wasteful and virtually endless job which in the end would offer no assurance that the ultimate decisions of the courts would necessarily reflect the will of Congress. Congress should address itself, in light of the experience of the past 9 years, to the specific matters in controversy and declare its will with respect to them.

The only important respect in which the legislation, as interpreted and applied by the Railroad Retirement Board, is broadened with respect to coverage is by the inclusion of freight forwarding companies

not railroad owned or controlled and by the inclusion of railroad connected trucking services.

Paragraph (1): The definition of carrier covers the employers of the great bulk of the employees affected. This definition is exactly the same as that contained in the present act.

Paragraph (2): This paragraph is directed to the inclusion of companies which are performing railroad transportation as defined in the Interstate Commerce Act but who do not regard themselves as carriers under the Interstate Commerce Act. It can be argued with great force that as a strict matter of law they are carriers under the Interstate Commerce Act by reason of the fact that they hold themselves out or are held out by others to perform transportation services. However, the Interstate Commerce Commission has not had occasion in fact to regulate them as carriers, since it has been able to make the requirements of the Interstate Commerce Act fully effective by enforcing the carrier obligations upon the railroads for whom the services are performed. The kinds of transportation services which are farmed out to such companies are numerous. Typical examples are the transportation of ore across docks and its delivery on shipboard—the point at which the railroad is obligated to make delivery, loading and unloading railroad cars, etc.

In practically all, if not all, instances these services are performed under railroad tariffs. However, the Retirement and Unemployment Insurance rights of the men carrying on these transportation services cannot safely be made to depend upon the accuracy with which tariffs may at any given time reflect the transportation services actually being performed. The fact that the services are actually being rendered as a part of the transportation should be determinative of coverage irrespective of whether the railroad does the work itself, farms it out through contract, or relies upon the performance of the services by others without formal arrangement therefor.

Paragraph (3): Freight forwarders, while they have the characteristics of shippers relative to the railroads, have most of the characteristics of carriers with respect to their own clientele. Regulatory policy with respect to them was controversial for many years, and was finally settled by the Transportation Act of 1940. They are now subjected to regulation of much the same character as that applicable to carriers, and the fact that the regulatory policy is expressed in a separate title of the Interstate Commerce Act so as to permit more precise adaptation to the particular aspect of transportation carried on by these companies affords no sound basis for differentiating the employees from railroad employees. In any realistic sense they are part of the railroad industry and are carrying on railroad transportation.

Two of the three largest freight forwarders have been held, administratively, to be railroad-controlled and are consequently covered under present law as interpreted by the Railroad Retirement Board and the Bureau of Internal Revenue.

The definition here used to describe freight forwarders is taken from the Interstate Commerce Act with only such adaptations as are necessary to confine it to companies regularly and substantially utilizing railroads as the means of transportation.

Paragraph (4): This paragraph is addressed to the coverage of work which is not itself transportation but is part of the regular operations which a railroad must carry on in order to perform transportation.

By the first requirement that the work must be of such a nature as to be susceptible of indefinitely continuous performance, the coverage is restricted to those things which are a continuing part of operating a railroad; but the phrase "susceptible of" will make it impossible to evade coverage by artificially converting continuing work into the form of a series of individual job contracts.

Experience shows that the railroads for one reason or another have contracted out many operations which they would ordinarily be expected to perform through their own employees. Examples are maintenance of way, the operation of repair shops, knocking ashes out of locomotives, coaling and sanding locomotives, cleaning cars, policing railroad property, etc. These operations are so closely integrated into the regular daily railroad operating that it is almost impossible for the railroad to avoid supervising and directing the manner in which the employees perform their work, and consequently in virtually all instances of this kind the Railroad Retirement Board and the Bureau of Internal Revenue have held such employees to be covered under present law as employees of the carrier within the definition contained in the act. But these holdings have been the subject of much controversy and in any event that approach has the disadvantage of making the carrier rather than the contractor responsible for the employer obligations. It is here proposed to approach the problem directly by including such contractors in the definition of "employer."

Paragraph (5): This paragraph spells out in more detail the provision of the present law making the legislation applicable to carrier-controlled companies engaged in performing services in connection with railroad transportation. The specific services spelled out here are all services which the Railroad Retirement Board and the Bureau of Internal Revenue have held to be covered by present law when performed by carrier-controlled companies, except that the present law omitted trucking services. Trucking services were omitted from the Railway Labor Act because at the time the carrier definition was written into that act in 1934 trucking operations were covered by the NRA code, and it was felt that it would be disruptive to transfer labor relations in railroad-controlled trucking operations from the NRA to the Railway Labor Act. The NRA codes, of course, have long since disappeared, and there was probably never any valid reason for carrying that limitation over from the Railway Labor Act into the Railroad Retirement Act.

Paragraph (6): This paragraph makes no change in existing law.

Paragraph (7): This paragraph makes no change in existing law.

Paragraph (8): This paragraph covers railroad-controlled hospital and recreational associations which have uniformly been held to be covered under existing law as railroad-controlled companies performing services in connection with railroad transportation.

Paragraph (9): This paragraph makes no change in existing law.

Paragraph (10): This paragraph places certain limitations upon the preceding paragraphs in part to express limitations now in the law, and in part to avoid possibilities of too broad an interpretation of the preceding paragraphs.

Clause (i): It has been established by judicial decision that railroad-controlled water carriers are not covered by the present law. This clause accepts that disposition. It also makes clear that other

common carriers by air, motor, or animal-drawn vehicle (except railroad-controlled bus and truck companies) are not covered; contract carriers, as distinguished from common carriers, are likewise excluded unless they offer a service to railroad passengers, shippers, or consignees pursuant to arrangements with a railroad.

Clause (ii): This clause spells out the Railroad Retirement Board's interpretation of the provision in the present law excepting "casual service and the casual operation of equipment or facilities" from the kinds of service which cause a company to be covered.

Clause (iii): This clause insofar as it relates to the mining or supplying of coal merely expresses a limitation which was placed in the present law by the act of August 13, 1940 (Public No. 764, 76th Cong., 3d sess.). The clause goes on similarly to exclude lumber and supply companies, some of which may be covered by present law when they are railroad controlled; the personnel of such companies are generally unrelated to railroad personnel, and it seems undesirable that any such person should be covered.

Clause (iv): This clause merely reenacts the present interurban exclusion as interpreted by the Interstate Commerce Commission.

Last sentence (lines 7–9, p. 6): This sentence is directed to the problem arising from the fact that railroads frequently engage individuals such as station caretakers, mail carriers, etc., by individual contract claimed not to be a contract of employment. Generally, such persons have been found by the Railroad Retirement Board and the Bureau of Internal Revenue to be employees within the definition of employees contained in the present law. This sentence in conjunction with lines 22–25 on page 8 makes it clear that such persons are to continue to be treated as employees rather than being considered themselves to be "employers" within paragraph (4) of this section.

Paragraph (11): The main problem to which this paragraph is addressed is that of employers who are principally engaged in other things. The Retirement Board was first confronted with this problem under present law in cases such as the State Belt Railroad of California, owned and operated by the State government, and cases of light and power companies who incidentally also operated without separate incorporation an electric railway subject to the act. A completely literal reading of the present law would lead to the conclusion that the whole State government of California is subject to the law. The Board, however, has felt that where a literal reading led to such an absurd result it was proper by construction to avoid the absurdity. It has consequently held that where the employer operation was conducted as a separate enterprise that enterprise should be considered to be the employer. However, since this formula has no statutory text and is based purely on construction to avoid absurdity, it has frequently been difficult for the Board and the Bureau of Internal Revenue and the Social Security Board to agree on whether particular cases were proper cases for the application of such a formula and, if so, precisely how the formula should be applied. Hence, it is deemed important that specific statutory directions be provided.

This paragraph first provides that in the case of receivers and trustees who are in possession of railroad property the receiver or trustee shall be an employer only in that capacity and not with respect to other activities which the same individuals may contemporaneously

be carrying on. This is in accord with the Board's interpretation under present law.

Next it is provided (p. 6, lines 15 to 21) that employers principally engaged in other activities who conduct their employer activities as a separate operation shall be considered employers only with respect to those separate operations. This again is the formula which the Board has adopted by interpretation.

Thirdly (p. 6, line 21 to p. 7, line 6), the bill concerns itself with a problem to which no satisfactory solution has been found under present law, i. e., the case of an employer principally engaged in nonemployer activities but with employer and nonemployer activities intermingled. Such situations are not likely to occur with respect to carriers or carrier affiliates, but if such a situation should occur it is felt that the proper result would be for the entire company to be treated as an employer since all the executive, managerial, and clerical staffs as well as all others normally associated with the operation of a railroad are entitled to be covered by this legislation; the employer who has chosen to mingle other operations with its railroad operations should bear the consequence of paying higher taxes on all its employees rather than having any employees who do railroad work left out. On the other hand, where contractors become employers by virtue of carrying on some railroad operations under contract and these operations are intermingled with their other operations it is felt that a different rule should prevail and that coverage of the railroad legislation should be limited to persons performing work on railroad property.

The bill then goes on (p. 7, line 6 ff.) to lay down rules governing the application of these formulas. Operations in which men shift back and forth from employer work to nonemployer work are not to be considered to be conducted as separate operations. Whether or not a company is principally engaged in employer or nonemployer operations is normally to be determined by the preponderance of man-hours. If, however, the peculiar circumstances of a particular employer should make the man-hours test inapplicable or inappropriate, the Board would be authorized to base a determination on such factors as are in its judgment relevant and appropriate.

Finally (p. 7, line 24 to p. 8, line 12), in order that slight fluctuations in business may not operate to shift an employer back and forth between the railroad legislation and the general social-security system, it is provided that once the principal activity of an employer has been ascertained it shall not be redetermined in less than 3 years unless substantial activities have been abandoned or substantial new activities undertaken. And when a new determination is made the conclusion is not to be changed merely because of a slight shift in preponderance; the previous determination is to continue effective unless the activity which formerly predominated has then fallen to less than 40 percent of all the activities carried on by the employer.

Many representations have been made to the committee indicating that persons (other than carriers subject to pt. I of the Interstate Commerce Act) engaged in manufacturing, harvesting, storing, distributing, selling, or delivering refrigeration or ice to or into equipment used for refrigeration purposes in connection with the transportation of passengers or property are included in the term "employer," and that therefore their employees will be considered to be railroad employees. The committee would like to state categorically that

there is no purpose or intent to include such persons as employers under the act and that it is the unanimous understanding of the committee that such persons are not so covered. The committee also unanimously understands that notwithstanding the provisions of subsections (2) and (4) of section 1, there is no purpose or intent to include warehouse or trucking companies, or individuals carrying on either of such businesses, within the term "employer," if they are not owned or controlled, directly or indirectly, by, or under common control with, a carrier subject to part I of the Interstate Commerce Act.

Section 2: This section amends the definition of "employee" to deal with several problems that have arisen in the administration of the acts.

The test of whether an individual is an employee, under present law, depends on whether the employer has the authority to supervise and direct the manner of rendition of the services. This test is rather meaningless as applied to professional personnel, particularly doctors and lawyers since the nature of their work is such that they normally are required to exercise independent professional judgment and cannot be subjected to supervision as to the manner in which their services are performed. The realistic test of whether such personnel are employees is whether they are integrated into the employer's staff or are independent practitioners having the railroad as part of their clientele. The objective indicia bearing on that test would be whether they occupy railroad offices or maintain their own offices; whether they are paid a salary or are paid a fee or retainer; whether the railroad is entitled to make demands on them which the usual clientele of a professional man cannot make; whether they do only railroad work or carry on a substantial outside practice, etc. It is recognized that a determination even on these bases may not always be easy but at least the criteria have some relation to reality rather than being cast in terms of supervision and direction of the manner in which services are rendered—which in the case of professional employees, is largely fictitious.

The proposed test would conform substantially to the conclusions which have been reached under present law when the Railroad Retirement Board has made determinations. It would conform also to the actual reporting practices of employers to a greater degree than any other test; but the fact must be faced that there has been a considerable lack of uniformity in the reporting practices of the various employers and that situation must be corrected.

A second problem which has arisen under the present definition of "employee" is that employers have on many occasions made contracts with individuals which purport not to be contracts of employment but under which the individual is for all practical purposes an employee and not an independent contractor. These persons normally perform personal services which are integrated into the employer's operations and generally are of such character that if the contractor engaged personnel to do the work rather than performing it personally he would be himself an employer as defined in this bill. The language on page 8, lines 18 to 25, is calculated to clarify the status of such persons as employees.

The language on page 9, lines 3 to 5, operates to give employee status to red caps in the period before September 1941, when they were generally compensated exclusively by tips, which are not included in compensation as that term is defined in this legislation.

The language on page 9, lines 7 to 11, refers to a very narrow but troublesome problem concerning railway labor organization employees who work on both sides of the Canadian border. The present law provides that general committee chairmen or assistant general chairmen not having their headquarters in the United States and assigned to railroads not doing the principal part of their business in the United States shall be credited with compensation only in the proportion that the mileage under their jurisdiction in the United States bears to all mileage under their jurisdiction. In the case of some crafts, of course, such as shop crafts, no mileage test can be applied since their jurisdiction is not related to railroad mileage and in those instances the Board is authorized to prescribe a formula for measuring creditable compensation. But the mileage formula and any other equitable formula that might be prescribed may operate in many cases to credit very small amounts of compensation; the result is to give the individual such a low average that he would be much better off to have the service disregarded entirely. The bill would provide for disregarding it when it falls to less than 10 percent of his remuneration.

Section 3: The first part of this amendment, page 9, lines 12 to 18, are necessary to change the computation of benefits and taxes from a "compensation earned" basis to a "compensation paid" basis. Under present law, compensation is credited to the month in which it was earned even though in the case of pay for time lost, adjustment board awards, retroactive wage increases, etc., the amount earned is not ascertained until some time later when the reports for the period in which compensation was earned have already been made. This brings about heavy administrative burdens both on the Board and on the employers to make thousands of corrections in reports previously filed. These are useless operations since in most cases it makes little or no difference to the employee's annuity whether the compensation is credited at the time it is paid or at the time it is earned.

The language (p. 9, line 22 to p. 10, line 3) establishes a presumption that payments made through the regular pay roll are compensation and thus avoids the necessity for passing on a variety of items such as pay during periods of sickness, payments to the end of a pay period in which the employee dies, bonuses, etc.

The language (p. 10, lines 3 to 16) provides for crediting pay for time lost on account of personal injuries even though the pay is included in a general settlement. The present law provides generally without limitation for crediting pay for time lost. Many claimants have asserted that this includes pay for time lost on account of personal injury even though the payments were included in a lump-sum settlement. However, the Board's interpretations embodied in its regulations do not provide for crediting such payments as compensation under those conditions. In 1940 the Board was advised by its general counsel that its regulations are more restrictive than the present law permits. In consequence the Board held a hearing to permit employers and employees to express their views on proposed modifications of the regulations. The AAR opposed modification of the regulations but proposed that the matter be handled by legislation. The AAR was agreeable to legislation crediting service during such periods for time lost but was opposed to any tax being collected on the payments. The Railroad Retirement Board in accordance with a con-

sistent policy was opposed to crediting service without taxes being collected with respect thereto. This bill provides that the periods of time lost which are paid for by the employer be credited (as indeed everyone seems to agree) and that there be corresponding tax collections as the Board recommends.

The language on page 10, line 16, to page 11, line 1, is necessary for the change-over from crediting compensation up to $300 for each month in which it was earned to crediting compensation up to $300 times the months of service in the calendar year. On this new basis compensation is credited with respect to the time it is paid rather than with respect to the time that it is earned except that after the end of the year a period of a month is allowed during which compensation earned during the year just past may be paid and reported for that year.

The language on page 11, lines 3 through 9, makes a change in the crediting of compensation for military service. Under present law military service is creditable but the compensation attributed to military service is the average earned by the individual in his other months of service except that $160 per month is used for purposes of the lump-sum death benefit. This provision of the bill would use the $160 per month rate for all purposes and treat all military service on a uniform basis. One hundred and sixty dollars a month is about the average of monthly compensation for all railroad services.

Section 4 (a) makes verbal changes in the Carriers Taxing Act necessary for transferring tax collections from the Bureau of Internal Revenue to the Railroad Retirement Board.

Section 4 (b), page 11, line 16, to page 12, line 6, makes the changes in the Carriers Taxing Act necessary to change over from the $300 limit for each month of service to the basis of $300 times the number of months of service in the calendar year. This change avoids the inequity of having an individual who makes over $300 in some months of the year but less than $300 in other months suffer a reduction because of the way his income happens to be distributed.

The language on page 12, lines 6 to 21, makes a change in the proration of taxes between employers employing the same individual if one of them is a railway-labor organization. Individuals employed by railway labor organizations are generally unwilling to disclose to their railroad employers precisely what their income from railway-labor organization activities is. Under these circumstances it is impossible for the employers to make a proration of taxes or to make any claim for refund if they have overpaid their share. This has been a source of great administrative difficulty out of all proportion to the amount of money involved. Consequently, it is proposed that the tax should be paid by railroad employers in the same way that it would be if the individual were not also employed by a railway-labor organization and the railway-labor organization will make up any difference in the total tax imposed up to the limit of $300, times the months of service in the calendar year.

Section 4 (c) imposes the new tax rates. The first three numbered paragraphs have reference to employer and employee taxes and the second three numbered paragraphs have reference to the employee representative taxes, which are paid by the representative himself in an amount equal to the combined employer and employee taxes. These employee representatives are labor-union representatives other

than the standard railway labor organizations. Since such unions are not employers and hence not taxed it is necessary for the representative to pay the combined tax rates.

Section 4 (d): This subsection automatically appropriates to the Railroad Retirement Account all moneys collected under the Carriers Taxing Act by the Railroad Retirement Board. It is then provided that in the first fiscal year an adjustment shall be made for any excess or deficiency in prior appropriations. It has been customary heretofore for Congress to appropriate annually the estimated tax collections and then in the next appropriation to adjust any excess or deficiency in the actual collections as against those estimated. Finally, on page 14, lines 14 through 18, provision is made for charging to the Railroad Retirement Account (into which all the tax collections are appropriated by the preceding language) the appropriations which will be made annually for administrative expenses in accordance with the regular budget and appropriation procedure.

Section 4 (e): This subsection incorporates by reference the administrative and enforcement machinery already provided under the Railroad Unemployment Insurance Act for the collection of contributions. Since the Board will be collecting both the Carriers Taxing Act taxes and the Railroad Unemployment Insurance contributions it is desirable that the same administrative and enforcement machinery be applicable to both.

Section 4 (f): This subsection codifies the Carriers Taxing Act as title II of the Railroad Retirement Act. In this way all the definitions of the Retirement Act, some of which are amended by this bill become automatically applicable to the Carriers Taxing Act and in the future if there is any occasion to amend definitions a single amendment will suffice. The final sentence of the subsection, lines 13 to 15 on page 15, preserve all rights and liabilities accruing before the effective date of the transfer, so that such rights and liabilities will be settled between the taxpayer and the Bureau of Internal Revenue but the Railroad Retirement Board will deal with all rights and liabilities under the act accruing thereafter.

Section 201: In order to receive credit for service rendered prior to August 29, 1945, an individual must have been on that date in an employment relation to an employer. Under present law an individual is in an employment relation to an employer if he is on furlough subject to call for service and ready and willing to serve or on leave of absence or absent on account of sickness or disability all in accordance with the established rules and practices in effect on the employer. The present definition has given rise to many difficulties. On many employers the rules governing furlough, leave of absence, or absence on account of sickness and disability are very vague; frequently rules are nonexistent and the relationships are governed by practices which, however, are applied with varying degrees of uniformity; and sometimes rules are varied by practices. It has consequently been an almost impossible task in many cases to ascertain the applicable rules or practices and to determine their application to particular cases. Furthermore, as of August 29, 1935, there were substantial groups of men who had been furloughed but whose rights had expired; nevertheless, as business improved they have been actually recalled to service in seniority order and should now equitably be regarded as having been continuously associated with the industry and should

be given their prior service credit notwithstanding the fact that they were technically not in an employment relation on August 29, 1935. On the other hand other substantial groups of men who were technically on furlough as of that date have not actually regarded themselves as connected with the industry and did not respond to recalls to service. This group is now out of the industry. They have contributed nothing to the support of the railroad retirement system and it is not deemed fair to the men in the industry that such persons should, when they reach 65, be granted annuities at the expense of the people who did remain in the industry.

Consequently, it is proposed by section 201 to amend the employment relation definition to include only the following: First, those who were actually on bona fide leave of absence without reference to any governing rule or practice; second, those who did in fact return to service before January 1, 1945, and served at least 6 months; third, those who were not retired or discharged but who were by reason of continuous disability unable to return to service or for reasons of disability were not called back to service or were called and for reasons of disability were unable to render the required service; and fourth, those who were out of service on the enactment date by reason of a wrongful discharge which has through reinstatement been determined to be wrongful.

The proviso beginning on page 16, line 24, excludes from the employment relationship: First, those who had been pensioned by a railroad prior to the enactment date; second, whose whose last service was outside the United States under conditions in which the service itself would not be creditable; and third, those whose only connection with the industry lies in having maintained a relationship or reestablished a relationship with a local labor union. These provisions are substantially in accord with interpretations of present law and are included for purposes of clarification.

Section 202: Page 17, lines 12 to 17, are intended to remedy an inequity affecting a rather small group of individuals. The situation principally calling for the amendment (there may be others like it that have not come to light) is at Whiting, Ind., where, on the enactment date and since, certain switching operations in connection with the Standard Oil Co. plant are conducted by railroad carriers. However, during certain periods prior to the enactment date these operations were conducted by the Standard Oil Co. The operations did not change when the railroads took them over; the operation itself, the equipment used, and the men employed remained the same. These men are now clearly covered by the act and no problem of extending coverage is involved. The inequity arises purely out of the fact that although they and their work are now clearly covered they would not under present law be able to include in the computation of their annuities the time spent by the same individuals in doing the same work while it was conducted by the Standard Oil Co. This makes their annuities wholly inadequate. The amendment would permit such service to be included in the prior service credit of employees so situated.

Page 17, lines 17 to 22: Under present law, in computing years of service, months of service are accumulated, an ultimate fraction of less than 6 months being taken at its actual value, and a fraction of six months or more is counted as a year. This provision serves a useful

purpose but it gives a disproportionate gratuity to individuals having very short periods of service. For instance, an individual having only six months of service has it counted as a year and thus doubles his actual service for annuity purposes. The amendment would limit the privilege of counting an ultimate fraction of 6 months or more as a year to persons having at least 4½ years of service (i. e., 5 years when the ultimate fraction is treated as a year).

Section 203: The definition of "current connection with the railroad industry" is a new definition. No similar concept appears in present law. The definition is significant in three respects in connection with the amendments:

(1) Only persons currently connected with the industry at the time the annuity accrues are entitled to annuities based on occupational disability as distinguished from permanent total disability for all work. (See p. 19, par. 4.)

(2) Only persons currently connected with the railroad industry at the time the annuity begins to accrue are entitled to the benefits of the minimum annuity provisions. (See p. 23, sec. 210.)

(3) Only the survivors of persons currently connected with the railroad industry at the time of death receive their survivor benefits under the Railroad Retirement Act; all others look to the Social Security Act, receiving credit, however, for their railroad service (see the definitions of "completely insured" and "partially insured," pars. 7 and 8, pp. 37 and 38); the only exception is that under subparagraph (iii), page 38, survivors of pensioners taken over from the railroads and of annuitants with 10 or more years of service whose annuities began in the first 10 years following 1936 receive their survivor benefits under this act rather than under the Social Security Act.

The general test of current connection is that the individual must have had at least 12 months of railroad service out of the last 30 months; normally, the 30 months would immediately precede the month of retirement or death whichever first occurs, but if the individual did not have any regular employment outside the railroad industry he can take 30 months which do not immediately precede his retirement or death; thus an individual who is on furlough for a substantial period preceding his retirement or death but does not go into another industry will not be prejudiced. If the individual lives to retirement age and is currently connected with the railroad industry at the time of his retirement, he remains currently connected for life so that any survivor benefits payable at his death will be under the Railroad Retirement Act.

In addition to the general rule above stated, provision is made on page 18, lines 11 to 18, to avoid putting a person under the Social Security Act if he would have a different insured status under that act from the one he would have under the Railroad Retirement Act. Generally speaking, insured status under the Retirement Act would be determined in the same way as under the Social Security Act and the individual would have the same status irrespective of the act applicable to him. However, since under the Railroad Retirement system, in order to simplify reporting and record keeping, it is proposed to determine quarters of coverage by a formula depending upon months of service and earnings in the calendar year, rather than on a strict calendar-quarter basis as the Social Security Act does, it is possible for a difference of status to occur. In view of the fact that

normally such an individual would in any event have had fairly recent railroad service, it is deemed equitable to treat him as currently connected for survivor-benefit purposes, rather than to permit a loss of status by determining the benefit right of survivors under the Social Security Act.

Section 204: It is necessary to define the terms "quarter" and "calendar quarter," since they are used in the survivor-benefit provisions. The definition is self-explanatory.

Section 205: This section amends the provisions determining eligibility for annuity. The first paragraph of the present section 2 (a) of the act is not amended; that paragraph makes all persons eligible at age 65 for annuities in whatever amount their service and compensation would determine.

Page 19, lines 3 to 4: This change would make women eligible for retirement on full annuity at the age of 60 if they have 30 years of service. Although the result is to give women more favored treatment than men, the proposal has a sound industrial basis. Women between the ages of 60 and 65 who have spent substantially the whole of their working lives in industry are much more likely to have lost efficiency than are men of the same ages. The cost of this change is not substantial; the proportion of women in the industry is small.

Page 19, lines 5 to 9: This makes no change in existing law. Under present law individuals who are 60 years of age and have 30 years of service are eligible to retire on a reduced annuity. The provision is rewritten here only because it is under the present law interwoven with the provisions for retirement on disability at age 60 and the disability retirement provisions are being changed.

Page 19, lines 10 and following: This paragraph introduces the occupational disability feature. Under present law the only disability that is recognized is total and permanent disability to do any kind of work. If he is not so disabled, if he is only disabled for work in his regular occupation, he is considered able to work in some other occupation regardless of whether his training, age, and background are such as to hold out any reasonable prospect that he could get other work. A person who is completely disabled for all work may under present law retire on a full annuity if he has 30 years of service or a reduced annuity if he is age 60 and has less than 30 years of service. It is here proposed that persons who are disabled for work in their regular occupation shall be entitled to retire on full annuity if they have 20 years of service or are 60 years of age provided that they are currently connected with the railroad industry at retirement. (See sec. 203, pp. 17–18.

Page 19, line 15, to page 20, line 15: The concept of an individual disabled for work in a particular occupation is a perfectly simple one which everyone readily comprehends. However, in the application of that concept to concrete cases people's judgments may differ rather widely and when employees' annuity rights depend on these judgments it is desirable to take all precautions that can be taken to assure uniformity of application. In the usual case in which an individual is disabled for work in his occupation his employer will disqualify him; but some employers are more strict than others and it is not desirable to leave the annuity rights of the employees to the uncontrolled discretion of the employer in determining whether the individual should or should not be disqualified. It is recognized that

discretion must rest with the employer, subject to the handling of any grievances through collective-bargaining machinery, insofar as a determination must be made as to whether the individual will be permitted to work; but that determination should not be conclusive of the individual's annuity rights.

It is proposed, therefore, that in the first place the Board should cooperate with employers and employees in bringing about a greater degree of standardization of employers' practices with respect to occupational disqualification. Then, if the employee is disqualified in accordance with standard practices, he is considered occupationally disabled. If he is not so disqualified either because the employer has not disqualified him at all or because he has disqualified him but has not followed standard practices, the Board must make a decision, upon the employee's application, as to whether he would be disqualified under generally prevailing standards in the railroad industry, or, if the occupation is so peculiar that there are no standard practices either for it or for reasonably comparable occupations in the railroad industry, whether he would be disqualified for such an occupation in industry generally. Admittedly, the final determination of the individual's rights cannot be governed by some mathematical formula which completely excludes any administrative judgment. The proposal recognizes that fact but sets forth the criteria by which the Board is to be governed in formulating its judgments so as to attain the maximum practicable degree of uniformity.

Page 20, line 15 to page 21, line 2: "Regular occupation" is also a perfectly simple concept which everyone understands but on which opinions may differ when it comes to its application to concrete cases. Here, however, it is possible to draw a fairly precise line even though opinions might differ as to just where the line should be drawn. The bill proposes that normally an individual's regular occupation shall be considered to be the occupation in which he worked for more calendar months than in any other occupation during the last 5 years in which he worked. Recognizing, however, that an individual may in the last few years have shifted from an occupation in which he spent most of his working life to a new occupation, provision is made for recognizing the former rather than the latter as the individual's regular occupation; if the employee during the last 15 years worked in a particular occupation for one-half or more of his total working months he may claim that occupation as his regular occupation. In other words, if the 5-year test and the 15-year test would show different occupations to be the regular occupation, it is felt that either one might reasonably be regarded as the employee's regular occupation and the employee is allowed to choose which of the two is to be used in judging occupational disability.

Page 21, lines 3 to 6: The paragraph numbered 5 revises the conditions upon which annuities may be paid for total and permanent disability for all work. Under present law a person permanently and totally disabled for all work is eligible for a full annuity upon completing 30 years of service or for a reduced annuity at age 60, irrespective of the years of service. Those requirements are liberalized in that the service requirements for the annuity based on total disability and years of service are reduced from 30 to 10 years and the annuity based upon total disability and age 60 is made a full annuity rather than a reduced annuity.

Page 21, line 7, to page 22, line 9: These provisions relating to proof of continuance of disability and recovery from disability are in substance the same as the present law having been merely rewritten to adapt them to cover both the occupational disability and the disability for all work. The only substantive change is the provision that an individual who earns more than $75 a month consecutively for 6 months is deemed to have recovered, irrespective of his physical condition.

Section 206: These are merely technical changes in cross references necessitated by the other amendments.

Section 207: Under present law service after June 30, 1937, is not credited to an individual after he attains age 65. The change here proposed would make it creditable to the end of the calendar year in which he attains age 65. The principal purpose of the change is to serve administrative convenience since it is contemplated that under the simplified reporting and record-keeping methods that can be utilized after the enactment of this bill the annuity can be much more readily computed if it is not necessary to differentiate between service rendered in the same calendar year. It is contemplated that records will be kept showing for each individual his total earnings and his number of months of service by calendar years; under present law more detailed information would be required for the year in which age 65 is attained so as to eliminate service after that date; but if as is here proposed the service is made creditable to the end of the calendar year the regular annual record will be sufficient.

Section 209—Page 22, line 21, to page 23, line 5: This provision enables redcaps who were compensated entirely by tips prior to 1940 to get credit for their prior service, using their compensation in the period from September 1940 through August 1941 as the measure of creditable compensation. It has been determined under the Fair Labor Standards Act that redcaps are employees. They should, consequently, get credit for all service rendered in that capacity just as other employees do. However, because of the difficulty in obtaining records of tips, the definition of compensation under present law excludes tips, and service is not creditable unless it is rendered for compensation. By reason of the Fair Labor Standards Act, redcaps have been compensated through wages since September 1940. There is thus no problem about their service since that date. But the amendment here proposed is needed to enable them to credit service rendered prior to that date and to establish an average compensation for such service.

Page 23, lines 5 to 14: Under present law it is recognized that it would be impossible to ascertain exactly what compensation was earned in each month many years ago. Consequently, the present law provides that for all service prior to January 1, 1937, the average monthly compensation to be used in computing the annuity is to be the average for the years 1924 to 1931. But it is also recognized that in some few cases service during that period may be insufficient to constitute a fair and equitable measure of compensation and the Board is authorized in such cases to determine the compensation on such basis as in its judgment is fair and equitable. The bill makes no change in this respect. This proviso merely rewrites the language so as to make the same principle applicable in cases where the 1940–41 period may not be a fair and equitable basis for determining the compensation for the prior service of red caps.

Page 23, lines 14 to 19: The only change here made from existing law is to change from the limit of $300 for each month applicable in the past to the new basis of $300 times the number of months of service in the calendar year. This change avoids the inequity of having an individual who earns over $300 in some months of the year but less than $300 in other months suffer a reduction because of the way his income happens to be distributed.

Section 210: This section revises the minimum annuity provisions. Under present law the minimum for an individual who is an employee at the time he reaches age 65 and who has at least 20 years of service is $40 unless his monthly compensation was under $50 in which case the minimum is 80 percent of the monthly compensation, but not less than $20 or an amount equal to the monthly compensation whichever is less. It is further provided that in no case shall an annuity be less than the amount the railroad service would have entitled him if it were creditable under the original Social Security Act. It is here proposed to liberalize and simplify this provision. In the first place the minimum is applicable only to persons having a current connection with the railroad industry at retirement (see discussion of sec. 203, pp. 17–18) and having at least 5 years of service. Under the new provisions all individuals who have 17 years of service or more and whose average monthly compensation is $50 or more the minimum would be $50. If the compensation is less than $50 or if the individual has less than 17 years of service the minimum would be $3 multiplied by the number of years of service or the average monthly compensation, whichever is less.

Section 211: Under present law any annuity payments which have accrued but have not been paid when the annuitant dies are paid to the surviving spouse if the spouse is entitled to a survivor annuity pursuant to a joint and survivor election; otherwise they are paid to the individuals entitled to receive the lump-sum death benefits. These provisions are no longer appropriate in view of the fact that the survivor-benefit provisions of this bill are in substitution for both the joint and survivor election provisions and for the lump-sum death-benefit provisions. It is accordingly proposed to make the devolution of accrued and unpaid annuities correspond to the new survivor-benefit provisions rather than the old survivor annuity and death-benefit provisions.

Section 212: Section 4 of the present law permits an individual to elect to have his annuity converted into a joint and survivor annuity of equivalent value, i. e., the payments made to the employee during his lifetime are reduced in order to allow for payments to be made to his surviving spouse during her lifetime. Since surviving spouses are provided for under the new survivorship-benefit provisions it becomes unnecessary to continue the provision for joint survivor annuity elections. Experience has shown that few employees feel that they can afford the reduction required in their annuity in order to provide for a spouse by election and the elections when they were made have frequently been a source of dissatisfaction. The election is in any event a gamble since only subsequent events can determine whether the choice was advantageous or disadvantageous; if the spouse does not survive the employee, or if the spouse lives only for a very short period after his death, he would always have been better off not to have made the election.

Section 213: This section substitutes survivor benefits like those provided under the social-security system for the present election and lump-sum death-benefit provisions. The lump-sum death benefit which is superseded is roughly equivalent to the individual's contributions to the fund minus any annuities that have been paid.

For purposes of the survivor benefits two kinds of insured status are recognized, completely insured and partially insured. The requirements for attaining such a status are set forth in paragraphs 7 and 8 on pages 37 and 38. All the survivor benefits are available to the survivors of completely insured individuals, whereas, only those benefits giving protection to children and widows with children in their care and the lump-sum payment are available to survivors of persons dying only partially insured. The amount of all survivor benefits is determined by reference to what is called the "basic amount". This "basic amount" is derived by a formula (set forth in par. 10, pp. 39–40) from the average monthly earnings and the years of covered employment of the employee.

Subsection (a) of new section 5: This subsection provides the widows monthly benefit after age 65 until death or remarriage. It is three-fourths of the "basic amount."

Subsection (b): This subsection provides the monthly benefit to widows under age 65 during the period that they have young children in their care. This benefit is also three-fourths of the basic amount.

Subsection (c): This subsection provides the monthly benefit for each child of a deceased employee. This benefit is one-half of the basic amount.

Subsection (d): Parents over age 65 and dependent on the deceased employee are provided monthly benefit of one-half the basic amount by this subsection in the absence of a surviving widow or children. The requirement of dependency is included in the definition of "parent" at page 35, line 20.

Subsection (e): A parent or child is entitled to only one annuity even though an annuity might have been claimed independently with respect to the death of two or more employees.

Subsection (f): In the event that a completely or partially insured employee dies and no survivors are entitled to immediate monthly benefits, a lump sum is paid amounting to eight times the employee's basic amount. This is almost equal to what a widow's annuity would be for a year.

The lump sum is paid to the surviving spouse if there is one; otherwise to children, if any; otherwise to parents, if any; and if there are no persons in any of these classes, there may be reimbursement of anyone who paid the deceased's funeral expenses.

Page 27, line 19, to page 28, line 6: In some cases survivors may be entitled immediately to a monthly benefit, but eligibility may terminate very shortly thereafter, as, for example, a child may attain the age of 18. Under those circumstances, in order that the survivors may not be worse off than they would be if they had been entitled only to the lump sum, this provision guarantees benefits within the year following the employee's death at least equal to the lump sum.

Page 28, lines 6 to 19: This provision sets up a period of 2 years within which the application for the lump-sum benefit must be made. In case the employee was missing in the armed forces, the 2 years runs from the time the War or Navy Department finds him officially to be dead.

Subsection (g) (1): The first sentence of this subsection preserves benefit rights under the Social Security Act which may have begun to accrue before this section goes into effect if those benefits should exceed the benefits payable under this act. The second sentence excludes from survivor benefit rights under the Social Security Act any survivors entitled to benefits under this act.

(2) If a widow or child or parent is receiving any benefits under the Social Security Act other than those from which they are excluded by the preceding paragraph, this paragraph limits the amount to which they are entitled under this act so that the total amount received under both acts equals no more than the larger benefit. In other words, the objective is to permit receipt of the largest benefit payable under either act but to avoid duplication of benefits.

Subsection (h): Since the survivor benefits may be payable independently to a widow and to each child, a cumulation of these benefits might in the absence of limitation become excessive. Therefore, this subsection puts an over-all limit on the survivor benefits payable to the group with respect to the death of a particular employee; the limit is, generally speaking, $120, twice the employee's basic amount (i. e., the equivalent of four children's annuities) or 80 percent of the employee's average monthly compensation, whichever is least.

Subsection (i): Paragraphs 1 and 2 of this subsection provide in substance for not paying a survivor annuity with respect to any month in which any of the conditions enumerated in paragraph 1 exist, but in order to avoid hardship by leaving a survivor wholly without income for a month this provision authorizes the deductions to be spread over a longer period. For example, suppose that a widow has been paid an annuity for a month, and after receiving the payment she earns $25 in wages; to cut off her annuity entirely the following month might cause hardship, and it is therefore contemplated that her payments might for several months be reduced sufficiently to recover in the aggregate the equivalent of a monthly payment.

Paragraph (3) provides for other deductions to be made so as to avoid duplicating other benefits which may already have been paid under the Retirement or Social Security Act on the basis of the same employment.

Deduction No. (vi), page 32, lines 3–11, provides a deduction to compensate for the fact that in 1939 employment covered by the Social Security Act by persons over 65 became taxable, but since the amendments were not enacted until late in the year it was impossible for employers to collect taxes on wages previously paid.

Paragraph (4) gives discretion to the Board to provide flexibility in deductions previously provided for, and provides pro rata distribution among the several beneficiaries of any increases or decreases to meet the maximum and minimum totals provided for in subsection (h).

Subsection (j): This subsection sets the effective date of survivor benefits and provides for the filing of applications for survivor benefits. An application to be valid cannot be filed more than 3 months before the individual becomes entitled to receive benefits; thus there is avoided any temptation to get an application on file when the individual knows he is not currently eligible and merely wants to cover himself with respect to eligibility in the indefinite future. Applications may be filed at any time within the 3 months following the

month in which eligibility is attained without loss of any benefits but if the application is not filed within that period retroactive benefits will not be paid and the first payment will be for the month in which the application is filed.

Subsection (k): (1) This paragraph makes railroad service creditable for survivor benefit purposes under the Social Security Act. It will be recalled that the provision on page 29, lines 2 to 7, denies to persons eligible for survivor benefits under the Retirement Act any rights under the Social Security Act to survivor benefits based on the death of the same employee. So the net effect of the two provisions in combination is that persons eligible to survivor benefits under the Retirement Act look exclusively to this act whereas those not so eligible will look to the Social Security Act and will have their Social Security Act benefits calculated on a basis which also credits railroad service under that act.

(2) Since the survivor benefits of the families of men who died currently connected with the railroad industry will include credit for service under the Social Security Act and, on the other hand, railroad-industry service is credited under the Social Security Act for the families of persons who are not currently connected with the railroad industry when they die, neither fund would charge the other for this reciprocal crediting and it is expected that the distribution of cost through reciprocal crediting will be equitable. However, experience may show that the distribution may not be entirely equitable to one fund or the other and it is consequently proposed that the Social Security Board and the Railroad Retirement Board make a joint report to Congress together with their recommendations after some experience has been gained and they are able to tell whether the distribution of cost is working out equitably or not.

(3) Since both the Railroad Retirement Board and the Social Security Board will be maintaining records of service and compensation covered by their respective acts each will be in a position to furnish to the other reports of such service and compensation when such reports are needed for the adjudication of claims involving the crediting under one act of service covered by the other act.

Subsection (l): (1) This incorporates by reference the definitions of widow, child, and parent contained in the Social Security Act. The additional qualifications set forth in subparagraphs (i), (ii), and (iii) are also contained in substance in the Social Security Act but not as part of the definition. It is for this reason, although the statement of additional qualifications appears to be a departure from the Social Security Act, that there is no departure in substance.

(2) This definition merely permits the use of the shorthand expression "retirement annuity" to refer to railroad employee annuities under the Railroad Retirement Acts and the term "pension" to refer to the pensions paid under section 6 of the Retirement Act of 1937.

(3) For survivor benefit purposes under the Social Security Act and consequently also for these proposed survivor benefits the basic unit of service is a calendar quarter in which a minimum of $50 is earned in covered employment. The proviso makes certain that the same quarters are not counted twice merely because the individual meets the minimum requirements by some service under the Social Security Act and also by service under the Retirement Act in the same quarter.

(4), (5), and (6). Retirement Act quarters of coverage are differentiated from Social Security Act quarters of coverage by calling the former "compensation quarters of coverage" and the latter "wage quarters of coverage" since earnings are called "compensation" in the Retirement Act and "wages" in the Social Security Act. As stated above, under both acts the basic unit of service for survivor-benefit purposes is a calendar quarter in which a minimum of $50 is earned in covered employment. But since it is contemplated that the cumulative wage record with respect to railroad employees will be kept on an annual basis to simplify and reduce the burden of record keeping it will not be possible to ascertain the distribution of employment within the calendar year from this cumulative report. It is of no importance to do so since there is nothing inherently sacred about the calendar-quarter concept; what is important is that something substantially corresponding to the Social Security Act unit be readily determinable from a simple record. For this reason, the table at the top of page 37 has been constructed to permit an annual earnings figure together with the number of months of service in the calendar year to be translated into quarters of coverage.

(7) This paragraph sets forth the various conditions under which an individual is completely insured for survivor benefit purposes. It will be recalled that the survivors of completely insured individuals qualify for all the survivor benefits whereas the survivors of partially insured individuals qualify only for the benefits directed to the support of children and widows having children in their care, and lump-sum payments. The language of this paragraph sounds technical since it is necessary to take account of quite a number of conditions but the basic concept is fairly simple: An individual is completely insured if he has employment (covered either by the Retirement Act or the Social Security Act) in half the calendar quarters in which he lives after 1936, exclusive of the time he was under 21 or over 65; but once he gets 40 or more quarters of employment (i. e., the equivalent of 10 years) his completely insured status is fixed without regard to the lapse of time; and in addition, those persons who have already retired or will retire before the end of this year, so they will not have had a fair opportunity to become completely insured by employment after 1936, are given a completely insured status provided they are pensioners or have an annuity based on at least 10 years of service.

(8) The significance of the distinction between complete and partial insurance has been set forth in the preceding paragraphs. Partially insured status, in general, is based on less employment than is necessary for complete insurance. Partial insurance is based, roughly, on employment in half the quarters in the 3 years preceding death; or, more precisely, six quarters of employment in the period beginning with the third calendar year before the year of death and ending with the quarter before that in which death occurs.

(9) The average monthly remuneration is simply the average obtained by averaging total creditable earnings over total elapsed time but excluding time during which the individual may have been retired and time prior to age 22 during which the individual did not have quarters of coverage.

(10) The basic amount is the common denominator, so to speak, by reference to which the amount of all survivor benefits is computed. Monthly widow's benefits whether based on age or on having children

in her care are three-fourths of the basic amount; each child's monthly benefit and a parent's monthly benefit is one-half the basic amount; and the lump-sum payment is eight times the basic amount.

The formula set forth in subparagraph (i) is the normally applicable formula (as would appear upon analyzing the cross reference to (7) (i) and (7) (ii)). This formula gives weight both to earnings and to the amount of service and gives more than pro rata weight to earnings in the lower brackets so as to avoid having the survivor benefits of low-paid employees normally fall below a subsistence level. The formula will produce benefits which in general are about 25 percent higher than social-security benefits. The reason why survivor benefits under the Retirement Act must be higher than under the Social Security Act is fairly obvious: the pension history in the railroad industry requires the payment of substantially higher retirement annuities than the Social Security Act provides; to pay for these higher benefits railroad men must pay much higher taxes; since they do pay much higher taxes it is necessary that survivor benefits be also higher or else the benefits of the system for those dying before retirement age would be disproportionately low as compared with those who live to retirement. Even so, the scale of benefits is, in terms of present purchasing power, probably no greater than the social-security benefits were at the time they were enacted.

The formula set up in subparagraph (ii) is simply applicable to annuitants and pensioners already retired to most of whom the normal formula could not be applied.

The subparagraph (iii) provides that in those few cases in which both formulas would apply the higher of the two amounts shall be used.

Section 214: The amendments contained in this section accomplish two things: First, and primarily, they amend the provisions relating to reports of service and compensation which carriers must make to the Board to change over from the "earned" to the "paid" basis. The reason for this change-over is discussed in connection with section 3, page 9. Secondly, these amendments give effect to the Board's records rather than to the original return made by the employer. As a matter of practical administration, of course, the Board cannot adjudicate cases from the original periodic reports made by employers; it is necessary to transcribe the information onto individual cumulative accounts covering the record of a particular employee over his whole period of service. When that transcription has been made the original reports become useless and should be discarded. But the Board has been hesitant to discard them since under present law the original reports rather than the transcription (which is annually checked with the employee) is authoritative. Under the Unemployment Insurance Act this same change was made as part of the 1940 amendments.

Section 215: This section would make the judicial review provisions as now contained in the Railroad Unemployment Insurance Act applicable to Retirement Act cases. The judicial review provisions now in the Retirement Act are very vague and do not specify procedure at all. Insofar as they have been interpreted by the courts they apparently provide substantially the same scope of review as the provisions of the Unemployment Insurance Act. The latter, however, are more definite and specific as to procedure and it is therefore pro-

posed to make them applicable to the Retirement Act cases rather than vice versa. It is of importance to attain uniformity since very frequently, particularly in coverage cases, the same issue must be decided under both acts and uniform provisions will enable the Board to decide the issue in a single consolidated proceeding with a single court review.

Section 216: This merely amends the exclusion of railroad service from the social-security system in conformity with the other amendments proposed by the bill and makes clear that the scope of coverage so excluded is the scope determined pursuant to the Railroad Retirement Act rather than leaving to separate proceedings under the Social Security Act the determination of the same questions which must be determined under the Railroad Retirement Act. Obviously the Railroad Retirement Act cannot be administered without determining what service is covered by that act. When that has been done it should follow automatically that such service is excluded from the Social Security Act and from social-security taxes. In the past it has not been clear that this is the case and some have felt that independent determinations under the Social Security Act were necessary to determine that service already determined to be under the Railroad Retirement Act is excluded from the Social Security Act.

Section 301: The unit of time with respect to which unemployment insurance is paid is the "registration period." This is a period of 14 days beginning with a day of unemployment. Benefits are paid at a daily benefit rate for each day of unemployment in excess of seven during the first compensable registration period in a benefit year and thereafter for each day of unemployment in excess of four in any subsequent registration period in the same benefit year.

The amendments proposed in this section amend the definition of "registration period" so as to cover also registration periods based on days of sickness. Under the definition, as amended, days of unemployment and days of sickness will not be combined in the same registration period but a registration period based on days of sickness may be begun before a registration period based on days of unemployment has expired and vice versa. In other words, an individual who has current a registration period in which he has had, say, 4 days of unemployment when he becomes sick can immediately begin a registration period based on days of sickness so that the pendency of one kind of registration period does not deprive the individual of benefits he would otherwise be entitled to; but he cannot merely add the days of sickness to the days of unemployment in determining the number of compensable days (i. e., excess over four) in a registration period.

Section 302: The term "remuneration" as now defined excludes payments received from any nongovernmental plan of unemployment insurance. The significance of that provision lies in the fact that an individual cannot be considered unemployed on any day with respect to which he receives remuneration; hence an individual who is not receiving pay but has some form of private unemployment insurance from which he is getting payments is not to be precluded from drawing unemployment insurance under the act. The amendment proposed by this section merely puts sickness and maternity benefits on the same basis.

Section 303: This section adds to the present definition of a day of unemployment a definition of a day of sickness; the definition is in substance the same as that of a day of unemployment except that the unemployment is due to illness.

Section 304, first paragraph: This amends the term "benefits" to include sickness benefits.

Second paragraph: This paragraph describes the "statement of sickness" (i. e., the certificate from a doctor) which is required to be filed with the Board to establish days of sickness. Ordinarily this will be the proof on which benefits are paid but the Board will have power to investigate further if it has reason to doubt the proof thus furnished. The statement of sickness with respect to sickness benefits corresponds to and serves the same function as registration at the employment office with respect to unemployment insurance.

Third paragraph: This paragraph defines "maternity period." It would normally be 116 days in duration but if the birth of the child should be delayed more than 4 weeks after the expected date of birth the period is extended so as to end with the 31st day after the child is actually born. In this way the maternity period will always cover at least 31 days after the child is born so as to permit the mother to recuperate. Such an extension does not, however, result in total payments for the maternity period being greater than they otherwise would be since under section 305 (b), page 45, the maximum compensable days prior to the birth of the child is fixed at 84. In other words, benefit payments are begun 57 days before the expected birth of the child but if the birth of the child is delayed more than 84 days after benefit payments are commenced the payments are stopped so as to save 31 days payment for the period of recuperation. The 116-day maternity period was arrived at so as to make the total benefits payable during a maternity period equivalent to those payable for the total days of unemployment or days of sickness which are compensable in a benefit year. (See sec. 306, pp. 45–46.) Although the compensable days of unemployment and of sickness are 130 the maternity period is fixed at 116 because the amount of maternity benefits is increased by 50 percent in the first registration period in the maternity period and in the first registration period following the birth of the child so as to make more funds available in the period when expenses are likely to be heaviest. These two 50-percent increases are equivalent to the benefits which would be paid at the normal rate for an additional 2 weeks and hence that period is subtracted from 130 in arriving at the 116 days.

Section 305: (*a*) This section amends the benefit-payment provisions so as to provide for payments with respect to days of sickness on the same basis as for days of unemployment.

(*b*) Page 44, lines 23 to 25: This merely includes sickness in the provisions establishing the daily benefit rates.

Page 44, line 25, to page 45, line 4: This change carries out the change-over from the $300 per month limit of creditable compensation to the limit of $300 multiplied by the number of months of service in the calendar year.

Page 45, lines 4 to 6: This adds two new benefit rates for the higher paid employees. At the present time all persons earnings $1,600 or over receive benefits at the same daily benefit rates. By adding these new benefit rates the basic earnings are reflected in the rate of benefits to a higher degree.

Page 45, lines 8 to 12: As has already been explained in connection with the duration of the maternity period, benefit payments for maternity sickness are stepped up by 50 percent for the first registration period after the employee stops work so as to ease the transition from employment to unemployment, and again in the first registration period after the birth of the child when the expenses are heaviest.

Page 45, lines 12 to 14: As has already been explained in connection with the duration of the maternity period, if the birth of the child is unduly delayed benefit payments are interrupted so as to save about a month's benefit payments for payment after the birth of the child during the period of recuperation.

Page 45, lines 14 to 18: Where a maternity period begins in one benefit year and extends over into another benefit year, payments are to continue on the basis on which they started even though the daily benefit rate for the new sickness in the new benefit year might be different; if, however, the employee did not qualify in the benefit year in which the maternity period begins, and hence no payments have been begun, but the employee is qualified in the new benefit year, of course, payments are begun as soon as the employee becomes entitled.

Page 45, lines 19 to 21: The significance of not combining days of unemployment with days of sickness in the same registration period has been fully explained in connection with the second paragraph of section 301, page 42.

Section 306: This increases the maximum number of compensable days of unemployment in a benefit year from the present 100 to the proposed 130, and establishes the same maximum for days of sickness. Days of sickness in a maternity period are excluded here since generally they are separately provided for in section 304, top of page 44. Since only 10 days out of each 14 days of unemployment are compensable, we have in substance five compensable days per week so that the present 100 days translated to weeks of total unemployment is equivalent to 20 weeks, and the proposed 130 days is equivalent to 26 weeks.

Section 307: This merely makes technical changes to conform to the inclusion of sickness benefits.

Section 308: This is another technical change to conform to the change-over from "earned" to "paid" compensation. This change-over is discussed in connection with section 3, page 9.

Section 309: Under present law there are certain disqualifications for the receipt of unemployment benefits, such as leaving work voluntarily, failing to accept suitable work, etc. It is evident from the nature of disqualifications that most of them have no pertinency to sickness benefits; but some are equally applicable to sickness benefits. This whole section merely rearranges, and in part rephrases, the disqualifications so as to separate those which are applicable to sickness insurance from those that are applicable only to unemployment insurance. The disqualifications which are made applicable to sickness benefits are: Fraudulently claiming benefits, being in receipt of other social-insurance benefits such as State sickness or unemployment insurance, retirement annuities, etc., and in the case of train and engine service employees or employees in similar services having, through accumulation of abnormal mileage in the first part of a period, already earned normal earnings for the whole period.

Section 310: This is merely a technical change of cross-references made necessary by the amendments made in section 309.

Section 311 (a). The present law provides for administrative review of initially rejected claims by district boards. Such provision was made on the assumption that there would be a large volume of appeals. In fact there have been practically no appeals, and the board itself has handled the few that have been taken; consequently, the district boards have never functioned. It is therefore proposed to eliminate the provision for district boards but to authorize the board to establish such intermediate reviewing bodies as may be called for if the volume of appeals should require any.

(b) Under present law the board is authorized to decide coverage cases in special proceedings, determining simultaneously the tax liabilities of the employer and the benefit rights of all employees concerned. By conducting a single, thorough, consolidated proceeding, both efficiency of administration and most adequate protection of all rights are secured. However, the present law contemplates that whenever such an issue arises there will be pending benefit claims and the employer will be refusing to comply with the act. If there happened to be no persons unemployed at the moment and hence no current claims pending, or if the employer is complying with the act by paying the contributions but is paying them under protest and is claiming a refund, some doubt has been raised as to whether the Board has authority to proceed with a determination. Under such circumstances the issue is just as much present and it is just as important for the employer and employees to have the issue determined as though all the conditions which the statute contemplates were present—normally they are present, but occasionally they are not. This subsection makes a few slight technical amendments to enable the board to proceed to a determination whenever a coverage issue actually arises, regardless of the form in which it arises, and the final paragraph (p. 49 lines 10 to 13) makes it clear that coverage issues are to be determined only in proceedings in which all parties in interest have an opportunity to be heard.

Section 312: This merely makes technical changes conforming to the elimination of the district boards under section 311 (a).

Section 313: This merely makes technical changes conforming to the amendments made by section 311 (b).

Section 314: The only change made from present law by this section is to place review in the circuit courts of appeals rather than in the district courts.

Sections 315 and 316: These are merely technical changes conforming to the amendments made by section 311 (b).

Section 317: These are technical changes conforming to the change-over from compensation "earned" to the compensation "paid" basis. This change-over is discussed in connection with section 3, page 9.

Section 318: This makes precisely the same changes with respect to unemployment insurance taxes that are made with respect to the Carriers Taxing Act by section 4 (b), pages 11–12. Their significance is fully discussed there.

Section 319: This provides for enforcement of subpenas in the Northern District of Illinois as well as in the District of Columbia since the Board's main office is now in Chicago.

Sections 320 and 321: These are merely technical changes conforming to the inclusion of sickness benefits.

Section 322: This section authorizes the Board to establish the procedures for the execution and filing of statements of sickness.

These statements are designed to furnish the prima facie proof of sickness and ordinarily would constitute the evidence upon which claims to sickness benefits would be paid. They would normally be executed by doctors licensed to practice in the place where their profession is carried on or by officers or supervisory employees of hospitals, clinics, group health associations, or other similar organizations whose qualifications meet the standards to be prescribed by the Board. These statements of sickness in their function of providing the prima facie proof of sickness correspond to registration at an employment office with respect to unemployment benefits.

Section 323, first paragraph, page 53, line 19, to page 64, line 4: By this paragraph the Board would be authorized to require physical examination of any claimant in order to verify his claims of sickness. It is required that places of examination be reasonably convenient to the employee.

Second paragraph, page 54, lines 5–19: Doctors in attendance upon employees claiming sickness benefits are required to make information regarding the illness available to the Board. A waiver of the doctor-patient privilege respecting such information is required, but the Board in turn is required to maintain it in confidence except as its revelation may be required in a court proceeding pertaining to sickness benefits.

Third paragraph, page 54, line 20, to page 55, line 14: The Board is authorized to contract for and pay for physical examinations of claimants which it requires in accordance with the first paragraph of this section. If the Board pays for such an examination and the employee bases his claim upon the examination provided by the Board he may be charged a reasonable fee for that service. If the employee chooses to have his statement of sickness executed by his own, independent physician, of course he need not predicate his claim on any examination directed by the Board, and would not be charged any fee for the examination directed by the Board.

Fourth paragraph, page 55, line 15, to page 56, line 5: The fact that a third party may be liable to the employee for inflicting the disability upon which a claim for sickness benefits is predicated does not affect the validity of the claim for benefits, but the Board is entited to reimbursement from any payment in discharge of such liability to the extent of the sickness benefits paid under these circumstances, and upon notice to the person liable obtains a lien securing its right of reimbursement.

Fifth paragraph, page 56, line 6 to line 21: The Board is authorized after hearing to disqualify persons from executing sickness statements on grounds of solicitation, falsification of statements, refusal to give information to the Board, and malpractice or other professional misconduct. Upon his disqualification such an individual also becomes disentitled to accrue any further fees for rendering any examination service to the Board.

Sixth paragraph, page 56, line 22, to page 57, line 3: The Board is authorized to carry on investigation and research in connection with the sickness-benefit program. Inevitably the operation of a sickness-benefit program will place in the hands of the Board a great deal of information and statistics regarding the incidence and effects of disabilities which should be of great value to the Government in determining future policy with respect to sickness and disability. But that information cannot be utilized unless it is properly processed and correlated to other information so that its significance may appear.

Section 324: Section 13 (b) of the present unemployment insurance law preempts to the Federal Government the field of railroad unemployment insurance so as to exclude State unemployment compensation laws from the field and thus to protect employers from duplicate liability. The amendments made by this section of the bill extend that preemption to the sickness benefits provided by the bill.

Sections 401, 402, and 403: These sections merely fix effective dates for the several provisions of the bill.

Section 404: In general, annuities in force upon the approval of the bill will be left undisturbed, and with respect to pending applications there will be no retroactive accrual of rights. Further, any additional credit for prior service on applications pending in whole or in part would depend on whether the applicant was entitled to such credit under the amendments made by the bill. But under section 407, page 59, the benefit of some of the amendments is made available to annuitants whose claims have already been allowed.

Section 405: Although the provision for joint and survivor annuity elections is repealed by the bill, such elections will be given effect with respect to annuities accruing before January 1, 1946, except that revocation is permissible if no award is made before passage of the bill. Also other persons who have made joint and survivor elections but whose annuities do not accrue before January 1, 1946, are permitted to maintain those elections in effect by reaffirmation within one year after January 1, 1946. It is desirable to permit reconsidera tion of the matter since it is believed that most persons who have made elections prior to the adoption of survivor benefits will wish to reconsider the election in view of the independent benefits accruing to a surviving spouse by reason of the survivor benefit amendments.

Section 406: Lump sum death benefits and the death benefits pay able in the cases still governed by the 1935 act (i. e., persons who had retired and become eligible for annuities before the 1937 act was passed) will be paid only with respect to deaths occurring before January 1, 1946, as of which time the new survivor benefits become effective.

Section 407: Persons who did not receive credit for prior service because they lacked an employment relation under the present law but would have an employment relation under the amendment, persons who had prior service in operations now conducted by an employer but which was not service to an employer when rendered, persons whose annuities would be increased by reason of the change in disability annuities, and persons who would benefit by the change in the minimum annuity provisions will be given the benefit of the new amendments as of the date the amendments become operative even though an annuity has previously been awarded. For these purposes a "current connection with the railroad industry" is presumed if the annuity was based on 5 years or more of railroad service. In case the annuities affected are in joint and survivor form the increase generally will be similarly treated.

Section 408: Under present law if a disability annuity is awarded and there is a subsequent recovery from disability, before age 65, any future annuity to which the individual becomes entitled must be reduced to compensate actuarily for the payments made under the previously awarded disability annuity. Such a reduction is in-

equitable since it treats the previous disability payments in substance as though they were erroneous payments when in fact they were not; the mere fact of recovery from disability does not indicate that the individual's physical condition was not properly judged to be permanently and totally disabling as of the time the award is made. The provision for reduction is superseded in section 205 of this bill. Section 408 makes it clear that there are to be no reductions of this character after the amendments become effective.

Section 409: Section 6 of the Retirement Act of 1937 took over pensioners then on the pension rolls of employers. It is not known that there are any pensioners of employers brought into the Act by the amendments, but, if there are any, those pensioners would be taken over as of January 1, 1946, provided the pensions had been granted by January 1, 1945, in the same way that the original railroad pensioners were taken over as of July 1, 1937, provided that the pensions had been awarded by March 1, 1937.

Section 410: Subsection 1 (b) of the Railroad Unemployment Insurance Act defined the term "carrier." In view of the revision of the coverage definitions made by section 1 of the bill, that subsection now becomes superfluous.

O

AMENDMENT OF RAILROAD RETIREMENT ACTS

Mr. CAPEHART. Mr. President, I ask unanimous consent to submit an amend-

ment in the nature of a substitute to House bill 1362, to amend the railroad retirement acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes, and request that it be printed and lie on the table. I also request that the amendment be printed at this point in the RECORD, as a part of my remarks, and that there be printed in the RECORD following it an explanation of the bill and amendment and a statement by me which appears in the newspaper Labor of May 11, 1946.

The PRESIDENT pro tempore. Without objection, the amendment will be received and lie on the table, and the amendment, together with an explanation of the bill and amendment, and the statement will be printed in the RECORD.

The amendment in the nature of a substitute submitted by Mr. CAPEHART is as follows:

Amendment (in the nature of a substitute) intended to be proposed by Mr. CAPEHART to the bill (H. R. 1362) to amend the railroad retirement acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code, and for other purposes, viz: Strike out all after the enacting clause and insert the following:

TITLE I—AMENDMENTS TO RAILROAD RETIREMENT ACT OF 1937

ADDITION OF CERTAIN DEFINITIONS

SECTION 1. Section 1 of the Railroad Retirement Act of 1937, as amended, is amended by adding at the end thereof the following new subsections:

"(o) An individual has 'a current connection with the railroad industry' on a particular date if, in any 30 consecutive calendar months before the month in which such date occurs, he was in service as an employee in not less than 12 calendar months and, if such 30 calendar months do not immediately precede such month, he was not engaged in any regular employment other than employment for an employer in the period before such month and after the end of such 30 calendar months.

"(p) The term 'occupational injury or disease' means (1) accidental injury arising out of and in the course of employment as an employee, (2) such occupational disease or infection as arises out of such employment or as naturally or unavoidably results from such accidental injury, or (3) injury caused by the willful act of a third person directed against an individual because of his employment as an employee.

"(q) The term 'wages' (except when used in section 5 (d) (1)) means all compensation earned by an employee after December 31, 1936, excluding that part of such compensation which, after compensation equal to $3,000 had been earned by an employee during any calendar year, was earned by such employee during such calendar year; but, in computing such compensation no part of any month's compensation in excess of $300, earned before January 1, 1947, shall be recognized.

"(r) The term 'survivor benefit credit' means an amount equal to the sum of the following—

"(1) (A) Forty percent of the amount of an individual's average monthly wage if such average monthly wage does not exceed $50, or (B) if such average monthly wage exceeds $50, 40 percent of $50, plus 10 percent of the amount by which such average monthly wage exceeds $50 and does not exceed $250, and

"(2) an amount equal to 1 percent of the amount computed under paragraph (1) multiplied by the number of years in which $200 or more of wages were earned by such individual.

Where the survivor benefit credit thus computed is less than $10, such credit shall be $10.

"(s) The term 'average monthly wage' means the quotient obtained by dividing the total wages earned by an individual before the quarter in which he died, became entitled to receive an annuity under paragraph 1 of section 2 (a), or attained the age of 65 if he became entitled to receive an annuity under section 2 (a) before attaining the age of 65, whichever first occurred, by three times the number of quarters elapsing after 1936 and before such quarter in which he died, became so entitled, or so attained the age of 65, excluding any quarter prior to the quarter in which he attained the age of 22 during which he earned less than $50 of wages.

"(t) The term 'completely insured individual' means any individual with respect to whom it appears to the satisfaction of the Board that—

"(1) He had not less than one quarter of coverage for each two of the quarters elapsing after 1936, or after the quarter in which he attained the age of twenty-one, whichever quarter is later, and up to but excluding the quarter in which he attained the age of sixty-five, or died, whichever first occurred, and in no case less than six quarters of coverage; or

"(2) He had at least forty quarters of coverage.

As used in this subsection, and in subsections (s), (u), and (v) of this section, the term 'quarter' and the term 'calendar quarter' mean a period of three calendar months ending on March 31, June 30, September 30, or December 31. When the number of quarters specified in paragraph (1) of this subsection is an odd number, for purposes of such paragraph such number shall be reduced by one. In any case where an individual has earned in a calendar year $3,000 or more in wages, each quarter of such year following his first quarter of coverage shall be deemed a quarter of coverage, excepting any quarter in such year in which such individual dies or (having attained the age of sixty-five) is or becomes entitled to receive an annuity under section 2 and any quarter succeeding such quarter in which he died or was or became so entitled.

"(u) The term 'partially insured individual' means any individual with respect to whom it appears to the satisfaction of the Board that he earned wages of not less than $50 in each of not less than six of the twelve calendar quarters immediately preceding the quarter in which he died.

"(v) The term 'quarter of coverage' means a calendar quarter in which the individual earned not less than $50 in wages; except that for each calendar year during the period beginning January 1, 1937, and ending December 31, 1946, an individual's number of quarters of coverage shall be determined in accordance with the following table:

If during the calendar year the individual earned wages in the following number of calendar months—	And the total wages earned during such calendar year is—			
	$50 but less than $100	$100 but less than $150	$150 but less than $200	$200 or more
	Then the quarters of coverage for such calendar year shall be—			
1 but not more than 3	1	1	1	1
4 but not more than 6	1	2	2	2
7 but not more than 9	1	2	3	3
10 or more	1	2	3	4

For the purposes of subsections (s) and (u) of this section if an individual's quarters of coverage in any calendar year before 1947, as determined from the table—

"(1) is one, his wages for such year shall be deemed to have been earned in the last calendar quarter of such year;

"(2) are two, one-half of his wages for such year shall be deemed to have been earned in each of the last two calendar quarters of such year;

"(3) are three, one-third of his wages for such year shall be deemed to have been earned in each of the last three calendar quarters of such year; and

"(4) are four, one-fourth of his wages for such year shall be deemed to have been earned in each calendar quarter of such year.

"(w) The term 'widow' (except when used in section 4 (e)) means the surviving wife of an individual who either (1) is the mother of such individual's son or daughter, or (2) was married to him prior to the beginning of the twelfth month before the month in which he died.

"(x) The term 'child' (except when used in section 4 (e)) means the child of an individual, and the stepchild of an individual by a marriage contracted prior to the date upon which he attained the age of 60 and prior to the beginning of the twelfth month before the month in which he died, and a child legally adopted by an individual prior to the date upon which he attained the age of 60 and prior to the beginning of the twelfth month before the month in which he died.

"(y) In determining whether an applicant is the widow, child, or parent of a completely insured or partially insured individual, the Board shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual was domiciled at the time of his death, or if such insured individual was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a widow, child, or parent shall be deemed such.

"(z) A widow shall be deemed to have been living with her husband at the time of his death if they were both members of the same household on the date of his death, or she was receiving regular contributions from him toward her support on such date, or he had been ordered by any court to contribute to her support."

AMENDMENT TO SECTION 2 OF RAILROAD RETIREMENT ACT OF 1937

SEC. 2. Section 2 of the Railroad Retirement Act of 1937, as amended, is amended to read as follows:

"ANNUITIES

"SEC. 2. (a) The following-described individuals, if they shall have been employees on or after August 29, 1935, shall, subject to the conditions set forth in subsections (b), (c), (d), and (e), be eligible for annuities after they shall have ceased to render compensated service to any person, whether or not an employer as defined in section 1 (a) (but with the right to engage in other employment to the extent not prohibtied by subsection (e)):

"1. Individuals who on or after August 29, 1935, shall be 65 years of age or over.

"2. Women who on or after January 1, 1947, shall be 60 years of age or over and have completed 30 years of service.

"3. Individuals (other than those covered by paragraph 2) who on or after August 29, 1935, shall be 60 years of age or over and have completed 30 years of service, but the annuity of such an individual shall be reduced by one one-hundred-and-eightieth for each calendar month that such individual is under age 65 when the annuity begins to accrue.

"4. Individuals who on or after August 29, 1935, shall be either 60 years of age or over or shall have completed 30 years of service, and whose permanent physical or mental condition is such that they are unable to engage in any regular employment for hire.

"5. Individuals who on or after January 1, 1947, have completed 10 years of service and whose permanent physical or mental condition, as the result of occupational injury or disease, is such that they are unable to engage in any regular employment for hire.

"6. Individuals who on or after January 1, 1947, have, on the date as of which the annuity begins to accrue, a current connection with the railroad industry and, on such date, either have completed 20 years of service or have attained the age of 60, and whose permanent physical or mental condition, as the result of occupational injury or disease, is such as to be disabling for work in their regular occupation as employees. The Board, with the cooperation of employers and employees, shall secure for purposes of this paragraph the establishment of standards determining the physical and mental conditions which are permanently disabling for work in the several occupations in the railroad industry, and the Board, employers, and employees shall cooperate in the promotion of the greatest practicable degree of uniformity in the standards applied by the several employers. An individual's condition shall be deemed to be disabling for work in his regular occupation as an employee if he has been disqualified by his employer because of disability for service in his regular occupation as an employee in accordance with the applicable standards so established; but if the employee has not been so disqualified by his employer, the Board shall determine whether his condition is disabling for work in his regular occupation as an employee in accordance with the standards generally established; and, if the employee's regular occupation as an employee is not one with respect to which standards have been established, the standards relating to a reasonably comparable occupation shall be used. If there is no such comparable occupation, the Board shall determine whether the employee's condition is disabling for work in his regular occupation as an employee by determining whether under the practices generally prevailing in industries in which such occupation exists such condition is a permanent disqualification for work in such occupation. For the purposes of this section, an employee's 'regular occupation' shall be deemed to be the occupation in which he has been engaged as an employee in more calendar months than the calendar months in which he has been engaged in any other occupation as an employee during the last preceding 5 calendar years, whether or not consecutive, in each of which years he has earned compensation, except that, if an employee establishes that during the last 15 consecutive calendar years he has been engaged in another occupation as an employee in one-half or more of all the months in which he has earned compensation, he may claim such other occupation as his regular occupation as an employee.

"(b) Such satisfactory proof shall be made, as prescribed by the Board, of the physical or mental condition referred to in paragraph 4, 5, or 6 of subsection (a), and from time to time, of the continuance of such condition (determined in accordance with the tests applied in the original determination of such condition) until the employee attains the age of 65. If the individual fails to comply with the requirements prescribed by the Board as to proof of the continuance of such condition until he attains the age of 65 years, his right to an annuity by reason thereof shall, except for good cause shown to the Board, cease, but without prejudice to his rights to have subsequently awarded to him any annuity to which he may be entitled. If before attaining the age of 65 an individual in receipt of an annuity under paragraph 4, 5, or 6 of subsection (a) is found by the Board to be no longer in the physical or mental condition referred to in such paragraph his annuity shall cease upon the last day of the month in which such condition is found by the Board to have ceased to exist, but without prejudice to his rights to have subsequently awarded to him any annuity to which he may be entitled.

"(c) An annuity shall be paid only if the applicant has relinquished such rights as he may have had to return to the service of an employer and of the person by whom he was last employed; but this requirement shall not apply to the individuals mentioned in paragraphs 4, 5, and 6 of subsection (a) prior to attaining the age of 65.

"(d) An annuity shall begin to accrue as of a date to be specified in a written application (to be made in such manner and form as may be prescribed by the Board and to be signed by the individual entitled thereto), but—

"(1) not before the date following the last day of compensated service of the applicant, and

"(2) not more than 60 days before the filing of the application.

"(e) No annuity shall be paid with respect to any month in which an individual in receipt of an annuity hereunder (1) renders compensated service to an employer, (2) renders compensated service to the last person by whom he was employed prior to the date on which the annuity begins to accrue, or (3) in the case of an annuity under paragraph 6 of subsection (a), earns more than $75 in service for hire or in self-employment. Individuals receiving annuities shall report to the Board immediately all such compensated service and earnings."

PROVISION RELATING TO MINIMUM ANNUITIES

SEC. 3. Subsection (e) of section 3 of the Railroad Retirement Act of 1937, as amended, is amended to read as follows:

"(e) If an individual entitled to an annuity—

"(1) was an employee when he attained age 65 and has completed 20 years of service, or

"(2) had, on the date as of which such annuity began to accrue, a current connection with the railroad industry and had, on such date, completed 5 years of service,

the minimum annuity payable shall, before any reduction pursuant to paragraph 3 of section 2 (a), be whichever of the following is the least: (1) $3 multiplied by the number of his years of service, (2) $50, or (3) his monthly conpensation."

REPEAL OF SECTIONS 4 AND 5; ADDITION OF SECTIONS PROVIDING FOR SURVIVOR BENEFITS

SEC. 4. The Railroad Retirement Act of 1937, as amended, is amended by striking out sections 4 and 5 thereof, and by inserting in lieu of such sections the following:

"SURVIVOR BENEFITS

"Child's insurance benefits

"SEC. 4. (a) (1) Every child (as defined in section 1 (x)) of an individual who died a completely or partially insured individual (as defined in section 1 (t) and (u)) after December 31, 1946, if such child (A) has filed application for child's insurance benefits, (B) at the time such application was filed was unmarried and had not attained the age of 18, and (C) was dependent upon such individual at the time of such individual's death, shall be entitled to receive a child's insurance benefit for each month, beginning with the month in which such child becomes so entitled to such insurance benefits, and ending with the month immediately preceding the first month in which any of the following occurs; such child dies, marries, is adopted, or attains the age of 18.

"(2) Such child's insurance benefit for each month shall be equal to one-half of the survivor benefit credit (as defined in section 1 (r)) of the individual with respect to whose wages the child is entitled to receive such benefit, except that, when there is more than one such individual such benefit shall be equal to one-half of whichever survivor benefit credit is greatest.

"(3) A child shall be deemed to have been dependent upon a father or adopting father at the time of the death of such individual unless, at the time of such death, such individual was not living with or contributing to the support of such child and—

"(A) such child is neither the legitimate nor adopted child of such individual, or

"(B) such child has been adopted by some other individual, or

"(C) such child was living with and supported by such child's stepfather,

"(4) A child shall be deemed to have been dependent upon a mother, adopting mother, or stepparent at the time of the death of such individual only if, at the time of such death, no parent other than such individual was contributing to the support of such child and such child was not living with its father or adopting father.

"Widow's insurance benefits

"(b) (1) Every widow (as defined in section 1 (w)) of an individual who died a completely insured individual after December 31, 1946, if such widow (A) has not remarried, (B) has attained the age of 65, (C) has filed application for widow's insurance benefits, (D) was living with such individual at the time of his death, and (E) is not entitled to receive an annuity under section 2, or is entitled to receive an annuity under section 2 which is less than three-fourths of the survivor benefit credit of her husband, shall be entitled to receive a widow's insurance benefit for each month, beginning with the month in which she becomes so entitled to such insurance benefits and ending with the month immediately preceding the first month in which any of the following occurs: She remarries, dies, or becomes entitled to receive an annuity under section 2 equal to or exceeding three-fourths of the survivor benefit credit of her husband.

"(2) such widow's insurance benefit for each month shall be equal to three-fourths of the survivor benefit credit of her deceased husband, except that, if she is entitled to receive an annuity under section 2 for any month, such widow's insurance benefit for such month shall be reduced by an amount equal to the annuity under section 2 to which such widow is entitled.

"Widow's current insurance benefits

"(c) (1) Every widow (as defined in section 1 (w)) of an individual who died a completely or partially insured individual after December 31, 1946, if such widow (A) has not remarried, (B) is not entitled to receive a widow's insurance benefit, and is not entitled to receive an annuity under section 2, or is entitled to receive an annuity under section 2 which is less than three-fourths of the survivor benefit credit of her husband, (C) was living with such individual at the time of his death, (D) has filed application for widow's current insurance benefits, and (E) at the time of filing such application has in her care a child of such deceased individual entitled to receive a child's insurance benefit, shall be entitled to receive a widow's current insurance benefit for each month, beginning with the month in which she becomes so entitled to such current insurance benefits and ending with the month immediately preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to receive a child's insurance benefit, she becomes entitled to receive an annuity under paragraph 1 or 2

of section 2 (a) equal to or exceeding three-fourths of the survivor benefit credit of her deceased husband, she becomes entitled to receive a widow's insurance benefit, she remarries, she dies.

"(2) Such widow's current insurance benefit for each month shall be equal to three-fourths of the survivor benefit credit of her deceased husband, except that, if she is entitled to receive an annuity under section 2 for any month, such widow's current insurance benefit for such month shall be reduced by an amount equal to the annuity under section 2 to which such widow is entitled or by an amount equal to such current insurance benefit, whichever amount is less.

"Parent's insurance benefit

"(d) (1) Every parent (as defined in this subsection) of an individual who died a completely insured individual after December 31, 1946, leaving no widow and no unmarried surviving child under the age of 18, if such parent (A) has attained the age of 65, (B) was wholly dependent upon and supported by such individual at the time of such individual's death and filed proof of such dependency and support within 2 years of such date of death, (C) has not married since such individual's death, (D) is not entitled to receive any other insurance benefits under this section or any annuity under section 2, or is entitled to receive one or more of such benefits or annuity for a month, but the total for such month is less than one-half of the survivor benefit credit of such deceased individual, and (E) has filed application for parent's insurance benefits, shall be entitled to receive a parent's insurance benefit for each month, beginning with the month in which such parent becomes so entitled to such parent's insurance benefits and ending with the month immediately preceding the first month in which any of the following occurs: such parent dies, marries, or becomes entitled to receive for any month an insurance benefit or benefits (other than a benefit under this subsection) or an annuity under section 2 in a total amount equal to or exceeding one-half of the survivor benefit credit of such deceased individual.

"(2) Such parent's insurance benefit for each month shall be equal to one-half of the survivor benefit credit of such deceased individual, except that, if such parent is entitled to receive an insurance benefit or benefits for any month (other than a benefit under this subsection) or an annuity under section 2, such parent's insurance benefit for such month shall be reduced by an amount equal to the total of such other benefit or benefits or annuity for such month. When there is more than one such individual with respect to whose wages the parent is entitled to receive a parent's insurance benefit for a month, such benefit shall be equal to one-half of whichever survivor benefit credit is greatest.

"(3) As used in this subsection, the term 'parent' means the mother or father of an individual, a stepparent of an individual by a marriage contracted before such individual attained the age of 16, or an adopting parent by whom an individual was adopted before he attained the age of 16.

"Lump-sum death payments

"(e) Upon the death, after December 31, 1946, of an individual who died a completely or partially insured individual leaving no surviving widow, child, or parent who would, on filing application in the month in which such individual died, be entitled to a benefit for such month under subsection (a), (b), (c) or (d) of this section, an amount equal to six times the survivor benefit credit of such individual shall be paid in a lump-sum to the following person (or if more than one, shall be distributed among them) whose relationship to the deceased is determined by the Board, and who is living on the date of such determination: To the widow or widower of the deceased; or, if no such widow or widower be then living, to any child or children of the deceased and to any other person or persons who are, under the intestacy law of the State where the deceased was domiciled, entitled to share as distributees with such children of the deceased, in such proportions as is provided by such law; or, if no widow or widower and no such child and no such other person be then living, to the parent or to the parents of the deceased, in equal shares. A person who is entitled to share as distributee with an above-named relative of the deceased shall not be precluded from receiving a payment under this subsection by reason of the fact that no such named relative survived the deceased or of the fact that no such named relative of the deceased was living on the date of such determination. If none of the persons described in this subsection be living on the date of such determination, such amount shall be paid to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the expenses of burial of the deceased. No payment shall be made to any person under this subsection, unless application therefor shall have been filed, by or on behalf of any such person (whether or not legally competent), prior to the expiration of 2 years after the date of death of such individual.

"Application

"(f) (1) An individual who would have been entitled to a benefit under subsection (a), (b), (c), or (d) for any month had he filed application therefor prior to the end of such month, shall be entitled to such benefit for such month if he files application therefor prior to the end of the third month immediately succeeding such month.

"(2) No application for any benefit under this section filed prior to 3 months before the first month for which the applicant becomes entitled to receive such benefit shall be accepted as an application for the purposes of this section.

"(3) An application for any payment or benefit under this section shall be made and filed in such manner as the Board may by regulation prescribe.

"Family payments

"(g) The Board may, in its discretion, certify to the Secretary of the Treasury any two or more individuals of the same family for joint payment of the total benefits and annuities payable to such individuals under this act.

"Benefits due but not paid at death

"(h) The amount of any monthly benefit or lump sum due any individual under this section but not paid to such individual before his death shall be paid to the same persons, and subject to the same conditions and limitations, as though (1) such amount constituted a lump sum payable under subsection (e) by reason of the death of the individual with respect to whose wages such amount was payable, and (2) the individual with respect to whose wages such amount was payable had died on the date of the death of the individual to whom such amount was due.

"Assignment

"(i) The right of any individual to any future payment under this section shall not be transferable or assignable at law or in equity, and none of the moneys paid or payable or rights existing under this section shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

"When an individual is deemed entitled to receive an annuity

"(j) For the purposes of this section and subsections (s) and (t) of section 1, an individual shall be deemed to be entitled to receive an annuity for any month if an annuity is, or thereafter becomes, payable to him for the accrual during such month.

"REDUCTION AND INCREASE OF INSURANCE BENEFITS

"SEC. 5. (a) Whenever the total of benefits under section 4, payable for a month with respect to an individual's wages, is more than $20 and exceeds (1) 85, or (2) an amount equal to twice the survivor benefit credit of such individual, or (3) an amount equal to 80 percent of his average monthly wage (as defined in section 1 (s)), whichever of such three amounts is least, such total of benefits shall, prior to any deductions under subsection (d), be reduced to such least amount or to $20, whichever is greater.

"(b) Whenever the benefit or total of benefits under section 4, payable for a month with respect to an individual's wages, is less than $10, such benefit or total of benefits shall, prior to any deductions under subsection (d), be increased to $10.

"(c) Whenever a decrease or increase of the total of benefits for a month is made under subsection (a) or (b) of this section, each benefit shall be proportionately decreased or increased, as the case may be.

"(d) Deductions, in such amounts and at such time or times as the Board shall determine, shall be made from any payment or payments under section 4 to which an individual is entitled, until the total of such deductions equals such individual's benefit or benefits for any month in which such individual:

"(1) rendered services for wages (as defined in section 209 (a) of the Social Security Act, as amended) of not less than $15; or

"(2) if a child under 18 and over 16 years of age, failed to attend school regularly and the Board finds that attendance was feasible; or

"(3) if a widow entitled to a widow's current insurance benefit, did not have in her care a child of her deceased husband entitled to receive a child's insurance benefit.

"(e) If more than one event occurs in any one month which would occasion deductions equal to a benefit for such month, only an amount equal to such benefit shall be deducted.

"(f) Any individual in receipt of benefits subject to deduction under subsection (d) (or who is in receipt of such benefits on behalf of another individual), because of the occurrence of an event enumerated therein, shall report such occurrence to the Board prior to the receipt and acceptance of an insurance benefit for the second month following the month in which such event occurred. Any such individual having knowledge thereof, who fails to report any such occurrence, shall suffer an additional deduction equal to that imposed under subsection (d)."

"RETURNS OF COMPENSATION AND CONCLUSIVENESS OF EMPLOYEES

SEC. 5. Section 8 of the Railroad Retirement Act of 1937, as amended, is amended to read as follows:

"RETURNS OF COMPENSATION AND CONCLUSIVENESS OF RECORDS OF COMPENSATION

"SEC. 8. Employers shall file with the Board, in such manner and form and at such times as the Board by rules and regulations may prescribe, returns under oath of compensation of employees, and, if the Board shall so require, shall furnish employees with statements of their compensation as reported to the Board. The Board's record of the compensation so returned shall be conclusive as

to the amount of compensation earned by an employee during each month covered by the return, and the fact that the Board's records show that no return was made of the compensation claimed to be earned by an employee during a particular calendar month shall be taken as conclusive that no compensation was earned by such employee during that month, unless the error in the amount of compensation in the one case, or failure to make or record return of the compensation in the other case, is called to the attention of the Board within 4 years after the last date on which return of the compensation was required to be made."

CHANGES IN EXISTING LAW MADE NECESSARY BY PRECEDING AMENDMENTS

SEC. 6. (a) The third sentence of paragraph (h) of section 1 of the Railroad Retirement Act of 1937, as amended, is amended by striking out "for the purposes of subsections (a), (c), and (d) of section 2 and subsection (a) of section 5" and inserting in lieu thereof "for the purposes of subsections (a), (d), and (e) of section 2, and for the purposes of section 4,".

(b) Subsection (f) of section 3 of the Railroad Retirement Act of 1937, as amended, is amended to read as follows:

"(f) Annuity payments due any individual but not paid to such individual before his death shall be paid to the same persons, and subject to the same conditions and limitations, as though such payments constituted a lump sum payable under section 4 (e) with respect to the death of such individual."

(c) Subsection (h) of section 3 of the Railroad Retirement Act of 1937, as amended, is amended by striking out "except as provided in subdivision 3 of section 2 (a)" and inserting in lieu thereof "except that if, under subsection (b) of section 2, an individual's annuity ceases the provisions of this subsection shall not apply with respect to any annuity subsequently awarded to which such individual may be entitled."

(d) Subsection (m) of section 3A of the Railroad Retirement Act of 1937, as amended, is hereby repealed.

(e) (1) Subsection (n) of section 3A of the Railroad Retirement Act of 1937, as amended, is amended by striking out the phrase "annuities, pensions and death benefits" and inserting in lieu thereof the following: "annuities, pensions, death benefits, insurance benefits, and lump sum payments."

(2) Section 9 of such act is amended by striking out the phrase "annuities, pensions, or death benefits" wherever it appears in such section, and inserting in lieu thereof the following: "annuities, pensions, death benefits, insurance benefits, or lump sum payments."

(3) Subsection (b) (1) of section 10 of such act is amended by striking out the phrase "pensions, annuities, or death benefits" and inserting in lieu thereof the following: "annuities, pensions, death benefits, insurance benefits, or lump sum payments."

(4) Subsection (b) 5 of section 10 of such act is amended by striking out the phrase "annuities or death benefits" and inserting in lieu thereof the following: "annuities, death benefits, insurance benefits, or lump sum payments."

(5) The third sentence of section 11 of such act is amended by striking out the phrase "annuity, pension, or death benefit" wherever it appears in such sentence and inserting in lieu thereof the following: "annuity, pension, death benefit, insurance benefit, or lump sum payment."

(6) Subsections (a) and (b) of section 15 of such act are amended by striking out the phrase "annuities, pensions, and death benefits" wherever it appears in such subsections, and inserting in lieu thereof the following: "annuities, pensions, death benefits, insurance benefits, and lump sum payments."

SAVING PROVISIONS

SEC. 7. (a) The provisions of paragraphs 2 and 4 of section 2 (a), and of section 3 (e), of the Railroad Retirement Act of 1937, as in force after this title takes effect, shall be applicable to individuals who became eligible for annuities before January 1, 1947, without further application therefor, but such provisions shall not result in the payment of any annuity, with respect to any calendar month prior to January 1, 1947, in a higher amount than would be payable under the Railroad Retirement Act of 1937 as in force prior to the date on which this title takes effect. If an annuity increased pursuant to such provisions is a joint and survivor annuity, the increase shall be in the same form, the actuarial value being computed as of the date the increase begins, unless on that date there is no spouse living for whom the election was made, in which case the increase shall be awarded on a single life basis. If the increase affects a survivor annuity only, the increase shall be so determined as to bear the same ratio to the survivor annuity as the increase in the basic annuity would bear to such basic annuity if the employee annuitant were living and had made no joint and survivor election. For the purposes of section 3 (e) of the Railroad Retirement Act of 1937, as amended by this act, an individual to whom an annuity began to accrue before January 1, 1947, if such annuity was based on not less than 5 years of service, shall be deemed to have had a current connection with the railroad industry on the date as of which such annuity began to accrue.

(b) Notwithstanding the amendment by this act of section 3 (f) of the Railroad Retirement Act of 1937 in any case in which the individual referred to in such section died before January 1, 1947, such section shall continue in effect as though this act had not been enacted.

(c) Notwithstanding the repeal by this act of section 4 of the Railroad Retirement Act of 1937, in any case where an election was made under such section 4 prior to January 1, 1947, the election shall be given effect as though this act had not been enacted; except that—

(1) If the annuity of the individual who made the election did not begin to accrue before January 1, 1947, the election shall be considered not to have been made unless the individual, prior to January 1, 1948, reaffirms such election in such manner as the Railroad Retirement Board shall by regulations prescribe.

(2) If the annuity of the individual who made the election began to accrue, but was not awarded, before January 1, 1947, the election shall be considered not to have been made if such individual, prior to January 1, 1948, revokes such election in such manner as the Railroad Retirement Board shall by regulations prescribe.

(d) Notwithstanding the repeal by this act of section 3A (m) and section 5 of the Railroad Retirement Act of 1937, such section 3A (m) and such section 5 shall continue in effect with respect to compensation earned after December 31, 1936, and before January 1, 1947, by an individual as an employee, as though this act had not been enacted, in the following cases:

(1) If such individual dies before January 1, 1947.

(2) If such individual dies on or after January 1, 1947, and died neither completely nor partially insured within the meaning of subsection (t) or (u) of section 1 of the Railroad Retirement Act, as amended by this act.

(3) If such individual dies on or after January 1, 1947, and a lump-sum death payment under section 4 (e) of the Railroad Retirement Act of 1937, as amended by this act, is payable, except that the death benefit shall be reduced by the amount of such lump-sum death payment.

(4) If such individual dies on or after January 1, 1947, leaving a surviving widow, child, or parent who would, on filing application in the month in which such individual died, be entitled to a benefit for such month under subsection (a), (b), (c), or (d) of section 4 of the Railroad Retirement Act of 1937, as amended by this act, except that (A) the death benefit, if any, shall not be due before (i) the first day of the month next following the last month with respect to which any benefits under such subsection (a), (b), (c), or (d), based on an application filed in the month in which such individual dies, would be payable, or (ii) the first day of the month next following the month of the death of a spouse entitled to a survivor annuity pursuant to an election made under the provisions of section 4 of the Railroad Retirement Act of 1937 before its amendment by this act, whichever is later; and the two-year period within which an application for the death benefit, if any, must be filed pursuant to the provisions of such section 5, shall not begin before such first day of the month described in clauses (i) and (ii) above, and (B) the death benefit shall be reduced by the aggregate amount of benefits paid, or due but not paid, under section 4 of the Railroad Retirement Act of 1937, as amended by this act, on the basis of such individual's death.

(e) Notwithstanding the amendment made by this act to section 8 of the Railroad Retirement Act of 1937, as amended, a return made in accordance with such section, covering monthly compensation of an employee, with respect to any period before January 1, 1947, shall be conclusive (in the same manner and to the same extent as provided under such section 8 prior to its amendment by this act) as to the amount of compensation earned by such employee during each month covered by the return; except that after March 31, 1951, the Railroad Retirement Board's record of the amount of the compensation earned by such employee during each month covered by any such return shall be conclusive.

TITLE II—AMENDMENTS TO RAILROAD UNEMPLOYMENT INSURANCE ACT

TERMINATION OF PERIOD WITH RESPECT TO WHICH CONTRIBUTIONS SHALL BE PAYABLE

SEC. 201. So much of the first sentence of subsection (a) of section 8 of the Railroad Unemployment Insurance Act, as amended, as precedes the proviso is amended to read as follows: "Every employer shall pay a contribution, with respect to having employees in his service, equal to 3 percent of so much of the compensation as is not in excess of $300 for any calendar month payable by him to any employee with respect to employment after June 30, 1939, and before January 1, 1947:".

AMENDMENTS RELATING TO RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT.

SEC. 202. (a) Subsection (a) of section 10 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"(a) The Secretary of the Treasury shall maintain in the unemployment trust fund established pursuant to section 904 of the Social Security Act an account to be known as the railroad unemployment insurance account. This account shall consist of (i) 90 percent of all contributions collected pursuant to section 8 of this act, together with all interest collected pursuant to section 8 of this act, and 90 percent of all taxes (together with all interest, civil fines, civil penalties, additional amounts, and additions to the tax) collected pursuant to the Railroad Unemployment Tax Act (pt. II, subch. B, ch. 9, Internal Revenue Code); (ii) all amounts transferred or paid into the account pursuant to section 13 or section 14 of this act; (iii) all additional amounts appropriated to the account in accordance with any

provision of this act or with any provision of law now or hereafter adopted; (iv) a proportionate part of the earnings of the unemployment trust fund, computed in accordance with the provisions of section 904 (e) of the Social Security Act; (v) all amounts realized in recoveries for overpayments or erroneous payments of benefits; (vi) all amounts transferred thereto pursuant to section 11 of this act; (vii) all fines or penalties collected pursuant to the provisions of this act and all criminal fines or criminal penalties collected with respect to the tax imposed under the Railroad Unemployment Tax Act; and (viii) all amounts credited thereto pursuant to section 2 (f) or section 12 (g) of this act. Notwithstanding any other provision of law, all moneys at any time standing to the credit of the account shall be mingled and undivided, and are hereby permanently appropriated to the Board and to the Bureau of Internal Revenue to be continuously available to the Board and to the Bureau of Internal Revenue, without further appropriation, for the payment of benefits provided for by this act, and for the payment of refunds (including interest thereon) pursuant to this act or the Railroad Unemployment Tax Act, and no part thereof shall lapse at any time, or be carried to the surplus fund or any other fund other than as provided by section 11 (e) of this act."

(b) Subsection (b) of section 10 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"(b) All moneys in the account shall be used solely for the payment of the benefits provided for by this act, for the payment of refunds (including interest thereon) pursuant to this act or the Railroad Unemployment Tax Act, and for the transfer of amounts to be credited to the fund pursuant to section 11 (e) of this act. The Board shall, from time to time, certify to the Secretary of the Treasury the name and address of each person or company entitled to receive benefits or a refund payment under this act, the amount of such payment, and the time at which it shall be made. The Commissioner of Internal Revenue shall, from time to time, furnish to the Secretary of the Treasury a schedule of overpayments in respect of the tax (or any interest, penalty, additional amount, or addition to the tax) under the Railroad Unemployment Tax Act for the purpose of causing refunds under such act to be made from the account. Prior to audit or settlement by the General Accounting Office, the Secretary of the Treasury, through the Division of Disbursement of the Treasury Department, shall make payments from the account directly to such person or company of the amount of benefits or refund so certified by the Board and to the person or company shown to be entitled thereto of the amount of the refund under the Railroad Unemployment Tax Act so scheduled by the Commissioner of Internal Revenue: *Provided, however*, That if the Board shall so request, the Secretary of the Treasury, through the Division of Disbursement of the Treasury Department, shall transmit benefit payments to the Board for distribution by it through employment offices or in such other manner as the Board deems proper."

(c) The second sentence of subsection (a) of section 904 of the Social Security Act, as amended, is amended by inserting after the word "Board" the words "or the Bureau of Internal Revenue."

(d) Subsection (f) of section 904 of the Social Security Act, as amended, is amended by striking out the last sentence thereof and by inserting in lieu thereof the following sentence: "The Secretary of the Treasury is authorized and directed to make out of the fund such payments as the Railroad Retirement Board may duly certify, such refunds under the Railroad Unemployment Tax Act (pt. II, subch. B, ch. 9, Internal Revenue Code) as may be duly scheduled for payment by the Commissioner of Internal Revenue, and such transfers as may be required pursuant to section 11 (e) of the Railroad Unemployment Insurance Act, not exceeding the amount standing to the credit of the railroad unemployment insurance account at the time of such payment, refund, or transfer."

AMENDMENTS RELATING TO THE RAILROAD UNEMPLOYMENT INSURANCE ADMINISTRATION FUND

SEC. 203. (a) The second sentence of subsection (a) of section 11 of the Railroad Unemployment Insurance Act, as amended, is amended by inserting immediately before the semicolon at the end of clause (i) of such sentence the following: ", 10 percent of all taxes (exclusive of all interest, fines, penalties, additional amounts, and additions to the tax) collected pursuant to the Railroad Unemployment Tax Act (p. II, subch. B, ch. 9, Internal Revenue Code), and all amounts transferred to the fund pursuant to subsection (e) of this section."

Page 95, after line 17, insert the following:

"(b) Section 11 of the Railroad Unemployment Insurance Act, as amended, is amended by adding after subsection (d) thereof the following new subsection:

"'(e) If the aggregate amount credited to the fund during any calendar year pursuant to the Railroad Unemployment Tax Act and section 8 of this act is less than $3,000,000 there shall be transferred from the account and credited to the fund, on or before January 31 of the next calendar year, an amount equal to the amount by which $3,000,000 exceeds such aggregate amount.'"

CHANGES IN EXISTING LAW MADE NECESSARY BY PRECEDING AMENDMENTS

SEC. 204. (a) Subsection (g) of section 2 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"(g) Benefits accrued to an individual but not yet paid at death shall, upon certification by the Board, be paid, without necessity of filing further claims therefor, to the same person or persons, and subject to the same conditions and limitations, as though such benefits constituted a lump sum payable under the provisions of section 4 (e) of the Railroad Retirement Act of 1937, as amended, with respect to the death of such individual."

(b) Subsection (g) of section 5 of the Railroad Unemployment Insurance Act, as amended, is amended by inserting after the word "refund" where it first appears in such subsection the words "under this act."

(c) Subsection (h) of section 8 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"(h) All provisions of law, including penalties, applicable with respect to any tax imposed by section 1800 or 2700 of the Internal Revenue Code, and the provisions of section 3661 of such code, insofar as applicable and not inconsistent with the provisions of this act, shall be applicable with respect to the contributions required by this act and the payments required by the second sentence of section 2 (f) of this act: *Provided*, That all authority and functions conferred by or pursuant to such provisions upon any officer or employee of the United States, except the authority to institute and prosecute, and the function of instituting and prosecuting, criminal proceedings, shall, with respect to such contributions and payments, be vested in and exercised by the Board or such officers and employees of the Board as it may designate therefor."

(d) Subsection (d) of section 9 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"(d) All fines and penalties imposed by a court pursuant to this act and all criminal fines and criminal penalties imposed by a court with respect to the tax imposed under the Railroad Unemployment Tax Act (pt. II, subch. B, ch. 9, Internal Revenue Code) shall be paid to the court and remitted from time to time by order of the judge to the Treasury of the United States to be credited to the account."

(e) Subsection (e) of section 12 of the Railroad Unemployment Insurance Act, as amended, is amended by inserting after the word "refunds" where it first appears in such subsection, the words "under this act."

SAVING PROVISION

SEC. 205. Notwithstanding the amendment made by this act to subsection (g) of section 2 of the Railroad Unemployment Insurance Act, in any case in which the individual referred to in such subsection died before January 1, 1947, the accrued benefits referred to in such subsection shall be paid in accordance with the provisions of that subsection as it was in effect before it was amended by this act; and the references in that subsection, as it was in effect before such amendment, to sections 3 (f) and 5 of the Railroad Retirement Act of 1937 shall be considered to be references to such sections as they were in force before the date on which title I of this act takes effect.

TITLE III—AMENDMENTS TO INTERNAL REVENUE CODE

INCREASE IN RAILROAD RETIREMENT TAX RATES

Rate of employees' tax

SEC. 301. (a) Section 1500 of the Internal Revenue Code is amended by striking out clauses Nos. 4 and 5 and by inserting in lieu thereof the following:

"4. With respect to compensation earned during the calendar year 1946, the rate shall be 3½ percent.

"5. With respect to compensation earned after December 31, 1946, the rate shall be 6 percent."

Rate of employee representatives' tax

(b) Section 1510 of the Internal Revenue Code is amended by striking out clauses Nos. 4 and 5 and by inserting in lieu thereof the following:

"4. With respect to compensation earned during the calendar year 1946, the rate shall be 7 percent.

"5. With respect to compensation earned after December 31, 1946, the rate shall be 12 percent."

Rate of employers' tax

(c) Section 1520 of the Internal Revenue Code is amended by striking out clauses Nos. 4 and 5 and by inserting in lieu thereof the following:

"4. With respect to compensation paid to employees for services rendered during the calendar year 1946, the rate shall be 3½ percent.

"5. With respect to compensation paid to employees for services rendered after December 31, 1946, the rate shall be 6 percent."

RAILROAD UNEMPLOYMENT TAX

Technical amendments

SEC. 302. (a) Subchapter B of chapter 9 of the Internal Revenue Code, as amended, is further amended:

(1) By striking out the words and figures "Part I", "Part II", "Part III", and "Part IV" in the subheadings in such subchapter and by inserting in lieu thereof "Subpart I", "Subpart II", "Subpart III", and "Subpart IV", respectively;

(2) By striking out the word "Subchapter" in the heading of section 1537 of such subchapter and by inserting in lieu thereof "Part";

"(3) By striking out the words 'this subchapter' and 'This subchapter' wherever they appear in such subchapter and by inserting in lieu thereof 'this part' and 'This part', respectively."

(4) By inserting immediately after the heading of such subchapter the following new subheading:

"PART I—RAILROAD RETIREMENT TAX ACT"

(5) By adding at the end of such subchapter the following:

"SEC. 1538. Title of part.

"This part may be cited as the 'Railroad Retirement Tax Act'."

Railroad Unemployment Tax Act

(b) Subchapter B of chapter 9 of the Internal Revenue Code, as amended, is further amended by adding at the end thereof the following:

"PART II—RAILROAD UNEMPLOYMENT TAX ACT

"SEC. 1550. Rate of tax on employers:

"In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his service, equal to the percentages set forth in the following table of so much of the compensation as is not in excess of $300 for any calendar month payable by him to any employee for services rendered to him after December 31, 1946: *Provided, however,* That if compensation is payable to an employee by more than one employer with respect to any such calendar month, the tax imposed by this section shall apply to not more than $300 of the aggregate compensation payable to said employee by all said employers with respect to such calendar month, and each such employer shall be liable for that proportion of the tax with respect to such compensation which the amount payable by him to the employee with respect to such calendar month bears to the aggregate compensation payable to such employee by all employers with respect to such calendar month:

If the balance to the credit of the account as of the close of business on Sept. 30 of any year, as determined by the Secretary, is:	The rate with respect to compensation payable to employees for services rendered during the next succeeding calendar year shall be:
$350,000,000 or more	½ percent.
$300,000,000 or more but less than $350,000,000	1 percent.
$250,000,000 or more but less than $300,000,000	1½ percent.
$200,000,000 or more but less than $250,000,000	2 percent.
$150,000,000 or more but less than $200,000,000	2½ percent.
Less than $150,000,000	3 percent.

On or before December 31, 1946, and on or before December 31 of each succeeding year, the Secretary shall determine and proclaim the balance to the credit of the account as of the close of business on September 30 of such year.

"SEC. 1551. Adjustments:

"If more or less than the correct amount of the tax imposed by section 1550 is paid with respect to any compensation, then, under regulations made by the Commissioner, with the approval of the Secretary, proper adjustments with respect to the tax shall be made, without interest, in connection with subsequent payments of tax under this part made by the same employer.

"SEC. 1552. Overpayments and underpayments:

"If more or less than the correct amount of the tax imposed by section 1550 is paid with respect to any compensation and the overpayment or underpayment of the tax cannot be adjusted under section 1551, the amount of the overpayment shall be refunded, or the amount of the underpayment shall be collected, in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations under this part as made by the Commissioner, with the approval of the Secretary.

"SEC. 1553. Collection and payment of tax:

"(a) Administration: The tax imposed by this part shall be collected by the Bureau of Internal Revenue and shall be deposited by it with the Secretary, 90 percent thereof to the credit of the account and 10 percent thereof to the credit of the fund; except that 100 percent of the interest, civil fines, civil penalties, additional amounts, and additions to the tax, collected pursuant to this part, shall be credited to the account.

"(b) Time and manner of payment: The tax imposed by this part shall be collected and paid quarterly or at such other times and in such manner and under such conditions not inconsistent with this part as may be prescribed by regulations made by the Commissioner, with the approval of the Secretary.

"(c) Addition to tax in case of delinquency: If the tax imposed by this part is not paid when due, there shall be added as part of the tax (except in the case of adjustments made in accordance with the provisions of section 1551) interest at the rate of 1 percent per month or fraction of a month from the date the tax became due until paid.

"(d) Fractional parts of a cent: In the payment of any tax under this part, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

"SEC. 1554. Definitions.

"As used in this part—

"(a) Employer: The term 'employer' means any carrier (as defined in subsec. (b)), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term 'employer' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Commissioner of Internal Revenue, or upon compiaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term 'employer' shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies, and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations. The term 'employer' shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

"(b) Carrier: The term 'carrier' means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act, as amended.

"(c) Company: The term 'company' includes corporations, associations, and joint-stock companies.

"(d) Employee: The term 'employee' means any individual in the service of one or more employers for compensation: *Provided, however,* That the term 'employee' shall not include any individual in the service of a local lodge or division defined as an employer in subsection (a). The term 'employee' includes an officer of an employer. The term 'employee' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

"(e) Service: An individual is in the service of an employer whether his service is rendered within or without the United States if he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, which service he renders for compensation: *Provided, however,* That an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clauses (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to subsection (e) of section 1 of the Railroad Unemployment Insurance Act, as amended, shall be applicable: *Provided further,* That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof.

"(f) Compensation: The term 'compensation' means any form of money remuneration

earned by an individual for services rendered as an employee to one or more employers, including remuneration for time lost as an employee, but remuneration for time lost shall be deemed earned on the day on which such time is lost. Such term does not include tips, or the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 1500.

"(g) Account: The term 'account' means the railroad unemployment insurance account established pursuant to section 10 of the Railroad Unemployment Insurance Act, as amended, in the unemployment trust fund.

"(h) Fund: The term 'fund' means the railroad unemployment insurance administration fund established pursuant to section 11 of the Railroad Unemployment Insurance Act, as amended.

"(i) United States: The term 'United States,' when used in a geographical sense, means the States, Alaska, Hawaii, and the District of Columbia.

"(j) State: The term 'State' means any of the States, Alaska, Hawaii, or the District of Columbia.

"SEC. 1555. Penalties:

"(a) Prohibition on deduction of tax: The tax imposed by this part shall not be deducted by the employer, in whole or in part, from the compensation of employees in his employ. Any employer, or officer or agent of an employer, who violates any provision of this subsection shall, upon conviction, be punished for each such violation by a fine of not more than $1,000 or by imprisonment not exceeding 1 year, or both.

"(b) Prohibition on requiring employee to bear tax: Any agreement by an employee to pay all or any portion of the tax imposed on his employer by this part shall be void, and it shall be unlawful for any employer, or officer or agent of an employer, to make, require, or permit any employee to bear all or any portion of such tax. Any employer, or officer or agent of an employer, who violates any provision of this subsection shall, upon conviction, be punished for each such violation by a fine of not more than $10,000 or by imprisonment not exceeding 1 year, or both.

"SEC. 1556. Rules and regulations:

"The Commissioner, with the approval of the Secretary, shall make and publish such rules and regulations as may be necessary for the enforcement of this part.

"SEC. 1557. Other laws applicable:

"All provisions of law, including penalties, applicable with respect to any tax imposed by section 2700 or section 1800, insofar as applicable and not inconsistent with the provisions of this part, shall be applicable with respect to the tax imposed by this part.

"SEC. 1558. Title of part:

"This part may be cited as the 'Railroad Unemployment Tax Act'."

DEPOSIT OF COLLECTIONS

SEC. 303. Section 3971 (b) of the Internal Revenue Code is amended by adding at the end thereof the following paragraph:

"'(4) Tax collected under Railroad Unemployment Tax Act.—All taxes (including all interest, civil fines, civil penalties, additional amounts, and additions to the tax) collected pursuant to the Railroad Unemployment Tax Act shall be deposited directly with the Secretary, or with any Federal Reserve bank, or with any other bank designated by the Secretary, pursuant to section 10 of the act of June 11, 1942 (56 Stat. 356; 12 U. S. C., Supp. IV, 265) or pursuant to the act of June 19, 1922 (42 Stat. 662; 31 U. S. C., 1940 ed., 473), to receive such deposits, but the officer receiving or collecting the same, to be credited in accordance with section 1563 (a).'"

TITLE IV—EFFECTIVE DATES OF TITLES I AND II

SEC. 401. Titles I and II of this act shall take effect January 1, 1947.

Amend the title so as to read: "A bill to amend the Railroad Retirement Act of 1937 and the Railroad Unemployment Insurance Act, and for other purposes."

The explanation of the bill and amendment submitted by Mr. CAPEHART is as follows:

H. R. 1362—AN AMENDMENT IN THE NATURE OF A SUBSTITUTE

EXPLANATION OF THE BILL

In its present form the bill proposes numerous and substantial changes in the existing railroad retirement and unemployment insurance statutes, and in related provisions of the internal-revenue laws, the major proposals, stated briefly, being as follows:

Extension of coverage to freight forwarders not controlled by railroads, to railroad-controlled trucking companies, and to certain companies whose services are used by railroads.

New definition of employment relation which both lessened and broadened the class of individuals who could claim prior-service credit.

Disability annuities payable without reduction to individuals of age 60 or over regardless of length of service, and to those with 10 years of service regardless of age; in each instance with respect to permanent disability preventing the employee from engaging in any regular employment for hire.

Disability annuities payable to individuals with a "current connection with the railroad industry" if (1) having 20 years of service, regardless of age, or (2) if 60 years of age, regardless of length of service; in each instance with respect to permanent disability preventing the employee from engaging in his regular occupation.

Survivor benefits corresponding in general to those under social security but at approximately a 25-percent higher level as to amount and coordinated with social-security benefits in a manner raising difficult administrative problems; these benefits to be payable to all survivors of employees, annuitants, and pensioners regardless of whether death occurred before the effective date.

Minimum annuity provisions, on a more liberal basis than the existing minimum, for those having 5 years of service and a "current connection with the railroad industry."

Increase in the retirement tax rate to 11½ percent until 1949, 12 percent from 1949 to 1951, and 12½ percent thereafter.

Proposal that the function of collecting the retirement taxes (now exercised by the Bureau of Internal Revenue) be transferred to the Railroad Retirement Board; and that the retirement taxing provisions be removed from the Internal Revenue Code and made a part of the Railroad Retirement Act of 1937.

Larger unemployment-insurance benefits for those with high base-year earnings and longer duration of benefits for all.

Sickness and maternity benefits on the same basis as the unemployment insurance system. No change was proposed in the present rate of unemployment insurance contributions by the carriers, the assumption being that the present rate would be sufficient to finance the proposed new sickness and maternity benefits as well as unemployment insurance.

A change in the wage basis for taxes and benefits, so that, instead of excluding amounts in excess of $300 earned in any month, amounts in excess of $300 earned in a month and could be counted up to an aggregate, for a calendar year, of $300 multiplied by the number of months of service in the year.

EXPLANATION OF THE PROVISIONS OF THE AMENDMENT IN THE NATURE OF A SUBSTITUTE

This amendment proposes to amend the existing Railroad Retirement Act of 1937, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code. These statutory provisions now embody the law in reference to benefits receivable and taxes and contributions payable by railway employees, as well as taxes and contributions payable by carriers.

While the amendment proposed does not grant all of the new benefits proposed by the bill, it takes away no present benefits now existing in favor of the employees which the introduced bill would not have taken away, it preserves certain of such benefits which the introduced bill would have taken away, and adds several new benefit provisions to existing law. The proposed amendment provides, in substance, for:

CREATING A BENEFICIAL RIGHT IN BEHALF OF SURVIVING DEPENDENTS OF EMPLOYEES TO SPECIFIED MONTHLY BENEFITS

Under this amendment the new survivor benefits to be paid operate in favor of the same dependents as under the Social Security Act. The time and amount of payments to the surviving beneficiaries are likewise computed, so far as is practicable, in the same manner as under the Social Security Act.

Under the present law, the employee beneficiary has an optional right to allot a percentage of his retirement benefits to his surviving widow, in which case his own annuity is reduced. Under the plan proposed the surviving dependents would be entitled to benefits in their own right. The benefits so provided are granted without reducing the benefit available to the employee.

In addition to making provision for new survivor benefits, the amendment preserves the death benefit provided for under present law, so far as it has accrued to an individual up to January 1, 1947, reduced by such amounts as may be paid under the new survivor-benefit provisions.

NEW CLASSES OF BENEFICIARIES ON ACCOUNT OF OCCUPATIONAL DISABILITY, AND LIBERALIZATION OF PRESENT DISABILITY ANNUITY PROVISIONS

This amendment adds new provisions to present law, providing for payment of full retirement annuities to employees permanently disabled as a result of occupational injury or disease if they meet either of the following specifications:

(a) Disabled for any regular employment for hire and having 10 or more years of service;

(b) Disable for employment in their regular railroad occupation, having 20 or more yeas of sevice or being 60 years of age or over, and having a current connection with the railroad industry.

Under the present law, annuities are paid to employees who are totally and permanently disabled from any cause and who are unable to perform any regular employment. In order to qualify, they must either have 30 years of service or be 60 years of age or over. For those qualifying with 30 years of service the full annuity is paid, but for those qualifying only by being age 60 or over, a reduction is provided. The proposed amendment allows these provisions to remain as at present, except that the reduction for those qualifying only by reason of age is eliminated both for existing annuitants and for future ones.

REDUCTION OF RETIREMENT AGE FOR WOMEN

Under this amendment, female employees who have had 30 years of service may retire at age 60 on a full annuity. Under the present law, women have the same retirement provisions as men, namely, that the full annuity is not payable until age 65, although optional retirement between 60 and 65 can

take place for those with 30 years of service, but with a reduction in the annuity.

LIBERALIZATION OF MINIMUM ANNUITY PROVISIONS

This amendment provides for increased minimums, applicable with respect to all types of annuities for those having 5 or more years of service and a current connection with the railroad industry, or for those who have completed 20 years of service and were railroad employees when they attained age 65. Provision is made that the annuities of those now on the rolls will be increased if the new minimum provisions apply.

Under the present law, the minimum annuities payable are on a smaller basis than under the proposal and, moreover, apply only to annuities payable upon retirement at age 65 or later where the individual was an employee when he attained age 65 and had completed 20 years of service.

AN INCREASE IN THE TAX AS TO RETIREMENT BENEFITS IN ORDER TO FINANCE THE PROPOSED BENEFIT CHANGES

The actuary retained by the House committee estimates that the amendments listed above will require additional income equivalent to approximately 1½ percent of pay roll, itemized as follows:

	Cost as percentage of pay roll	Cost on basis of $4,000,000,000 pay roll
Survivor benefits [1]	1.2	$48,000,000
New occupational disability benefits [2]	.2	8,000,000
Women retiring at age 60 with 30 years of service	.02	800,000
New minimum annuity provisions	.3	12,000,000
Total additional	1.72	68,800,000

[1] Net total after allowing for cost savings due to partial elimination of present death benefits.

[2] Including additional cost for paying full annuities, rather than reduced ones, to present disability annuitants qualifying at age 60 with less than 30 years of service.

NOTE.—The figures shown above for estimated costs are single values on a "most probable" basis and do not indicate the range of variation inherent in such estimates.

INCREASE IN THE TAX AS TO RETIREMENT BENEFITS IN ORDER TO PUT THE PRESENT RAILROAD RETIREMENT SYSTEM ON A SOUND ACTUARIAL LEVEL-PAYMENT BASIS

This is accomplished by a proposal to add 3 percent to the existing ultimate tax of 7½ percent, half payable by the employers and half by the employees. The actuarial advisory committee, under the railroad retirement system, in its latest report for the 3-year period ending December 31, 1941, found that an additional tax of 3.32 percent was desirable at that time to place the retirement system on a sound actuarial level-payment basis. The actuary retained by the House committee estimates that an additional 3-percent tax would substantially assure a sound basis for the railroad-retirement system.

The total necessary increase in the ultimate tax rate of 7½ percent in 1949 and thereafter provided under the present act is thus determined to be 4½ percent, making a total tax rate of 12 percent. It is recommended that this tax rate be adopted effective January 1, 1947, which is the effective date provided in this amendment for the various benefit changes. Under the present act the combined tax schedule is 7 percent until 1949 and 7½ percent thereafter. It is desirable to have the taxes on a level-payment basis after 1946 rather than having a slight increase in 1949 and level thereafter.

REDUCTION IN THE UNEMPLOYMENT-INSURANCE TAX RATE

Under this amendment, the tax rate for unemployment insurance will be reduced from the existing 3 percent to varying amounts going as low as one-half percent, depending on the size of the unemployment-insurance account. On the basis of its present size of over $700,000,000 the tax rate would be one-half percent. Under the present law, no provision for tax-rate reduction is made when the experience is favorable and a large fund has been built up.

COLLECTION OF UNEMPLOYMENT-INSURANCE TAX

This amendment provides for the collection of the unemployment-insurance tax after January 1, 1947, by the Bureau of Internal Revenue rather than by the Railroad Retirement Board as at present. Amendments to the Railroad Unemployment Insurance Act and the Internal Revenue Code are included to effect this change. The taxes for the support of the railroad-retirement system are now collected by the Bureau of Internal Revenue under provisions of the Internal Revenue Code.

The newspaper statement presented by Mr. CAPEHART is as follows:

On May 11, 1946, the newspaper Labor, which is the official organ of the Railway Labor Executives Association, who are, in turn, sponsors of the bills H. R. 1362 and S. 293, had this to say:

"The extremely modest amendments proposed by the railroad unions are very briefly, but accurately, stated:

"1. Widows of railroad workers are to have pensions as a matter of right. Such a provision is to be found in practically all modern social-security legislation. Nothing revolutionary about that.

"2. A minimum pension of $50 a month is fixed for low-paid railroad workers who have devoted their lives to the industry. Thousands of them are now getting pensions of less than $50 a month.

"3. The totally disabled railroad worker—the man who, because of what he gave to the industry, is no longer able to hold a job in the industry—is treated somewhat more generously than at present.

"4. Finally, the tax is increased so as to make the railroad retirement system, as well as the railroad unemployment-insurance system, absolutely sound. The figures in every instance are based on the advice of the most competent actuaries in this country.

"These are the essential amendments. There are other slight changes, but they are not important."

Again, in the issue of Labor of May 18, 1946, the same newspaper repeated the statement on page 3, in the following language:

"As Labor has pointed out on a dozen occasions, the amendments may be stated very briefly.

"Widows of rail workers are to have pensions as a matter of right. A minimum pension of $50 a month is fixed for low-paid railroad workers. Those disabled for further railroad work are treated a little more generously than at present. Finally, the tax is increased to make the retirement system absolutely sound.

"This is practically all there is to the legislation which the railroad lobby and its supporters say is 'very complex.'"

Both of these articles appeared during the time that the bill was under consideration in the House of Representatives.

Mr. CAPEHART. The substitute bill that I am offering today gives to labor the four features which their official paper says is what they want, and I urge the Senate to consider the substitute.

AMENDMENT OF RAILROAD RETIREMENT ACTS—AMENDMENTS

Mr. REED and Mr. THOMAS of Oklahoma each submitted amendments intended to be proposed by them, respectively, to the bill (H. R. 1362) to amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter 9 of the Internal Revenue Code; and for other purposes, which were severally ordered to lie on the table and to be printed.

AMENDMENT TO RAILROAD RETIREMENT ACTS, RAILROAD UNEMPLOYMENT INSURANCE ACT, AND RELATED PROVISIONS OF LAW

Mr. BARKLEY. I move that the Senate proceed to the consideration of House bill 1362, to amend the railroad retirement acts, and so forth.

The motion was agreed to; and the Senate proceeded to consider the bill

(H. R. 1362) to amend the railroad retirement acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes.

AMENDMENT TO RAILROAD RETIREMENT ACTS, ETC.

The Senate resumed consideration of the bill (H. R. 1362) to amend the railroad retirement acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes.

Mr. BARKLEY. Mr. President, I am not in charge of the bill which is the unfinished business of the Senate. The Senator from Colorado [Mr. JOHNSON], who was chairman of the subcommittee of the Committee on Interstate Commerce which dealt with this proposed legislation, will be in charge of it and will make a detailed explanation of it. However, I wish to make a very brief statement with reference to it, so that the Senate may understand the situation in which we find ourselves with reference to this bill.

It has been suggested that probably there should be as full an attendance as possible while this bill is under consideration. I therefore suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Aiken	Hart	O'Daniel
Andrews	Hawkes	O'Mahoney
Austin	Hayden	Overton
Ball	Hill	Pepper
Barkley	Hoey	Radcliffe
Bilbo	Huffman	Reed
Brewster	Johnson, Colo.	Revercomb
Brooks	Johnston, S. C.	Russell
Buck	Kilgore	Shipstead
Burch	Knowland	Smith
Bushfield	La Follette	Stanfill
Byrd	Langer	Stewart
Capehart	Lucas	Swift
Capper	McCarran	Taft
Carville	McClellan	Taylor
Connally	McFarland	Thomas, Okla.
Cordon	McKellar	Thomas, Utah
Donnell	McMahon	Tobey
Downey	Magnuson	Vandenberg
Eastland	Maybank	Wagner
Ferguson	Mead	Walsh
Fulbright	Millikin	Wheeler
George	Mitchell	Wherry
Gerry	Moore	White
Green	Morse	Wiley
Guffey	Murdock	Willis
Gurney	Murray	Young

The PRESIDING OFFICER. Eighty-one Senators having answered to their names, a quorum is present.

Mr. BARKLEY. Mr. President, I wish to make a very brief general preliminary statement with reference to this proposed legislation. The Senator from Colorado, as I indicated a moment ago, who was the chairman of the subcommittee of the Committee on Interstate Commerce handling this bill, will give a more detailed explanation of it.

I wish to state that for many years it has been recognized that amendments to the Railroad Retirement Act have been necessary. In the first place, for a long time it has been recognized that the fund itself, out of which retirements are paid, has been on an unsound basis, and that the contributions both by the carriers and by the employees would have to be increased in order that the fund might be placed on a sound basis. I do not think there is any serious disagreement as to the need of strengthen-

ing the fund and putting it upon a sound basis.

The pending bill provides that the contributions shall be increased on a gradual basis, reaching their ultimate peak in 1952. The present rate of contribution is 3½ percent of the pay roll, and that is contributed by each side. The pending bill provides for an increase of that rate until in 1952 it will reach a maximum of 6¼ percent. But the process is a gradual one, increasing a fraction of a percent each year, until 1952, and that increase is applicable to the retirement payments, not to unemployment insurance. The bill will not add to the fund insofar as unemployment insurance is concerned, as I understand it.

Mr. President, for 5 or 6 years the railroad brotherhoods, who are primarily interested in this legislation, have been urging that amendments increasing the contributions and making other changes in the law be enacted. Of course, as in all such cases, a large amount of information and organization and presentation of the matter before congressional committees and, prior to that, before the organizations themselves, were required in order that a program might be worked out.

On May 11, 1944, the Senator from Montana [Mr. WHEELER], chairman of the Committee on Interstate Commerce, and the Senator from New York [Mr. WAGNER] introduced in the Senate the amendments which had been discussed and had been agreed upon, the bill at that time being identified as Senate bill 1911.

A similar bill was introduced in the House of Representatives by Representative CROSSER, of Ohio, on May 15, 1944. It carried the number House bill 4805. Hearings in connection with House bill 4805 got under way before the House Committee on Interstate and Foreign Commerce on May 23, 1944, and extended intermittently through June 1, on which date the Railway Labor Executives' Association committee concluded presentation of testimony in support of the bill then pending in the House of Representatives, House bill 4805.

The opposition to the measure succeeded in preventing resumption of the hearings up until the time the Congress recessed, on June 23. Congress reconvened on the 1st day of August 1944, and efforts were made by the Railway Labor Executives' Association, through its executive committee, to have the hearings before the House committee resumed. But on the 30th of August 1944, the House committee voted not to resume the hearings at that time. Congress adjourned without hearing the opponents of the bill.

When the Seventy-ninth Congress convened in January 1945, Representative CROSSER, of Ohio, on the 11th of January 1945, introduced House bill 1362, which is the bill now pending before the Senate. The Senator from Montana [Mr. WHEELER] and the Senator from New York [Mr. WAGNER] introduced Senate bill 293, on January 15, 1945. Hearings before the House committee got under way on January 31, 1945, and continued until February 16, when a recess was taken until February 27, on which date the opponents of the bill began the introduction of their testimony. Presentation of the testimony by the opponents was concluded on March 21, 1945. The hearings were resumed on April 18, and they were concluded on April 26, 1945.

Hearings on Senate bill 293 commenced on July 23, 1945, before the Senate committee, and were concluded on July 26, 1945.

In March 1946 a subcommittee of the Senate Committee on Interstate Commerce, whose chairman was the Senator from Colorado [Mr. JOHNSON], reported to the full committee. On April 9, 1946, the subcommittee of the House committee made a report to the full committee.

The petition to discharge the House committee from consideration of the bill was filed in the House on April 18, 1946. That was more than a year following the introduction of the bill in the House, and nearly a year following the conclusion of the hearings before the committee of the House. On May 9, 1946, the House Committee on Interstate and Foreign Commerce reported the bill amended in substantial conformity with the recommendations of the subcommittee of that committee.

House bill 1362, as originally introduced by Representative CROSSER, was passed by the House of Representatives on July 3, 1946. It came to the Senate and was referred to the Committee on Interstate Commerce, and on July 13, 1946, the committee reported the bill with the recommendation that it be passed without amendment.

I might say Mr. President, that this bill, involving as it does a tax upon the employer and the employee, could not be taken up and considered by the Senate until it had been acted upon by the House. Therefore, when the subcommittee of the Senate Committee on Commerce, of which the Senator from Colorado was chairman, reported to the full committee it called attention to the full committee of the fact that the Senate could not act upon this legislation because it provided for a tax and, under the Constitution, it would have to originate in the House of Representatives.

The House bill came to the Senate and was referred to the committee. As promptly as possible, in the absence of the chairman of the committee, the Senator from Montana [Mr. WHEELER], I, as the ranking member of the committee, called the committee into session and the bill was reported to the Senate.

Mr. President, there is an unfortunate parliamentary situation which has grown out of the delay elsewhere than in the Senate. I do not wish in any way to say anything which might be regarded as critical of the procedure in the other body which had this bill before it for so long a time. But the result of the situation is that the bill, having come to us only in July, and having been referred to the committee, and having been reported by the committee on the 15th of July, has come before the Senate so late that we are in such a parliamentary situation that, if the bill is amended in any particular, it will fail of enactment at this session of the Congress. That is an unfortunate circumstance for which the Senate is not responsible. I myself believe that the bill needs some clarification.

A great deal of confusion has been created in the country with respect to the coverage carried in the section of the bill dealing with coverage. The intent of the bill is to increase the tax on both the employers and the employees, that is, the carriers and their workers, in order that the fund may be strengthened and placed upon a sound basis. That is absolutely essential. It is unthinkable that this fine, progressive piece of legislation, which was conceived and advocated by the railway employees of the United States, should continue on crutches so that it will not have the full strength which it should have in order that it may be properly administered, and in order that the time will never come when the fund will be inadequate to meet the requirements of the law and the requirements and needs of the railway employees.

Furthermore, Mr. President, I may say that the bill contemplates including within its coverage railroad-owned trucks. In the case of railroads owning trucks, to all intents and purposes the operators of the trucks are employees of the railroads. The bill contemplates also including within its coverage freight forwarders, who, we understand, now occupy a special status with respect to transportation in interstate commerce. They are just as much a part of the transportation systems of the country as are the railroads themselves, or as are the railroad-owned busses or trucks.

In my judgment, there has been a great deal of confusion injected into the consideration of this legislation, whether by design or otherwise I would not say, as to the coverage of all sorts of activities and organizations which created within their own minds the fear that they were being taken into the bill. Among them are the ice companies. There is nothing in the bill which either specifically or indirectly refers to ice-manufacturing companies, or to ice companies which service the railroad cars. In the report of the committee it has been made clear that such companies are not intended to be covered by the coverage section of this bill. Warehouse companies which store articles of various kinds and operate as warehouse concerns, and may have commerce transferred from them to railroad cars and to railroad tracks, have developed the fear that they are covered under the language of the bill. I tried to make it clear in the report that that is not the intention of the bill, and so far as a report can clarify the bill to which it refers, I think that the report has done that. I do not mean to say that those fears do not bear on their face some justification, because the coverage section of the bill, from a technical standpoint, has not been as clearly drawn as it might have been.

Mr. LUCAS. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. LUCAS. I wish to say to the Senator that I do not know who is responsible for sending persons from Chicago and other parts of Illinois to see me about this bill. But I do not believe, in connection with any bill, that more persons have come to see me with opinions of what the bill does or does not do.

The individuals who believe they are covered by this bill are not in accord with what the distinguished Senator from Kentucky has stated in his report. I am in favor of the fundamental principles of the bill, but certainly icemen, warehousemen, and a dozen others whom I could name should not be covered in a bill of this character. If there is any question about it, they should be excluded. That is the position I wish to take, and I have so advised persons from my State.

For example, men who are engaged in the trucking business in Chicago, and teamsters' groups there, are vitally interested in this bill and its provisions, especially the section regarding coverage. Their lawyers or representatives have advised them that, under the strict construction of the bill, they are covered. I do not know whether they are or not. I have not had an opportunity to analyze the bill from every angle. But not only one but at least eight or nine separate concerns have sent representatives to see me who have said definitely that they were covered under the bill, and have asked me, "Will you please take us out by an amendment?"

I do not know anything about the parliamentary situation. In fact, I thought an amendment or two might not hurt the bill. I more or less promised two men that I would support amendments of that nature. I now find, according to the Senator from Kentucky, that if I do that, I will defeat the bill because of a parliamentary situation which exists about which I did not know.

Mr. President, that is the situation I am in, and I wanted to make myself clear.

I think there is strong disagreement with the Senator's conclusions so far as paragraphs 2 and 4 of section 1 are concerned. After all, we have seen that the administrative agencies at the other end of the avenue do not always follow what Congress has recommended.

Mr. BARKLEY. Mr. President, in that connection I might say that I have been visited by representatives of some of the interests who indulge in fears such as the Senator from Illinois has described. I refer to representatives of such industries as ice companies, warehouse companies, and other companies of that nature. They came to me because I have supported the bill and filed the report on behalf of the committee. I have assured the ice companies that they are not covered, and there is a letter from the Railway Retirement Board itself in which they state that they would not interpret the law, even if amended, to cover those companies.

I am afraid that somebody has stirred up this fear. It is not so much a conviction as it is a fear which has been fostered, I am afraid, by those who oppose the legislation or do not want any legislation passed.

Mr. WHEELER. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. WHEELER. This morning there was handed to me this communication from the National Association of Refrigerated Warehouses, and I imagine every Senator received a copy. It says:

> Section 1 (a) (2) of the bill specifically states that the term "employer" shall mean, among other things, "any person other than a carrier which performs any service within the term 'transportation' as defined in section 1 (3) of the Interstate Commerce Act."
>
> The services included within the term "transportation" as defined in section 1 (3) of the Interstate Commerce Act are receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage and handling of property, consequently the true meaning of section 1 (a) (2) of H. R. 1362 is as follows:
>
> "The term 'employer' shall mean any person other than a carrier which performs, for hire any service in connection with the receipt, delivery, elevation, transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported, being transported, or to be transported."

I call attention to the fact that if that interpretation had been adopted by the Interstate Commerce Commission it would have been the duty of the Commission to regulate every one of them, but the Interstate Commerce Commission has never taken the position that these groups, which are not owned or controlled or operated by the railroad companies, come within the provisions of the act, and they have never attempted to regulate them.

Those who drafted the bill took the phraseology of the Interstate Commerce Act, which had been construed by the Interstate Commerce Commission and I think by the courts, and they used this language in section 1, namely—

> Any person, other than a carrier regulated under part I of the Interstate Commerce Act, which, pursuant to arrangements with a carrier or otherwise, performs, for hire, with respect to passengers or property transported, being transported, or to be transported by a carrier, any service included within the term "transportation."

But the Interstate Commerce Commission has put an entirely different construction upon the term "transportation" from what these people are now seeking to put on it. The testimony before the Senate committee and before the House committee was exactly to the effect that it was not intended to include anything which was not either owned or operated by the railroads themselves.

Mr. HAWKES. Mr. President, will the Senator from Kentucky yield so that I may make a comment to the Senator from Montana?

Mr. BARKLEY. I yield.

Mr. HAWKES. I attended practically all the hearings of the subcommittee, probably as many as any of its members except the chairman, as I think he will agree. The testimony before the subcommittee clearly showed that there was a difference of opinion, and even the proponents of the bill admitted that the language of the bill might very easily include workers of an ice company which sent ice to a depot. I recall reference being made to a small ice company in Phoenix, Ariz. They sent ice to the depot, and delivered the ice to refrigerate the cars. The representatives of the railroad brotherhoods contended very positively that the men who took the ice to the depot and serviced the trains would come under the proposed law.

Mr. WHEELER. Mr. President, I think the Senator is entirely wrong about that. I have not the testimony of one of the representatives of the railway companies who testified on the subject, but the question was definitely asked him in the House committee as to whether an ice company was included, and he said definitely and positively that it was not.

If the word "transportation" should be interpreted as those who are making this contention claim, it would not only have been the right of the Interstate Commerce Commission, it would have been their duty to regulate such companies; but the Commission has never construed it in that way.

I am sure the Senator is wrong in referring to the testimony on the part of representatives of the railroad brotherhoods, because everybody who was connected with the drafting of the bill said definitely that it did not cover such activities.

Mr. HAWKES. I dislike to disagree with my distinguished friend from Montana, but I have a very clear recollection, and I am sure the hearings will show, and I am also sure the chairman of the subcommittee will recall, that Mr. Schoene, who represented the railroad brotherhoods, and several others at the hearings, admitted that there was confusion in this definition, and that it should be corrected.

How about subsection 4, which reads:

> Any person engaged in rendering, pursuant to any arrangement for one or more carriers, any service which (1) is of such a nature as to be susceptible of indefinitely continuous performance and (ii) constitutes a part of or is necessary or incidental to the operation or maintenance of way, equipment or structures devoted to transportation use, or constitutes a clerical, sales, accounting, protective, or communications service necessary or incidental to the conduct of transportation carried on by a carrier, or is rendered with respect to passengers or property transported by railroad, at point of departure or shipment or at destination or between such points.

Mr. WHEELER. If the Senator is directing his question to me, I say that the language in subsection 4 is not intended to include an independent contractor. The language is intended expressly to eliminate an independent contractor.

Mr. HAWKES. What is the Senator's definition of an independent contractor?

Mr. WHEELER. An independent contractor is one who does a specific job at a certain time, and is not carrying on regular work for the railroad; for instance, a building contractor who does building work on the railroad.

Let me suggest what I think the language of section 4 is aimed at. For in-

stance, the Santa Fe railroad during the war was unable to get men to work on the sections because it could not raise wages sufficiently high to attract men. So it let out contracts to someone who was not a railroad man at all, and who could pay higher wages. He contracted to do the work of the upkeep of the road. He had a wage scale which he could pay, and which would attract men to work on the railroad. But he was doing nothing but repair work, the same as the Pennsylvania, the Northern Pacific, or any other road would do. The only reason why the Santa Fe road did that was that it was the only way by which they could attract men to do the repair work and the section work which ordinarily would be done by the railroad itself

This language is inserted expressly for the purpose of enabling the roads to have essential work done. That is why there is included the language I have just read. In other words, where a railroad contracts with somebody to do essential railroad work, the section covers that, and it is intended to cover it.

Mr. HAWKES. It may be that the Senator is correct, and that that is what it is intended to cover, but the fact remains that warehouses, icing plants, those who serve the railroads with ice to refrigerate the cars, even the port authority in New York, and the public-service organizations which send electric cars to depots to pick up passengers are all concerned. The lawyers of most of them, some of the most eminent counsel in the United States, very definitely say that, as the bill now reads, they think it covers them, and they do not want to be covered. If it be true that there is a question of their being covered, why should we not correct the language of the bill now?

Mr. BARKLEY. Mr. President, if the Senator will permit me to continue, I may say that I did not rise to discuss the details of the bill section by section, because the Senator from Colorado, who is chairman of the subcommittee, and the Senator from Montana, who is chairman of the full committee, who introduced the legislation more than 2 years ago, will undertake that. I rose to make a preliminary statement calling attention to the difficulties we confront from a parliamentary standpoint.

I do not deny that the bill needs clarification with respect to coverage; but I think that any amendment to the bill at this time will mean that it will be dead, and that there will be no legislation looking to this end.

I have prepared a concurrent resolution to introduce to clarify the bill, so that there can be no question with respect to ice companies, warehouse companies, or others who should not be or are not intended to be covered. That can be attended to after the passage of the bill. But if we undertake to do it in the bill, under the unfortunate circumstances which I have described, it will mean that there will be no legislation at all. After all these years of efforts made to strengthen the law, and after we have gotten this close to final enactment, to fail merely because of delay somewhere for which we are not responsible, and when mistakes can be corrected later, where correction is needed, seems to be most unfortunate. That is all I have to say about it at this time. I did not intend to go into a discussion of the bill section by section.

Mr. CORDON. Mr. President——

The PRESIDING OFFICER (Mr. BURCH in the chair). Does the Senator from Kentucky yield to the Senator from Oregon?

Mr. BARKLEY. I yield.

Mr. CORDON. I should like to suggest in connection with the criticism of paragraphs (2) and (4) particularly, that those who are interested in the matter should, in connection with those two paragraphs, read paragraph (11) on pages 6 and 7, which is an expression of clarification of paragraphs (2) and (4), specifically limiting coverage.

Mr. BARKLEY. Yes; that is undoubtedly true, and I thank the Senator for calling my attention to it.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. TAFT. Did the Senator say that because of some parliamentary situation we cannot undertake to amend a bill 56 pages long, full of indefinite controversies, affecting millions of employees, and billions of dollars before we get through, simply because in some way it may delay the enactment of the bill into law? That seems to me to be the most extraordinary proposition I have ever heard advanced on the floor of the Senate in regard to important legislation.

Mr. BARKLEY. It grows out of an extraordinary situation regarding this legislation. I do not say that the Senate could not amend the bill. The Senate has a perfect right to amend it all it wants to amend it. But I felt it my duty and feel it my duty to call the attention of the Senate to the fact that if it is amended it will fail of enactment. I would not agree with the Senator from Ohio as to the bill being full of indefinite controversies, or as to the number of controversial points in it, but whatever clarification is needed so as to express the intention of Congress can be made by a concurrent resolution after the bill is passed, and it is to that end that I have had a joint resolution prepared undertaking to do that. Of course, the concurrent resolution itself could be amended when it comes before the Senate for action.

Mr. TAFT. I cannot understand how we can be sure of the passage of a joint resolution. If the House will not take our amended bill, why on earth will they take a joint resolution?

Mr. BARKLEY. I think the chances would be more favorable of getting action on the concurrent resolution than of getting action on the bill if it is amended because—well, Mr. President, I do not wish to discuss the parliamentary situation that exists, or say anything about it.

Mr. TAFT. Mr. President, will the Senator further yield?

Mr. BARKLEY. I yield.

Mr. TAFT. We have a great social-security system in the United States, and we have this particular security situation under discussion which is confined to a certain group. Further action on the social-security system has been postponed. It also ought to be improved. Yet we propose to take a system which is handed to us to cover a certain number of employees, and accept it just as it is presented, dollar for dollar, setting an example for the social-security system for the rest of the people of the United States, for all other persons in the United States. I cannot understand why the Senate should not consider on its merits a measure so important as is this, and consider it, section by section, in connection with whatever amendments may be presented, and decide the amendments on their merits. If the House will not take them, that is the privilege of the House.

Mr. BARKLEY. Of course, the Senate can do that. It has a perfect legislative and parliamentary right to do that. It has the right to cut the bill to pieces and to change it in any way it sees fit to do. But what I felt it my duty to do and which I feel it my duty to do, under a situation for which we are not responsible, is to say to the Senate that that course means the death of the legislation. And we can, by a concurrent resolution, correct whatever needs to be corrected subsequent to the passage of the bill.

Mr. TAFT. Is it not true that the author of the bill himself has proposed many amendments which he wished to have incorporated?

Mr. Latimer of the Railroad Retirement Board has something like 50 amendments which he wants incorporated, which the House did not incorporate, which our committee have even refused to consider. Is that not a fact?

Mr. BARKLEY. I do not know whether Mr. Latimer has any amendments, or if he has any, how many he has. If he had any amendments they may have been presented to the House committee. I will also say in that connection, that when the House committee, after a petition had been filed in the House to discharge the committee from further consideration, reported the bill with amendments, certain amendments were adopted by the House in the Committee of the Whole, and after the House went out of the Committee of the Whole and into the House, the amendments were rejected.

Mr. TAFT. By reason of that extraordinary procedure, as I understand, the House eliminated not only the controversial amendments proposed by the committee, but eliminated approximately 100 other amendments which were admitted by all persons to be necessary to clarify and improve the bill.

Mr. BARKLEY. It may be that amendments which had been agreed to in committee were eliminated in the House. We are not responsible for that. I have told the Senate what would be the result of amendment by the Senate of the bill. The Senate of course can act in its own wisdom and judgment.

Mr. WHEELER. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. WHEELER. I wish to call attention to the language of the Interstate

Commerce Act, and then to explain the construction which has been placed upon that language by the courts and by the Commission. I submit that it is not at all necessary to amend the bill. The only reason advanced for amending it is to quiet the nerves of some individuals who are becoming excited. Some of the amendments have been suggested by individuals who desire to defeat the bill. For instance, in my own State persons have come to me with suggestions for amendment, and I have tried to explain the whole situation to them.

Mr. REVERCOMB. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. REVERCOMB. I have had the question put to me by some persons who were extremely desirous of having the situation clarified, and who had no purpose of stirring up controversy. For instance, as a concrete example, I mention the small ice company, the independent ice producer, who services the refrigerator cars of a railroad company under contract, perhaps from year to year or from month to month. The question arises whether the men who service the cars, and are in the employ of the ice company, come under this measure.

Mr. WHEELER. I do not think they would. They are employees of an independent ice company, not controlled by the railroad in any way, shape, or form.

Mr. BARKLEY. And their services are paid for by the ice company, and not by the railroad.

Mr. REVERCOMB. The question is, Do those men come under the act?

Mr. WHEELER. No, they do not.

Mr. TAFT. Why are they not covered by section 4? The ice companies are independent contractors. They have to service the cars, day and night. It is a continual performance. I do not see how the language of section 4 can be construed not to include such companies.

Mr. WHEELER. The language in the Transportation Act of 1940 is as follows:

> The term "transportation" as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.

If the Interstate Commerce Commission had put the construction upon that language which is being contended for by ice companies and others, it would be the duty of the Interstate Commerce Commission to regulate every single one of these concerns.

Mr. TAFT. The Senator is dealing with section 2. But section 4 says "transportation use not related to the Interstate Commerce Act in any way."

Mr. WHEELER. I am referring to section 2.

Mr. TAFT. I was dealing with section 4. I do not know enough about the Transportation Act to know what section 2 would cover, but section 4, it seems to me, clearly would cover the situation.

Mr. WHEELER. It certainly does not cover an independent ice company, and it certainly does not cover any independent storage company or any concern of that kind.

Mr. TAFT. The Senator says, "It certainly does not cover," but why not?

Mr. WHEELER. Let me finish my statement. The Senator does not give me time to finish. I cannot cover the whole subject in one sentence. I first desire to call attention to the fact that the first objection made with respect to the coverage of this bill, and the big outcry against it, was with reference to section 2, because of the fact that the language of the Transportation Act, in section 3 (a), was used. The reason the language in section 3 (a) of the Transportation Act was used was that the courts and the Commission itself had construed that language and had interpreted it. I can understand how someone might go to an independent ice company or an independent refrigerator company and say, "You are included in this provision, because the language is broad enough to include you." But I cannot understand how a lawyer who has looked into the question and found how the courts and the Commission have construed the act could come to that conclusion. In dealing with this language of the Transportation Act, it is necessary to look at the construction which has been placed on it by the courts and by the Commission.

With respect to paragraph (4) on page 2, the question was asked by the Senator from West Virginia with reference to a company which furnished ice alone to the railroad company. Is that correct?

Mr. REVERCOMB. No, in the case that I mentioned, the general ice manufacturer merely furnished ice to the railroad company more as an accommodation because the railroad company's own supply of ice had gotten away from it. A contract was made with the ice company to furnish ice and refrigerate the cars at one or two stations. The employees—the men who did that work—are employees paid solely by the ice maker.

Mr. WHEELER. Frankly, that would be a very much closer case than the case of the ordinary ice company.

Mr. REVERCOMB. This is an ordinary ice company which furnishes ice to the public generally.

Mr. WHEELER. In my judgment, a company which furnishes ice to the public generally would not be included under the terms of the bill. If its principal business were the furnishing of ice to a railroad company under a contract, the situation might be different. The railroads own certain ice companies. There are certain ice companies which are exclusively in the business of furnishing ice for icing railroad cars.

Mr. REVERCOMB. This is an independent ice company.

Mr. WHEELER. Suppose the company, instead of itself furnishing the ice, sublets the contract to another company. Then I should say it would come under the terms of the bill. But in the case which the Senator cites, in which a company is engaged in the general ice business, and the furnishing of ice to the railroad is only incidental, in my judgment the company would not be covered.

Mr. REVERCOMB. This inquiry is made in a very serious way by the persons who are interested. They are relatively small businesses. The companies are in the general business of furnishing ice to the public, and one of their customers is the railroad. They furnish ice for the icing of railroad cars. That is the case which I have laid before the Senator. Why could not the whole question be taken care of by a simple amendment providing that those who come under the act shall be the employees of the railroad company?

Mr. WHEELER. That is what this language is intended to do. I cited a concrete example of the purpose of section 4. Take the Santa Fe railroad as an example. During the war it was not permitted to raise the wages of its section workers to the point where it could attract labor. In order to obtain the labor it had to deal with someone who was not in the railroad business at all, but who had a sufficiently high wage scale for common laborers to attract labor. He did the railroad work. He had never done any railroad work before, but he used employees who had formerly worked for the railroad, and he used railroad equipment. Under the language which the Senator suggests, those men would not come under the Retirement Act, although they are engaged in the business of taking care of the railroads.

Mr. REVERCOMB. I see the point of the able Senator. The railroad employees who have talked to me want the act kept as a railroad employees' retirement act. It is intended for railroad men. Why not clarify the whole situation by having the act apply only to the employees of the railroads, or those whose entire work is in the service of the railroads?

Mr. WHEELER. If we were to use the language "in the service of the railroads," there would be many instances in which railroad contracts would be involved. The courts have held that certain dock workers who formerly worked for the railroad, and who were performing services for the railroad under a contract which had been let to someone else, were not railroad employees. But they were really doing railroad work.

Mr. REVERCOMB. They may not be working for the railroad if the work is performed under a contract which is let to someone else; but their work is devoted to the purposes of the railroad and so long as they are solely in railroad work they may well come under the retirement act. Let the language of the proposed bill be made clear on this point and remove this doubt about it, then the bill can be passed as truly a railroad employees' retirement act.

Mr. WHEELER. I feel quite positive that the interpretation which would be placed upon such language, and which should be placed upon it, would be that they would not be considered as coming under the Retirement Act.

Mr. BARKLEY. Mr. President, if Members of the Senate will take the trouble to read the section of the committee report on pages 6 and 7, beginning with the subhead "Coverage," approximately a third of the way down on

page 6, and extending to the end of the next to the last paragraph on page 7, I think they will get a very clear idea of what was intended to be covered by this legislation. The committee report goes into that question and points out the fact that the bill is intended to include two additional classes beyond those now covered: First, those who are engaged in what we call freight forwarding, whose services are indistinguishable from railroad services; and a second category including workers on railroad-owned trucks. Both of those categories include not more than 10,000 additional employees to be covered under the act, as compared with a million and a half railroad employees now covered by the act.

It seems to me that the report of the committee clarifies the situation so far as the intention of the sponsors of the bill is concerned.

Mr. President, I have said all I care to say, and I yield the floor.

Mr. WHITE. Mr. President, will the Senator yield for a question?

Mr. BARKLEY. I yield.

Mr. WHITE. Is it not a fair statement that what the Senator is now advocating is that the Senate shall pass this legislation without the dotting of an "i," the crossing of a "t," or the insertion of a comma, practically eliminating ourselves as a part of the legislative machinery of the Government, and turning over full power and responsibility to the other body?

Mr. BARKLEY. The Senator can place his own interpretation on the action of the Senate, and can couch it in whatever language he chooses to use. What I have suggested to the Senate is that in view of the situation which exists—which I agree is an unfortunate situation—to change this bill in any particular would mean that it might not be enacted at this session of Congress.

Mr. WHITE. If that is the situation——

Mr. BARKLEY. That is the situation.

Mr. WHITE. If that is the situation, I would much prefer, instead of a complete surrender of our functions, to send this legislation in amended form to the other body, and let that body take some responsibility for what happens.

Mr. BARKLEY. The Senate has the right to do that, but I would prefer to pass this legislation as it is. After all these years of study, interminable hearings, and delays, I would rather pass it as it is and run the risk of correcting whatever ought to be corrected independently of a vote on the bill than to amend it and thereby make it impossible to legislate on the subject.

Mr. STEWART and Mr. CAPEHART addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Kentucky yield; and if so, to whom?

Mr. BARKLEY. Mr. President, I have occupied the floor longer than I intended. The Senator from Colorado [Mr. JOHNSON] and the Senator from Montana [Mr. WHEELER] are in charge of this legislation. I made this preliminary statement because, in the absence of the Senator from Colorado, I called the committee together and made the report.

Mr. STEWART. I should like to ask the Senator from Kentucky one question.

Mr. CAPEHART. Mr. President, have I the floor?

Mr. BARKLEY. Mr. President, I still have the floor, I believe.

The PRESIDING OFFICER. Does the Senator from Kentucky claim the floor?

Mr. BARKLEY. I had intended to yield the floor, but if any Senator wishes to ask me a question, I shall be glad to yield.

Mr. STEWART. Did the Senator place in the RECORD the interpretation by the committee which appears on page 7 of the report?

Mr. BARKLEY. I do not think it has been placed in the CONGRESSIONAL RECORD, if that is what the Senator refers to.

Mr. STEWART. I wonder if the Senator would mind placing in the RECORD that particular part of the report which interprets the provisions of the bill relating to coverage?

Mr. BARKLEY. I thank the Senator for the suggestion.

I ask unanimous consent that there be printed in the RECORD at this point as a part of my remarks the section of the report beginning on page 6 with the subhead "Coverage" and extending over to page 7, down to the subparagraph entitled, "Elimination of Inequities and Facilitation of Administration."

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kentucky?

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

Coverage: The bill, in section 1, redefines the term "employer" by spelling out in more detail the application of the act to companies and associations that are a part of the railroad industry but are not technically "carriers." It was the purpose of the present law to cover not only technical "carriers" but all other elements in the railroad industry such as railroad subsidiaries engaged in performing service in connection with railroad transportation, railroad associations, tariff bureaus, demurrage bureaus, railway labor organizations, and so forth.

The bill brings under the Railroad Retirement and Unemployment Insurance Acts two new groups of employers, namely, railroad-controlled trucking companies and those freight forwarders that are not now covered. The railroad-controlled trucking companies are operated as part of the raiload plant for the performance of railroad transportation. (See *Interstate Commerce Commission et al.* v. *Harry A. Parker et al.*, Supreme Court of the United States No. 507, October term, 1944, and brief of Pennsylvania Railroad Co. filed therein.) The reason they have been heretofore treated differently from other railroad subsidiaries performing service in connection with railroad transportation is merely historical accident. The employer definition of the Railroad Retirement Act and the Railroad Unemployment Insurance Act was largely copied from the Railway Labor Act where trucking subsidiaries were excepted because at the time of the Railway Labor Act amendments of 1934 the labor relations of these companies were governed by the NRA trucking code and it was not considered desirable to disturb the then existing situation. That condition has long since passed and in any event there has never been any valid reason in principle for making a special exception of trucking subsidiaries as distinguished from other railroad subsidiaries so far as the Railroad Retirement and Unemployment Insurance Acts are concerned.

Freight forwarders are intimately associated with the railroad industry. The great bulk of their employees perform work that is indistinguishable from the handling of less-than-carload lot freight by regular railroad employees. The employees are nearly all represented by a standard railway labor organization, the Brotherhood of Railway Clerks. Two of the largest of the companies are held by the Railroad Retirement Board to be railroad-controlled and, therefore, covered under present law as railroad affiliates performing services in connection with railroad transportation. The anomalous position that these companies occupied in relation to the railroad industry for regulatory purposes was brought to an end in 1940 when they were brought under regulation by the Interstate Commerce Act. They should now similarly be uniformly covered by the Railroad Retirement and Unemployment Insurance Acts.

The total number of employees brought into the system by such extensions of coverage is estimated not to exceed 10,000 as against some million and a half carrier employees currently covered. The inclusion of these relatively few additional employees could in no event impose any ascertainable burden on the railroad retirement account as a result of their not having been subject to tax in the period since 1937; and the probabilities are that these circumstances impose no financial burden at all since the employees involved are on the whole of a younger-age group than carrier employees on the whole.

Many representations have been made to the committee indicating that persons (other than carriers subject to part I of the Interstate Commerce Act) engaged in manufacturing, harvesting, storing, distributing, selling, or delivering refrigeration or ice to or into equipment used for refrigeration purposes in connection with the transportation of passengers or property are included in the term "employer," and that therefore their employees will be considered to be railroad employees. The committee would like to state categorically that there is no purpose or intent to include such persons as employers under the act and that it is the unanimous understanding of the committee that such persons are not so covered. The committee also unanimously understands that notwithstanding the provisions of subsections (2) and (4) of section 1, there is no purpose or intent to include warehouse or trucking companies, or individuals carrying on either of such businesses, within the term "employer," if they are not owned or controlled, directly or indirectly, by, or under common control with, a carrier subject to part I of the Interstate Commerce Act.

Mr. STEWART. Mr. President, may I ask the Senator a further question?

Mr. BARKLEY. I yield.

Mr. STEWART. Is it the opinion of the Senator that if there is any ambiguity in the bill the interpretation of the committee will govern?

Mr. BARKLEY. Of course, the report of a committee interpreting a bill is not always automatically binding upon a court or administrative agency. But it certainly has great weight, and ought to have great weight, in elucidating the intention of Congress in enacting the legislation.

Mr. STEWART. As I understand the Senator from Kentucky, in the light of the report on the bill, there is no question that the companies to which reference has been made are not included.

Mr. BARKLEY. That is my interpretation. Let me say, also, that I believe

that will be the interpretation of the Railroad Retirement Board itself.

Mr. STEWART. As I understand, that is the interpretation of the chairman of the Interstate Commerce Committee.

Mr. WHEELER. Mr. President, there is no question about it. I have gone into the question very thoroughly, not only with the attorneys for the Railroad Retirement Board, but with members of the Board. I am sure that that is the construction which the present Retirement Board places upon the bill. That is the construction placed upon it by the lawyers for the railroad men, and that is the construction that was placed upon it by the majority of the committee.

Mr. STEWART. And that construction would carry weight.

Mr. WHEELER. If the Retirement Board should place any other construction on it, I should say that it would be placing a construction upon it which was never intended.

Mr. CAPEHART. Mr. President, being a member of the Committee on Interstate Commerce, I feel that I have some slight responsibility in connection with this proposed legislation. I believe that the RECORD should be made perfectly clear with respect to what has happened up to date in connection with this measure.

I think it is a fact that the subject was studied in the House, and that hearings were held over a period of possibly 2 years. A subcommittee of the Senate committee also held hearings. The Committee on Interstate and Foreign Commerce in the House held 37 hearings and approximately 20 executive sessions. It spent many days on this legislation. It finally reported a bill to the House, which I offered as an amendment the other day and asked that it lie on the table. I offered it as a substitute for this bill. The House committee, after days and weeks and months of study—the sort of study I presume that the majority leader was referring to a moment ago—of the so-called Crosser bill, finally reported to the floor of the House a bill which was completely and entirely ignored by the House. The House passed the original bill, notwithstanding the fact that the Chairman of the Railroad Retirement Board was anxious to have many perfecting amendments added to that bill, and notwithstanding the fact that there were many other amendments which it was admitted should have been incorporated in the bill. The bill which the House passed—not the bill which was recommended by the House committee, which spent so long in studying it, as the Senator from Kentucky has said—finally came to the Senate. The Interstate Commerce Committee held a hearing which lasted about 30 minutes, at which time the chairman of the subcommittee, the able Senator from Colorado [Mr. JOHNSON], admitted that the bill possibly should be corrected and that there were many errors in it. However, he suggested that the errors could be corrected next year.

Mr. BARKLEY. Mr. President, will the Senator yield to me?

Mr. CAPEHART. I yield.

Mr. BARKLEY. I simply wish to announce to the Senate that the President has signed the OPA bill.

Mr. CAPEHART. Mr. President, after 30 minutes in the full committee, we listened to the same story which the able Senator from Kentucky told us a moment ago, namely, that we must take this bill just as it is, because if we amend it one iota, no matter what the reason, there will be no legislation on the subject.

Mr. WHEELER. Mr. President, will the Senator yield to me?

Mr. CAPEHART. I am happy to yield to the Senator from Montana.

Mr. WHEELER. Let me call attention to the fact that the House committee reported no bill until a petition was circulated in the House to discharge the committee from further consideration of the bill. In our judgment, if that petition had not been circulated, the committee probably would not have reported any bill on the subject. That shows, to my mind, that the House committee did not give very serious consideration to the subject, although the committee had the bill before it for a long period of time.

Furthermore, let me call attention to the fact that, while the House gave consideration to it and likewise the Senate committee gave consideration to it, and held long hearings on the bill——

Mr. CAPEHART. The Senator means the subcommittee; does he not?

Mr. WHEELER. Yes; the subcommittee.

Mr. CAPEHART. And the chairman of the subcommittee reported to us in the full committee that the bill did contain many errors and imperfections which should be corrected.

Mr. WHEELER. No report of that kind was made to the full committee.

Mr. CAPEHART. The chairman of the subcommittee, the able Senator from Colorado [Mr. JOHNSON], reported to the full committee that the bill did have some errors in it.

Mr. JOHNSON of Colorado. Mr. President, will the Senator yield to me?

Mr. CAPEHART. I am happy to yield.

Mr. JOHNSON of Colorado. I do not want the Senator to misstate my position, although unintentionally, of course. I did state to the whole committee that the subcommittee was of the opinion that the bill could very well stand some amendment, and that in our opinion amendments on coverage were very desirable. I also stated to the committee that if we attempted to place any amendments in the bill, even amendments of a clarifying nature or merely in the nature of making a correction of a typographical error, the bill would go to conference, and there it might possibly be held, and in that case there would be no legislation on the subject at all.

The Senator will recall that I presented the matter in that light before the committee. Although I said that perhaps some amendments were desirable and that the subcommittee would suggest a few amendments, not many, I also said that under the parliamentary situation which we were facing it was not desirable to amend the bill.

Mr. CAPEHART. Mr. President, if I remember correctly, at the same meeting we likewise asked a representative of the Office of the Legislative Counsel whether in his opinion the language of the bill was such as to bring under the terms of the bill the ice companies and the forwarders and the terminal people. He stated to us that in his opinion it was.

Mr. WHEELER. Mr. President, will the Senator yield to me?

Mr. CAPEHART. I am very happy to yield.

Mr. WHEELER. I do not care what the representative of the Office of the Legislative Counsel may have said. I was not there when he testified. But I say that in view of the construction which has been placed on the Transportation Act by the Interstate Commerce Commission and by the courts, how any one, whether he is member of the Office of the Legislative Counsel or is holding any other position, can say that the ice companies will come under this bill is beyond my comprehension.

Mr. CAPEHART. Mr. President, I should like to ask the Senator whether in his opinion, if it were possible to have the bill amended and enacted at this session of the Congress, the Senator would recommend that it be amended.

Mr. WHEELER. I do not know. I do not know whether amendments are necessary.

Let me say that the only reason why the majority leader suggested the passage of the joint resolution is that every time a bill is introduced in the Senate, someone representing certain groups expresses the fear that the proposed legislation will do this or will do that. After the measure is enacted, the fears disappear. I have never seen any important legislation come before this body but that some lawyers in the business of representing certain parties would attempt to conjure up in the minds of their clients certain fears. That seems to be their work, and that seems to be the way they earn their money.

I do not think it is necessary to amend the bill. But if it would calm the fears which some people seem to have, I say that for that purpose the joint resolution suggested by the Senator from Colorado would be all right.

Mr. REED. Mr. President, will the Senator yield to me?

Mr. CAPEHART. I yield.

Mr. REED. With the permission of the Senator from Indiana, I wish to call the attention of the Senator from Montana to the construction recently placed upon the term "transportation" and the effect of paragraph (2) of section 1 of this bill. One must go back to the beginning of section 1.

I read subdivision (a) of section 1:

> The term "employer," except as otherwise provided in this section, shall mean—
>
> * * * * *
>
> (2) Any person, other than a carrier regulated under part I of the Interstate Commerce Act, which, pursuant to arrangements with a carrier or otherwise, performs, for hire, with respect to passengers or property transported, being transported, or to be

transported by a carrier, any service included within the term "transportation."

Mr. President, I hold in my hand a copy of the Interstate Commerce Act.

Mr. WHEELER. So do I.

Mr. REED. This copy is corrected up to January 1, 1946. Here is what is included in paragraph (3) of section 1, as included in the Transportation Act:

All services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.

If that is not broad and all-inclusive, according to the language of paragraph (2) of section 1 of House bill 1362, I would have difficulty in understanding what would be.

Mr. WHEELER. But the Senator is an expert on transportation, and I am sure he understands that if this language were as broad as it is contended to be, then it would be the duty of the Interstate Commerce Commission to regulate every one of the ice companies and every one of the other companies.

Mr. REED. I beg the pardon of the Senator from Montana, but that is not a correct interpretation of the law. The Interstate Commerce Commission regulates the carrier. The carrier can hire and can pay for the icing and for his various other activities under the act. They are not brought under regulation as a common carrier. But this bill provides that, within regulations—

The term "employer" except as otherwise provided in this subsection, shall mean—

When we go to paragraph (2), we find this:

(2) Any person, other than a carrier regulated under part I of the Interstate Commerce Act—

So let us leave that out and read it in this way:

(2) Any person * * * which, pursuant to arrangements with a carrier or otherwise, performs, for hire, with respect to passengers or property transported, being transported, or to be transported by a carrier, any service included within the term "transportation" as defined in section 1 (3) of the Interstate Commerce Act, whether or not such service is offered under railroad tariffs.

Here is section (1), paragraph 3, of the Interstate Commerce Act:

The term "transportation" as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.

Mr. CAPEHART. Mr. President, I wish to make a statement for the RECORD. I believe it to be a true statement, and if it is not, I shall be very glad to have any Senator correct it.

I assert that the bill which was studied for 2 years, as the Senator from Kentucky has stated, and considered by the House Interstate and Foreign Commerce Committee consisting of some twenty-odd members, which held 37 hearings on it, is, in form, the bill which I hold in my hand. It was recommended by the House committee but is not the bill we are considering today. The bill we are considering today is the original Crosser bill, and it is not the bill which the Interstate and Foreign Commerce Committee of the House reported to the House.

Mr. WHEELER. But the bill reported by the House committee was promptly voted down. The pending bill is the one which was studied in the Interstate Commerce Committee of the Senate.

Mr. CAPEHART. I admit that the House passed the bill, or otherwise it would not be before us at this time. I still believe that the RECORD should show that the bill we are now considering is not the one the Members of the House committee reported to the floor of the House. Therefore, what we are now considering has not received 2 years of study, as the Senator from Kentucky has stated.

Mr. WHEELER. The bill before us now is the bill which the House studied because it was introduced by Representative CROSSER, and it was studied for 2 years.

Mr. CAPEHART. I am glad the Senator has made that statement. He is correct. The bill which the House originally studied and held hearings on for 2 years is the bill which the House threw aside as being undesirable and, in its place, passed a different bill. I have in my hand the original bill.

Mr. DONNELL. Mr. President, is the bill which the Senator is holding in his hand, namely, the one which the House had presented to it after a prolonged study, the same as the one which the Senator from Indiana is offering as an amendment in the nature of a substitute?

Mr. CAPEHART. The amendment in the nature of a substitute, which I hold in my hand, is, word for word, the bill that was reported to the House following a great number of hearings, as I have stated.

Mr. DONNELL. I thank the Senator.

Mr. CAPEHART. The bill which I hold in my hand is the one which, after 2 years of study and hearings, was recommended by the committee to the House, but was not passed by the House.

Mr. DONNELL. The amendment of the Senator from Indiana in the nature of a substitute, which was presented on July 19 and ordered to be printed and lie on the table, was not passed by the House.

Mr. CAPEHART. The Senator is correct.

Mr. JOHNSON of Colorado. Is it not also correct that the version prepared by the House committee was rejected by the House by an overwhelming vote, after which the House itself returned to the version which the Senate has now before it?

Mr. CAPEHART. It is obvious that the House passed the version now before the Senate or it would not be before the Senate. But I rose solely to keep the RECORD straight, inasmuch as the able Senator from Kentucky tried to leave the impression that we are now considering a bill which had received approximately 2 years of study on the part of a House committee, that the House had passed it, and that it was the last word on legislation of this character. The facts are as I have described them. The committee which held hearings and studied the bill for a period of approximately 2 years or more reported to the House a bill entirely different from the one we are now considering.

Mr. HAWKES. Mr. President, will the Senator yield?

Mr. CAPEHART. I yield.

Mr. HAWKES. Mr. President, I think the Members of the Senate should know that this question is not one concerning alone a change in the definition of coverage. The bill goes to the fundamentals of everything in the social security set-up and the social economic set-up in the United States.

Some time ago the Government made a horrible mistake under which officers received terminal leave. The other day the Senate passed a bill to give terminal leave pay to millions of enlisted men. Every other Senator to whom I talked said, and I agreed with him, that we had to vote this $3,000,000,000 or $4,000,000,000 more in order to do justice to the enlisted man.

I ask Senators if we have a right to pass a bill which would put a railroad man into a separate classification and place him on a separate and distinct unemployment compensation basis from all the other workers in the United States? If we make that mistake, we will be asked later to vote for a bill to adjust every single classification of workingmen and all other groups of workers in order to do justice. No member of this body has a greater respect for the railroad workers than do I. I also have respect for the other industrial workers throughout the United States. I assert that this bill has in it more to be cured than merely a definition of coverage.

There must be something done about the unemployment compensation fund of $790,000,000 already collected. Over the past 5 years, excluding this year, there has been used less than $10,000,000 a year. I understand that this year, because of the coal strikes, the railroad strikes, and so forth, resulting in the payment of unemployment compensation, the requirement will be somewhere between $18,000,000 and $20,000,000. As I say, there is in the fund approximately $790,000,000. The withdrawals from the fund over the past 5 years, excluding this year, have been less than $10,000,000 a year. The interest on the compensation fund of the railroads at the present time is more than $15,000,000 a year, or almost as much as the greatest expenditure of any year in connection with unemployment insurance.

Mr. President, I want the Senate to realize that before an amendment I have introduced is disposed of I shall bring certain facts to the attention of the Senate. I believe them to be facts which it will be the duty of the Senate to consider and carefully analyze before embarking

this Nation straight on the road to socialism.

I wish to make another statement the truth of which all Senators well know. This bill was voted out of the Interstate Commerce Committee in a way which amazes me more than anything which I have before seen in the 3½ years I have been here. The bill was reported by the committee by a vote of 11 to 9. Three proxies were used in order to obtain the 11 votes in favor of reporting the bill. I am not saying that the action taken by the committee was not proper and not in accord with the practices of the Senate, but I do assert that no business institution in the United States which expected to live would follow a process of that kind. The merit of the bill was never considered in any way by the main committee. I asked every member of the Interstate Commerce Committee if he had read the report and knew what the bill contained, and whether he had read the House report, and most everyone answered in the negative. The chairman of the subcommittee, the senior Senator from Colorado [Mr. JOHNSON], who is a very dear friend of mine and whom I respect very highly, undoubtedly has read all the reports as well as the bill. The Senator from Montana [Mr. WHEELER], who is also a friend of mine and whom I respect very highly, has undoubtedly read all the reports and the bill. But all the remaining members of the committee then present admitted to me that they knew nothing about what the bill contained. No hearing has ever been held on the bill in the Interstate Commerce Committee. The subcommittee reported to the main committee, but the main committee never gave the matter any consideration.

Mr. SHIPSTEAD. Mr. President, will the Senator yield?

Mr. HAWKES. I do not have the floor.

Mr. SHIPSTEAD. I merely want to say that I read the bill.

Mr. HAWKES. But the Senator from Minnesota did not read the hearings, did he?

Mr. SHIPSTEAD. I read a great deal of them.

Mr. HAWKES. Very well; I will give the Senator credit. He was not at the meeting of the committee the other day, was he?

Mr. SHIPSTEAD. No; I was not in Washington.

Mr. HAWKES. Therefore, the Senator was not present to vote. I am referring to the members who were at the meeting of the committee the other day. I did not mean to leave any implication with regard to the Senator from Minnesota, but he was not present, and his proxy was used to vote out the bill which had never been considered by the main committee.

Mr. DONNELL. Mr. President, will the Senator from Indiana yield to me at this point for a brief statement?

Mr. CAPEHART. I yield.

Mr. DONNELL. The Senator from New Jersey referred to the fact that proxies were used in connection with the vote of the committee. I ask the Senator if there is any rule of the Senate which directly or indirectly authorizes the use of proxies for voting in committees?

Mr. HAWKES. I can only answer the distinguished Senator from Missouri by saying that I have been told, I believe by the majority leader, and by other Senators who have been in the Senate for a great many years, that it is a custom which is followed. Whether or not it is a rule of the Senate, I cannot answer.

Mr. DONNELL. Has the Senator ever seen a rule of the Senate that authorizes the use of proxies to vote in a committee?

Mr. HAWKES. I have not.

Mr. SHIPSTEAD. Mr. President, will the Senator from Indiana yield——

Mr. CAPEHART. I am happy to yield.

Mr. SHIPSTEAD. I have been a Member of the Senate for 24 years, and through all those years I have seen proxies given for voting in committees when members were absent.

Mr. HAWKES. The Senator from Missouri did not ask me that question. He asked me if I had ever seen a rule which authorized it. I have not.

Mr. SHIPSTEAD. Oh, that is different.

Mr. MORSE. Mr. President, will the Senator yield?

Mr. HAWKES. So that I may make this statement to the Senate a little consecutive, I should like to proceed, then I shall be glad to answer any question.

The question was raised in the committee as to whether we should not defer the consideration of the bill for just 2 days. Does the Senator from Indiana remember that?

Mr. CAPEHART. I do, distinctly.

Mr. HAWKES. A motion was made to vote the bill out, when every member of the committee, excepting possibly two or three, admitted that he knew little or nothing about it. The distinguished Senator from Kansas [Mr. REED] offered a substitute motion that the bill be laid on the table until Monday, so that we could have a chance to understand it.

I am not a parliamentarian, but without any reflection on the majority leader, he refused to put the substitute motion of the Senator from Kansas to a vote. We debated the question, and discussed it, and he finally put the original motion to vote the bill out. The bill was voted out.

I have talked with parliamentarians around the Senate, and the best informed men in the Senate, and they tell me that the majority leader should not have done that, that the substitute motion should have had the right of way before the committee.

Now let me say one more thing, Mr. President, and then I shall be through, I assure the Senator from Indiana, but I want to get something in the RECORD which backs up what the Senator is saying.

When this bill was returned from the subcommittee to the main committee, as the Senator from Colorado [Mr. JOHNSON] knows, it contained 17 major changes in the existing railroad retirement and compensation laws, and it had in it 73 less important changes.

I ask, how can we expect to have the respect of the people of the Nation if we put a bill of this vast importance through a committee, and are willing to enact it into law as it is written, just because we are coming to the close of a session?

I have not seen anyone particularly interested in some of my bills because the session is coming to a close. No one was interested at the end of the last session, when there was on the calendar a very important bill, which had been before the Congress for 7 years, which had been passed four times by the House and three times by the Senate, with amendments. Nobody worried about that bill dying. We had to let it die, because it was considered necessary to give it careful thought and attention, because it affected the economy of the Nation.

Mr. President, with the kind indulgence of the Senator from Indiana, I wish to read just the first paragraph of the report of the subcommittee to the main committee, and if that does not show that this bill is important and needs attention and thought, and involves a great many things, I do not understand the English language. I read:

> The subcommittee, consisting of Senators JOHNSON of Colorado, HOEY, BRIGGS, SHIPSTEAD, and HAWKES, to whom was referred the bill S. 293, a bill to amend the Railroad Retirement Act, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes, having held full and complete hearings, report back to the full committee the major controversial—

Mark that word "controversial"—

> items contained in the bill. The House Committee on Interstate and Foreign Commerce also held extended hearings on a companion bill, H. R. 1362, extending over the period January 31, 1945, to April 26, 1945. Said hearings have been printed in three volumes and are available for study by the committee.

Mark right here, the committee admitted that outside of two or three, no member had ever had time or opportunity to read the hearings.

> The questions of policy needing decision are of such great importance that the full committee will find, after study and deliberation, that it will of necessity have to make the decisions itself—

I ask right there, how could the full committee make any decision when they never studied the bill and never studied the hearings, and had but 1 hour and 20 minutes together, in which they debated only the question of voting out the bill?—

> and the subcommittee therefore felt that no useful purpose would be served by deciding such questions and reporting them in the form of a finished bill to the full committee. A comprehensive and important report dealing with the over-all issues relating to national social security is pending before the Committee on Ways and Means of the House of Representatives and the problems raised by S. 293—

Which is identical with H. R. 1362—

> should be studied carefully in connection with the recommendations made in that report.

Mr. President, I submit to every Senator that the very first sentence of the report of the subcommittee shows conclusively that the bill is of vast importance, that it affects our whole structure of American life, and, regardless of the

merits of this or that contention, that it needs consideration.

I for one take issue with some of my very good friends on the committee. I would not rather have an imperfect bill, that would wreck the whole United States, than to have nothing at all because we are reaching the end of the session.

I thank the distinguished Senator from Indiana.

Mr. CAPEHART. Mr. President, I do not think there is any question that the Railroad Retirement Act of 1937 should be amended and overhauled and rewritten, and many inequities corrected. There is no question that the fund is insolvent for the purpose intended, there is no question that legislation is needed on this subject. But I certainly cannot understand why in the case of legislation so important and so far reaching as this the majority leader should tell the members of the Interstate Commerce Committee, and then rise on the floor and tell the Senate, that, if amended, the bill will die with this session of the Congress. I do not understand it. I wish the Senator from Kentucky were present and I wish he would give us the reasons why he thinks it is impossible for us to amend the bill, to correct the bill, as everyone agrees it should be corrected.

I have talked with a number of high ranking officials of the railway brotherhoods, and they do not want the ice companies and other companies included in the bill.

Mr. WHEELER. Mr. President——

Mr. CAPEHART. Just a moment. Why cannot we be told the reason why it is impossible for us to amend the bill and perfect it? What is the reason? Why can we not amend the bill and send it to conference? Why can we not hold a conference with the House, and agree on a decent piece of legislation which will protect the interests of all involved? What is the reason for it?

Mr. WHEELER. Will the Senator yield?

Mr. CAPEHART. I am happy to yield.

Mr. WHEELER. I thought the Senator from Kentucky made it perfectly clear that, in the legislative situation in which we are at the present time, to amend the bill would mean to kill it, that we would not be able to get a conference. We are asking for a conference now with the House on another bill, and it is necessary to get a vote in the House in order to determine the question, because someone may rise and object, and so they have to have a vote on it. It would be physically impossible to have a conference on this bill.

Mr. CAPEHART. Do physical conditions constitute the reason why it cannot be done?

Mr. WHEELER. Physical conditions. I am told that as a matter of fact there will not be a quorum in the House after Saturday.

I am sorry more Senators are not present, because I wish to present an interpretation of the Interstate Commerce Commission on the question we are discussing. I happen to have before me excerpts from some of their decisions, and I wish to read them, as follows:

Storage of property transported is a transportation service only to the extent that it is necessarily incidental to the transportation of such property, and the term has been used in section 1 (3) of the Interstate Commerce Act in that limited sense. (Guaranty claim of Central Elevator & Warehouse Co. (72 I. C. C. 169); Storage Rules on Fruits and Vegetables (95 I. C. C. 871).)

Storage of commodities outside railroad cars for convenience of shippers while markets are being sought is not properly a rail carriers' function. (Reconsignment and storage of lumber and shingles (27 I. C. C. 451).)

Storage of grain beyond the 10-day elevation period is no part of elevation nor a transportation service. (Allowances to elevators by Union Pacific Railroad Co. (14 I. C. C. 315).)

Transportation ceases with unloading of railroad car at the warehouse. (Storage Rules on Fruits and Vegetables (95 I. C. C. 87).)

That, Mr. President, is exactly what I have called attention to. It is said, "This service is transportation." The Interstate Commerce Commission has passed on this question, and has said, "Transportation ceases with unloading of the railroad car at the warehouse."

Compression of cotton is not a transportation service for the shipper, and no obligation rests upon the carrier to perform the service or to pay for it if it is performed by shippers. (*New Orleans Cotton Exchange v. Georgia & Florida Railway Co.* (146 I. C. C. 245).)

So the reason for the use of the language in this measure was because of the limited construction that has been placed upon 3 (a) of the Interstate Commerce Act.

Mr. CAPEHART. May I say in closing that the individual Senators are asked to be rubber stamps and to put their seal of approval upon a bill which it is proposed to have passed, without having the right of amending it. If they do not put their stamp of approval on it, if there are some things they dislike about the bill, if they wish to amend the bill to take care of things they dislike in it, they will be placed in the position, in the eyes of the proponents of this legislation of being against them. I am not so certain, Mr. President—I dislike to say this—that there is not a certain amount of politics tied up in the handling of this bill.

AMENDMENT TO RAILROAD RETIREMENT ACTS, ETC.

The Senate resumed consideration of the bill (H. R. 1362) to amend the railroad retirement acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes.

Mr. JOHNSON of Colorado obtained the floor.

Mr. GURNEY. Mr. President, will the Senator yield to me for a question?

Mr. JOHNSON of Colorado. I yield.

Mr. GURNEY. I should like to address an inquiry to the Senator from Colorado, and possibly in his explanation of the bill and in his discussion of it, he can cover some of these points. I am not entirely unacquainted with this proposed legislation, because as a freshman Member of this body about 6 years ago I had quite an argument about the increased railroad rates which were being requested, as I recall in 1940. I am not now a member of the Interstate Commerce Committee, so I do not know about this legislation in detail. As I remember, the measure we have before us covers two points, retirement and unemployment. With respect to retirement, we have an employer contribution of about 3½ percent of the pay roll, and an employee contribution for retirement of the same amount, 3½ percent.

Mr. JOHNSON of Colorado. That is correct, as of this year; yes.

Mr. GURNEY. Then for unemployment purposes, the employee does not contribute, but the employer, the railroad, contributes about 3 percent.

As I understand, under this bill, it is intended to leave the unemployment contribution as is, at 3 percent.

Mr. JOHNSON of Colorado. Yes.

Mr. GURNEY. And for retirement purposes the contribution is practically doubled.

Mr. JOHNSON of Colorado. No; it is increased 2½ percent on both employers and employees.

Mr. GURNEY. It is practically doubled. It is raised from 3½ percent to 6 percent for both employees and employers.

Mr. JOHNSON of Colorado. In 1949 the 3½ percent automatically goes to 3¾ percent, and then there is an increase to 5 percent which becomes fully effective in 1952.

Mr. GURNEY. The net effect of it, though, is a large increase for retirement purposes.

Mr. JOHNSON of Colorado. Yes.

Mr. GURNEY. And it is proposed to leave the unemployment contribution about the way it is.

Mr. JOHNSON of Colorado. Yes.

Mr. GURNEY. The question I want answered is this: If we are going to make these huge increases, almost double, do they not eventually fall on the user of the railroads, the shipper? Eventually rates will have to be raised, will they not, to cover these increases? I want to be sure that that question is answered. Because of the huge fund, $780,000,000 or $790,000,000, as it is at the moment, is it necessary to continue the employer contribution of 3 percent, merely to add to that fund? It seems to me that we ought to cut down on the unemployment contribution by the employer, always being sure, of course, to keep the fund of sufficient size to take care of any possible contingency or unemployment. But why could that not be transferred over to the retirement fund? That is, the employers' contribution now for unemployment should possibly go to build up the retirement reserve.

Mr. JOHNSON of Colorado. I do not think it would be a sound solution to transfer it. The Senator will agree that in the case of social security there is a 3 percent tax levy altogether on the employer. What has happened in connection with social security is that there has been some relaxation in the payments. The employers do not pay the full 3 percent.

Mr. GURNEY. We are holding it at 1 percent all the time.

Mr. JOHNSON of Coloradq. The payment varies throughout the States. Some States require a greater payment and some States a lesser payment. The payment varies also with the industries. An industry which has a record of low unemployment does not pay as much tax as an industry which has a high record of unemployment.

Mr. GURNEY. I understand that.

Mr. JOHNSON of Colorado. That is the way the States regulate the payment. But all States have a maximum of 3 percent, and I think it is advisable and necessary to have such a maximum. The matter of having some relaxation could very well be considered.

Mr. GURNEY. I do not like to get the social security question mixed up with the railroad question, I simply want to make the point and see if the Senator is going to tell us whether or not increased charges are in prospect for the shipper and also for the passenger on the railroad.

Mr. JOHNSON of Colorado. Quite obviously the only source of railroad revenue is out of the shippers and the users of the railroads. All wages and all benefits of the employee must come out of the shippers eventually. I do not want to argue the question. I think that categorical answer perhaps is sufficient. But I would say to the Senator from South Dakota that the shipper is also interested in good service, and good service comes from having contented, interested employees on the railroad. So if the shipper is going to have to pay the costs one way or the other, he had better pay them for an excellent service than pay a smaller rate perhaps and receive very poor service.

Mr. GURNEY. Then, as I understand the Senator's answer, if we raise these contributions to the retirement fund or unemployment fund, then that does make for increased railroad service costs and the shippers can contemplate increased rates in order to bring about a balance in the future. Is that correct?

Mr. JOHNSON of Colorado. The shippers must pay the bill.

Mr. GURNEY. There is one further point to which I should like to invite the Senator's attention. I refer the Senator to pages 458 and 459 of the hearings on Senate bill 293. Evidently an effort was made to justify the request for higher rates by showing that there would be railroad unemployment in the postwar period. I notice that for the year after victory in Europe it was estimated that 75,000 men would be unemployed, because they would be displaced by servicemen. In the first postwar year it was expected that 100,000 would be unemployed; and 70,000 in the second postwar year. No figures on the subject are given for the third and fourth postwar years, so far as servicemen are concerned. In my judgment the justification shown by that table is now out the window, because the Supreme Court has held that servicemen may not displace nonveteran employees. That decision would apply to railroads. Also the railroads had a seniority contract of employment, and they never did let a nonveteran go in order to give a veteran a job. That testimony was given last week before the Committee on Military Affairs.

Mr. JOHNSON of Colorado. I thank the Senator for his views on this subject.

Mr. President, I do not intend to take very much time. We have before us two reports from the committee. There is the original report, and also a supplementary report. Those reports deal with the provisions of the bill in great detail. I think they offer a full explanation of the bill. I do not think it is necessary for me to go through the bill section by section at this time and tell what the bill does or does not do.

The debate on the bill so far has been very disappointing to me. We have not seen the forest for the trees. As a matter of fact, we let one tree get in our way so that we could not see the forest at all. We have been quibbling over whether or not serving railroad equipment with ice brings certain employees under the provisions of the act. The answer is that there was no intention to bring them in. There was no such intention on the part of those who wrote the bill. The committee by unanimous vote—and I made the motion in committee—placed certain language in the report showing that the committee was of the opinion that the ice companies and certain other services somewhat connected with the railroads were not to be brought under the terms of the bill.

There are important matters in the bill which ought to recommend themselves very strongly to Members of the Senate. I agree with the majority leader that we are in a rather unfortunate parliamentary situation, with Congress getting ready to adjourn, the House having passed the bill at a very late date. Since it was a revenue bill we were estopped from considering the subject until the House sent us a bill. In the closing of the session perhaps every member of the committee will not have a full opportunity to satisfy himself as to all of the provisions of the bill. The bill is rather large, comprising 60 pages. It is a technical bill; it is not a bill which may be read in half an hour and be thoroughly understood in all its particulars.

The provision relating to coverage, to which I referred a moment ago, is a very difficult one to write into the bill. The proponents of the bill were trying to bring under the bill and into the retirement system only the men who are doing railroad work. Sometimes, as was stated by the Senator from Montana a few moments ago, the railroads contract for some of the work which formerly was done by railroad employees. In that way, of course, the railroad retirement system has lost certain employees, unless they are also brought within the system.

It was to take care of situations of that kind and to meet arguments made on that basis that the bill was introduced. There have been a number of suits in the courts on the point of whether certain employees were covered. The proponents of the bill and its authors were trying to correct that situation and to make it perfectly plain to everyone who was covered and who was not covered.

I agree with the majority leader that their efforts left something to be desired, and even today the matter of coverage is not clear. But all that can be corrected. If we wish to pass the bill, if we are in favor of the larger provisions of the bill, the matter of coverage can be corrected, if it is necessary to correct it. Frankly, I doubt whether it is necessary to do so. I think perhaps the report which came from the committee clears up the whole matter in a satisfactory way, and I do not believe anything will come from it.

Mr. PEPPER. Mr. President, will the Senator yield to me?

Mr. JOHNSON of Colorado. I yield.

Mr. PEPPER. I shall not prolong the discussion on that point, because, as the Senator from Colorado has said, no doubt it has already been unduly magnified. However, I wish to say that I do not see anything in sections 2, 4, and 5, which I think are the pertinent sections on this point, which would prevent the carrying out of the declared intention of the committee, as stated in its report, which has been called to the attention of the Senate and has been put in the RECORD, namely, that ice plants and warehouse

plants, unless they are owned and controlled directly or indirectly by the railroads, are not affected, nor are trucking companies or companies engaged in the trucking business, unless they are directly or indirectly controlled by a common carrier, as defined in the Interstate Commerce Act.

In addition to that, I do not find in those three sections or in any other section language as to coverage which in my opinion would be held by a court to outweigh the declarations of opinion which have been expressed on this floor or which are stated now by the Senator from Colorado, who is handling the measure, which previously has been handled in the Senate by the able Senator from Montana [Mr. WHEELER], the chairman of the Interstate Commerce Committee, and by the able Senator from Kentucky [Mr. BARKLEY], the majority leader.

So it seems to me that these expressions by the committee and by Senators who have debated and discussed this matter should make it preeminently clear that any possible ambiguity should be resolved in favor of limited coverage; and, as a matter of fact, it seems to me that the people who fear they would be covered unintentionally have no justification for such a fear, because we know that the courts in interpreting ambiguous language in a legislative enactment will always look at the legislative history of the enactment, to see what was the intention of Congress, and they will read the congressional debates in order to see what was the purpose and the intention. So the courts will read this debate in order to see what was the purpose and the intention of the Senate when it gave its assent to this measure, if it does do so.

Mr. HAWKES. Mr. President, will the Senator yield to me for a moment?

Mr. JOHNSON of Colorado. I yield to the Senator from New Jersey if he wishes to ask a question.

Mr. HAWKES. I simply wish to ask a question and to say a word to the Senator from Florida.

Mr. JOHNSON of Colorado. Very well; I yield.

Mr. HAWKES. Let me say that I agree with the Senator that the courts can look to the debates on the floor of the Senate, in order to obtain the proper interpretation of the language contained in the bill, unless the language in the bill is so clear that the courts think they do not need to refer to the debates. But let us always remember that the courts are not bound by the debates on the floor of the Senate.

Mr. PEPPER. Yes; we all know that, Mr. President.

But I wish to call attention to the fact that, taking the interpretation as it is intended here, and as we are now discussing it upon this floor—as being the meaning of the language—there is still a scope and a sphere in which all the other language of the pertinent sections will have meaning and force and effect. For example, the provision that people who have arrangements with a carrier or otherwise under section 2 are covered, can exclude the ice people and the warehouse people and the trucking people, and at the same time it can cover all the many other independent contractors who are rendering service for the railroads. So that language will have meaning and significance, even if we interpret it as not covering the ice people, the warehouse people and the trucking people whom we do not wish to have covered.

It appears to be clear that in the closing hours of this session of the Congress we are faced with the question whether we wish to pass a bill which will confer benefits on more than a million faithful railroad workers, a bill which will make provision for them in sickness, for their security in their old age, and for their support and sustenance when they are out of employment, and the like. I repeat, Mr. President, that the question is whether we wish to benefit more than a million faithful railroad workers by passing this bill, or whether the fear that a few people who are not intended to be included may possibly be included should keep us from passing this bill.

In the first place, I think it is without doubt that the courts cannot give to the words referred to a meaning contrary to that stated in the committee and in the debates on the floor of the Senate. I would not include one of these people; certainly not one of the truck people. If I thought they were going to be included, I would not vote for the bill, but I am confident they are not included. I do not wish, however, to deprive the faithful railroad workers of the beneficial provisions of this legislation. For that reason I shall vote for the bill.

Mr. JOHNSON of Colorado. Mr. President, I thank the Senator from Florida for the very fine statement he has made. It seems to me he has placed the issue squarely before us. The question is whether we are for the bill or whether we are against it. Of course, the matter of whether we shall cover into the system a few persons whom we do not wish to have included is not the issue at all.

In addition to what has already been said, I should like to state that when Mr. Robertson appeared at the House committee hearings—and the testimony I shall read will be found at page 956 of part 3 of the House hearings—the following occurred:

> Mr. HARRIS. * * * Now, Mr. Robertson, I would like to ask, merely for clarification in my own mind, about the intent with reference to coverage that is proposed in this legislation.
>
> Could you or would you state whether or not it was the intention to take in such industries as ice companies, the ice industry, cold-storage warehousing industry, cotton compresses, and so forth?

Mr. Robertson, we should remember, is president of the Brotherhood of Locomotive Firemen and Enginemen, and he is one of the proponents of the bill. In fact, he has taken the leadership in trying to have the bill enacted. This was Mr. Robertson's reply:

> Mr. ROBERTSON. Well, I can make a definite answer to that. No; it was not. We might just as well face the facts. We did not come here with any legislation designed to impose a railroad-retirement act on ice companies. We do not work for ice companies.

Of course, Mr. President, it is perfectly obvious that the folk who are interested in this whole program, in this whole system of retirement, are not interested in covering a number of others who do not work for the railroads. They want all the railroad employees to be covered, but they do not want to include any others, because that would place an extra burden on the railroad employees. For that reason, if for no other, they are glad enough to stay within their own industry.

Mr. WHEELER. Mr. President, will the Senator yield?

Mr. JOHNSON of Colorado. I yield.

Mr. WHEELER. Mr. President, for the benefit of Senators who were not present a few minutes ago, let me say that I called attention to the fact that section 2 of the bill, which was being construed as taking in ice-company employees and storage-company employees and other employees of that kind, should be considered in connection with the construction placed by the Interstate Commerce Commission on section 1 (3) of the Interstate Commerce Act. The construction the Interstate Commerce Commission has placed on that provision would absolutely eliminate entirely the ice companies and other companies from coverage.

At this point I should like to call attention to some decisions of the Interstate Commerce Commission. I hope these will be sufficient to do away with the fears of those who are afraid that ice companies or independent contractors will be included.

The first decision to which I wish to call attention is as follows:

> Storage of property transported is a transportation service only to the extent that it is necessarily incidental to the transportation of such property, and the term has been used in section 1 (3) of the Interstate Commerce Act in that limited sense.

It will be noted that reference is had to transportation as defined in section 1 (3). That case is the guaranty claim of Central Elevator & Warehouse Co. (72 I. C. C. 169), Storage Rules on Fruits and Vegetables (95 I. C. C. 87).

Here is another decision:

> Storage of commodities outside railroad cars for convenience of the shippers while markets are being sought is not properly a rail carriers' function.

That case concerns the reconsignment and storage of lumber and shingles (27 I. C. C. 451).

In the matter of allowances to elevators by the Union Pacific Railroad Co. (14 I. C. C. 315), it is said:

> Storage of grain beyond the 10-day elevation period is no part of elevation nor transportation service.

In Storage Rules on Fruits and Vegetables (95 I. C. C. 87), it is said:

> Transportation ceases with unloading of railroad car at the warehouse.

In *New Orleans Cotton Exchange* v. *Georgia & Florida Railway Co.* (146 I. C. C. 245), it is said:

> Compression of cotton is not a transportation service for the shipper, and no obligation rests upon the carrier to perform the service or to pay for it if it is performed by the shipper.

So a conclusive and absolute interpretation has been placed upon section 1 (3) by the Interstate Commerce Com-

mission. This language was used in the bill solely because the interpretations which I have cited had been made.

Mr. PEPPER. Mr. President, will the Senator yield to me while the chairman of the committee is on the floor?

Mr. JOHNSON of Colorado. I shall be glad to yield in just a few minutes.

I thank the Senator for reading into the RECORD the evidence to which he has referred. It seems to me that it should clear up the entire matter. Of course, that is what the proponents of the bill were trying to do. Many decisions have been made with respect to the question. Whether the language of the bill could be improved or not, is beside the point.

Mr. PEPPER. Will the Senator now yield to me?

Mr. JOHNSON of Colorado. I yield.

Mr. PEPPER. I wish to address a question to the able chairman of the Interstate Commerce Committee.

As specifically mentioned, those decisions pertain to ice manufacturers. I wish the Senator would give his opinion with regard to the coverage of trucking companies, and let us see if the Senator is in accord with the language of the report which reads as follows:

The committee also unanimously understands that notwithstanding the provisions of subsections (2) and (4) of section 1, there is no purpose or intent to include warehouse or trucking companies or individuals carrying on either of such businesses—

That is the carrying on of a business by truck—

within the term "employment," if they are not owned or controlled, directly or indirectly, by, or under common control with a carrier subject to part 1 of the Interstate Commerce Act.

If the Senator is in accord with that statement in the report of the committee, is it his opinion that trucking companies, trucking workers, truck drivers, and so forth, would not be covered unless the trucking company were owned and controlled directly or indirectly by carriers subject to part 1 of the Interstate Commerce Act?

Mr. WHEELER. That is absolutely correct. Of course, if a trucking company or a bus company is owned by the railroad system it is, of necessity, a part of the railroad company and comes within its control.

I have in my hand a decision by Mr. Justice Murphy in which he states:

The motor trucks transport less-than-carload lots of freight in complete coordination with the railroad service. The railroad instituted this additional method of transportation in order to furnish an improved and more convenient freight service to the public in certain areas of light traffic and in order to curtail car mileage way-freight service. Motor vehicle transportation, in other words, is merely a new method of carrying on part of its all-rail freight business in which it had been engaged for many years.

Protestants, in contending that the application in this case must be denied unless it is found that the existing motor and rail facilities are physically inadequate to handle the freight in question, are guilty of a fundamental confusion. They have confused cases like the present one, which involve simply an attempt by a railroad to improve its own existing service through the substitution of motor for rail handling of certain freight and the use of its motor carrier subsidiary for that purpose, with the quite different type of case in which an independent motor carrier seeks to inaugurate a new service, as, for example, a general over-the-road service, in addition to and in competition with other existing motor carriers who provide the same type of services.

In other words, the Pennsylvania Railroad Co. itself contended in its application that what it was using was motors and trucks as a part of its all-rail service and, of course, as such they must be and should be included in this bill, just as they are included generally under the Transportation Act. But the independent companies do not come under the bill.

Mr. PEPPER. It is not intended to cover the men who act as independent contractors in hauling materials to and from the railroad within towns and cities, and so forth?

Mr. WHEELER. Definitely not.

Mr. PEPPER. The railroad must have a proprietary interest in the truck in order to be brought under the act?

Mr. WHEELER. Yes.

Mr. LUCAS. Mr. President, is anyone covered under this bill who is not already covered?

Mr. JOHNSON of Colorado. Yes; the trucking companies owned by the railroads are covered, and the freight-forwarding companies are covered. I do not know of anyone else who is covered.

Mr. LUCAS. Am I correct in my understanding of the bill, that the two classes of persons the Senator has now designated are specifically set out in the bill as being covered?

Mr. JOHNSON of Colorado. Yes; they are specifically covered.

Mr. LUCAS. Will the Senator read the language to which he refers?

Mr. JOHNSON of Colorado. Paragraph (3) on page 2 of the bill reads in part, as follows:

Any freight forwarder: A "freight forwarder" is any person—

And then the language describes him. He comes under the bill.

Then on page 3, in paragraph (5) the following language appears:

Any person which, through any form of property interest is directly or indirectly subject to control by or to common control with a carrier—

Then if we turn to page 4 of the bill, in line 2, we find the words:

is engaged in transportation by motor vehicles.

So they are pointed out and named. They are covered by the bill.

Mr. LUCAS. Mr. President, allow me to give the Senator an example and see whether or not the warehouseman whom I have in mind would be a freight forwarder under the construction of the terms as found in this bill.

Assume that I want to ship household goods from Washington to Chicago, and wish to place them in Chicago temporarily for a period of 2 weeks, not knowing whether I will want to ship them into Wisconsin or into southern Illinois. I place those goods in a warehouse for 2 weeks' time. Are the employees in the warehouse at Chicago, as the result of that storage, covered under this bill?

Mr. JOHNSON of Colorado. Does the warehouse company belong to a railroad company?

Mr. LUCAS. No; it does not.

Mr. JOHNSON of Colorado. It is a privately owned warehouse?

Mr. LUCAS. Yes.

Mr. JOHNSON of Colorado. Such a warehouse and its employees are not covered by the bill.

Mr. LUCAS. But they are a part of the transportation activity which is taking place.

Mr. JOHNSON of Colorado. The freight forwarder who took the goods and shipped them to Chicago would be, if he issued a bill of lading, under the bill.

Mr. LUCAS. What is a freight forwarder under this bill? What does the term include?

Mr. JOHNSON of Colorado. The term "freight forwarder" is well known.

Mr. LUCAS. I know it is well known.

Mr. JOHNSON of Colorado. I will read from page 2 of the bill what is said there about a freight forwarder.

A "freight forwarder" is any person, other than a carrier, which holds itself out to the general public to transport, or provide transportation of property for hire, and which in the ordinary and usual course of its undertaking assembles and consolidates, or provides for assembling and consolidating, shipments of such property, and performs, or provides for the performing of, break-bulk and distributing operations with respect to such consolidated shipments, and assumes responsibility for the transportation of such property from the point of receipt to point of destination, and regularly and substantially utilizes, for the transportation of such shipments, the service of one or more carriers.

That is what a freight forwarder is under the bill, and a freight forwarder and employees of a freight forwarder are covered in the bill.

Mr. LUCAS. And they are not covered under the present law?

Mr. JOHNSON of Colorado. Some of them are covered and some of them are not. There have been court decisions on that point.

Mr. REED. Mr. President——

Mr. JOHNSON of Colorado. First I want to read what the committee had to say about paragraph (3). I read from the supplemental report, page 2:

Paragraph (3): Freight forwarders, while they have the characteristics of shippers relative to the railroads, have most of the characteristics of carriers with respect to their own clientele. Regulatory policy with respect to them was controversial for many years, and was finally settled by the Transportation Act of 1940.

As the Senator from Kansas well knows.

They are now subjected to regulation of much the same character as that applicable to carriers, and the fact that the regulatory policy is expressed in a separate title of the Interstate Commerce Act so as to permit more precise adaptation to the particular aspect of transportation carried on by these companies affords no sound basis for differentiating the employees from railroad employees. In any realistic sense they are part of the railroad industry and are carrying on railroad transportation.

Two of the three largest freight forwarders have been held, administratively, to be railroad controlled and are consequently covered under present law as interpreted by the

Railroad Retirement Board and the Bureau of Internal Revenue.

The definition here used to describe freight forwarders is taken from the Interstate Commerce Act with only such adaptations as are necessary to confine it to companies regularly and substantially utilizing railroads as the means of transportation.

So under existing law some freight forwarders were covered and some freight forwarders were not, but if the pending bill is approved, then all freight forwarders will be covered.

Mr. MAGNUSON. Will the Senator yield?

Mr. JOHNSON of Colorado. I promised to yield to the Senator from Kansas. I wish to finish up with the Senator from Illinois, and then I shall yield to the Senator from Kansas.

Mr. REED. Mr. President, the Senator from Kansas would like to have the Senator from Illinois listen, if he will, to what he is going to say about the error made by the Senator from Montana and the Senator from Colorado, both of whom very earnestly desire that the facts be stated. But they have put themselves a little crosswise.

The Interstate Commerce Act gives the Interstate Commerce Commission authority to regulate common carriers by railroad. In performing railroad service there are various things included in the term "transportation." I read the provision before, and I shall read it again. This is what is included in the definition of the word "transportation":

The receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.

Those all may be included and are inclued as incidental services under "transportation." But the Interstate Commerce Commission does not regulate the warehouseman. The icing man is not a carrier, but is performing an incidental service. If the railroad puts in its tariff a charge, as it does, for icing and other incidental services, it collects it, but the Interstate Commerce Commission has never undertaken to regulate these incidental services for carriers. That is the error into which the Senator from Montana and the Senator from Colorado have fallen.

The bill for the first time in my knowledge of interestate-commerce legislation and administration does include these people. The bill defines "employer," as follows:

The term "employer," except as otherwise provided in this subsection, shall mean—

(1) Any carrier: A "carrier" is any express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.

(2) Any person, other than a carrier regulated under part I of the Interstate Commerce Act, which, pursuant to arrangements with a carrier or otherwise, performs, for hire, with respect to passengers or property transported, being transported, or to be transported by a carrier, any service included within the term "transportation" as defined in section 1 (3) of the Interstate Commerce Act, whether or not such service is offered under railroad tariffs.

That is as plain as anything can be. These people for the first time, in my knowledge of interstate-commerce legislation and interstate-commerce administration, are brought within the terms of the act.

Mr. WHEELER. Will the Senator from Colorado yield?

Mr. JOHNSON of Colorado. I yield to the Senator from Illinois.

Mr. WHEELER. Since I have been referred to, the Senator will pardon me, I am sure.

I appreciate that the Senator from Kansas is a great lawyer and understands the law, but he entirely misconceives the purpose of the act. I read a portion of the act a moment ago which he read, but the Interstate Commerce Commission has repeatedly interpreted and defined the word "transportation" as used in this bill. They have said that an elevator, for instance, and other activities, icing companies, and the like, are not included in the term "transportation." They have specifically said that when a carload of wheat, or of a similar commodity is in an elevator, it is not included under the term "transportation," and that the railroad cannot be held liable. They have held that an article that is waiting to be transported does not come within the term "transportation." There cannot be any question about it at all.

While I respect the view of the Senator from Kansas on transportation, I cannot say that his conclusions with reference to matters of law in reference to this question are at all sound. I challenge anyone who has read the decisions of the Interstate Commerce Commission to come to any other conclusion than that which I have suggested.

The reason why that language was used in the bill was because the Interstate Commerce Commission itself had interpreted the word "transportation" in a limited sense, as it said in the case which I read just a moment ago.

Mr. LUCAS. Mr. President, I do not underestimate the opinion of the chairman of the Committee on Interstate Commerce, and his interpretation of what the bill means. Candidly, I have had no opportunity to analyze it from a legal angle. I presume it would take some time for one to go into a careful analysis of the decisions which have been made from time to time. However, it is something which is new, as I understand, and what I cannot understand is why so many people have been worrying me if it is as clear as the Senator from Montana claims it is. I do not say that in any disrespect at all, but I do not think there has been any piece of legislation before us in connection with which as many different people who were involved, or at least thought they were covered by the bill, came to see me.

I have heard some insinuations on the floor of the Senate to the effect that some want us to believe that the railroads are responsible for stirring up this agitation. I hold no brief for the railroads whatsoever, but I wish to say that so far as railroad men are concerned, no railroad man has ever talked to me at any time about the bill. But the iceman has been to see me, the truckman has been to see me, the warehouseman has been in, the man who makes the cups which go on the trains for drinking purposes has been in to see me, and I have another list somewhere in my files, which I am not able to find at the moment. These people are all asking for exemption from the bill.

When I talk to the brotherhood men they tell me they do not want these men included, and others who are widely interested in the bill do not want them included. Because of a parliamentary situation, we cannot offer an amendment to exclude these men, and make it certain that they are not included. It seems to me to be a rather unfortunate situation in which we find ourselves. When I talk to the brotherhood men, they say "Of course we do not want these men included," and I tell the men, "Yes, I will vote for an amendment under those circumstances to eliminate them, and I pledge myself to vote for the amendment." Then when I come to the floor of the Senate I learn from the majority leader that because of the parliamentary situation in the House we have to take the bill as it is or we get no bill at all. That is a very unfortunate situation in which to place Members of the Senate.

So far as I am concerned, Mr. President, if there is any question about any of these people being included in the over-all provision which we find in the first section of the bill, I am going to vote for an amendment that will strike it out, because I do not think they should be included, and I do not think we should take any chance of a board or a court following what the committee says in its interpretation. I have seen how courts and boards function, and we have all observed it, and the one thing we have been contending about as much as anything on the floor of the Senate is the failure of the bureaus of the Government to follow the interpretations, and the records made in the Senate in the way of interpretations of certain bills. The only way we can be sure about a thing of this kind is to write what we want into the law. That is my position.

I regret that I am in this position. I want to make it clear that I am definitely in favor of the fundamental and basic principle of the Railroad Act. I say these men are entitled to what they are asking for. But in order to give them what they are entitled to, I do not think it is fair to include every Tom, Dick, and Harry all over the country whose work is incidental to the transportation system, and who feel, simply because they serve some part of it, that they are covered by the act. We must do something about that. So far as I am concerned, I shall vote to exclude them when the time comes.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. JOHNSON of Colorado. I yield.

Mr. MAGNUSON. I merely want to ask a question. I do not disagree with the statement made by the able chairman of the committee as to how the Interstate Commerce Commission has interpreted the present Interstate Commerce Act. But we have before us a new measure. Is it not true that the measure contains greater coverage than the present law?

Mr. WHEELER. It does, and is meant to provide greater coverage.

Mr. JOHNSON of Colorado. Yes; it is meant to cover two different categories which were not included in the original act.

Mr. MAGNUSON. Let me ask a question about a freight forwarder. Suppose a freight forwarder forwards one-third his business by rail, another third by trucks, and the time is not far distant when he will forward one-third by air. Does he come under this act?

Mr. JOHNSON of Colorado. He comes under the act in that case.

Mr. WHEELER. Let me say that practically all the clerks working in freight-forwarding organizations belong to the railroad brotherhoods. A great part of the business they do is absolutely incidental to railroad transportation. Consequently there is no reason in the world why they should not come under the act.

Mr. MAGNUSON. I think that situation is changing considerably.

Mr. WHEELER. Let me say that the freight forwarders themselves have begged for legislation which would put them under the Interstate Commerce Act. I have sought to have that done, although there has been a tremendous amount of opposition to that suggestion. However, I thought it would be right to have them placed under the Interstate Commerce Act, because they render valuable service in connection with transportation. I think we have done the right thing to include them and to bring them under the act. But, Mr. President, they cannot come in and blow hot and cold on this question. They cannot blow hot one minute and cold the next minute. Yet that is what they are doing. One minute they say, "We are engaged in transportation and we want to be under the Interstate Commerce Act, and be regulated by the Interstate Commerce Commission." The next minute they say, "We do not want to be included." I have no sympathy with them when they do that.

Mr. JOHNSON of Colorado. Mr. President, I want to finish my answer to the Senator from Washington. I was interrupted, and so, did not finish it. In paragraph (3) on page 2 of the bill, after describing what a freight forwarder is, the following language occurs:

> And regularly and substantially utilizes, for the transportation of such shipments, the services of one or more carriers.

Mr. MAGNUSON. That is rail carriers.

Mr. JOHNSON of Colorado. Yes.

Then on page 6 there is a paragraph on segregation, that is assigning certain services here and there. The effect of that paragraph is to bring within the purview of the bill only that part of the freight-forwarder's activity which is in the service of the railroad. It does not bring into the bill the services the freight forwarder renders to air or to some other kind of transportation.

Mr. MAGNUSON. How can the employer I refer to be brought in?

Mr. JOHNSON of Colorado. He can be brought in if he can separate his business.

Mr. MAGNUSON. That is the thing that bothers me. At least 90 percent of the freight forwarders are freight forwarders for railroads. But I can see a condition in the very near future when a freight forwarder may use another means of transportation, and he would still be under the Railroad Retirement Act.

Mr. JOHNSON of Colorado. Not if he uses that other means of transportation exclusively.

Mr. MAGNUSON. But if he divides his business, what then?

Mr. JOHNSON of Colorado. If he is unable to make a separation himself, that is something else.

Mr. MAGNUSON. Another thing that bothers me is this: Let me give my own experience. When I was in school I worked for an ice company. The railroads would ship truck and produce and lettuce out of the city of Seattle. They needed their cars iced only about 3 days a week. We would go down to the yards and ice the railroad cars. The other 2 or 3 days of the week we would go about our other business for private individuals. The railroads paid us for our service to them. That is, they paid the company, and the company turned the money over to us. That portion of the service would be included under the act, would it not? We were paid by the railroads for the time we iced the cars for the railroads.

Mr. JOHNSON of Colorado. No, it is not meant to bring such individuals under the act at all.

Mr. MAGNUSON. I mean for the time we were paid by the railroads?

Mr. JOHNSON of Colorado. If one is a railroad employee, and is paid by the railroad, that is a different thing.

Mr. MAGNUSON. For the 2 or 3 or 4 days we worked and iced the railroad cars, for the number of days of work we were paid by the railroads. But the rest of the week we worked for someone else.

Mr. JOHNSON of Colorado. For the part of the time the Senator and his associates were employed by the railroads and were paid by the railroads for the time they were on the pay roll of the railroads they would of course be included in the Railroad Retirement Acts. But for the time they got their pay from a private ice company they would not be included.

Mr. MAGNUSON. Then, as the Senator from Michigan pointed out, I would have social security 3 days a week and railroad-retirement benefits three other days of the week.

Mr. JOHNSON of Colorado. Of course, most of the ice servicing is not handled in that way any more.

Mr. MAGNUSON. It is on the small sidings where the produce comes in perhaps only 2 or 3 days a week that it is necessary to re-ice the cars. It is still done in my State in the fruit and berry industry.

Mr. JOHNSON of Colorado. Anyone who works for the railroad and receives pay from the railroad is brought under the act.

Mr. MAGNUSON. I take the same position as does the Senator from Illinois. I want to do what is sought to be done under the basic purposes of the bill. But I am somewhat confused by the added coverage. All of us want to vote for this measure, but we are all concerned about the coverage. There is no question that the bill goes further than the original act.

Mr. JOHNSON of Colorado. It goes further with regard to freight forwarders and to truckers that are controlled and owned by the railroad company.

On the point of segregation, I want to read these words with respect to a person who works for more than one type of transportation. The language is found on page 6, line 15:

> If the Board finds that a person is principally engaged in activities other than employer activities and that its employer activities are conducted as an operation or operations separate and distinct from the operations in which it is principally engaged, such person shall be an employer only with respect to such employer operation or operations.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. JOHNSON of Colorado. I yield.

Mr. TAFT. As a matter of information, does the Senator then include motorbus operators? I have a number of telegrams from motorbus operators protesting very strenuously against the bill.

Mr. JOHNSON of Colorado. If motorbus operations are owned and controlled by the railroads they are already covered in the act.

Mr. TAFT. I do not know for certain, but my impression is that the Pennsylvania Greyhound, for instance, one of the largest operations in the country, is owned 50–50 by the Pennsylvania Railroad, and that some other Greyhound operations are similarly owned half and half. Would they be covered?

Mr. JOHNSON of Colorado. The Railroad Retirement Board has never held that the Greyhound Lines are covered by the act.

Mr. TAFT. Is the new bill exactly the same on that subject or not?

Mr. JOHNSON of Colorado. Yes; it is exactly the same on that subject. The bill extends coverage on truck lines that are controlled, whereas the present act does not include truck lines that are owned by the railroads.

Mr. TAFT. Is it not true that everyone who is not included under this system is included under the Social Security System?

Mr. JOHNSON of Colorado. I think that is correct.

Mr. TAFT. What is the difference then? Why change the present coverage? Why transfer somebody from one system which we have set up as adequate for the people of the country generally, to some other system, and introduce this complication? What is the reason for it? I think it is somewhat doubtful whether we should have two systems, but what is the use of shifting people from one to the other? Why not leave them where they are?

Mr. JOHNSON of Colorado. In these two categories I think it was advantageous to put the individuals where they belonged. They should have been put there in the first instance.

Mr. TAFT. What differences does it make? Have any of the employees of these companies asked to be transferred?

Mr. JOHNSON of Colorado. So far as I know they have not.

Mr. TAFT. Then, why should we transfer them? If they prefer the Social Security System, why not let them stay there?

Mr. JOHNSON of Colorado. Because they are railway employees and ought to be included.

Mr. TAFT. There are many other circumstances that would determine the situation. If we do not want the railroads to farm out their work they can all come under the Interstate Commerce Act. But why is not one system just as adequate as the other? Why give special privilege to certain persons and exclude others?

Mr. JOHNSON of Colorado. They were inadvertently left out of the original act. I think it is very proper that they be brought in now under this measure. But no one wants to extend the coverage beyond that.

Mr. TAFT. Who wants them brought in? I know the trucking unions are violently opposed to being brought in. Why should we step in from a supreme height and suddenly transfer a great number of persons from one system to another, when no one wants them transferred?

Mr. JOHNSON of Colorado. The railroad brotherhoods and the employees of the railroads want them transferred because they belong in that category.

Mr. TAFT. I do not understand that they want most of those who are protesting transferred.

Mr. JOHNSON of Colorado. They want those in the two categories which I have mentioned transferred.

Mr. WHEELER. Mr. President, will the Senator yield?

Mr. JOHNSON of Colorado, I yield.

Mr. WHEELER. Let me say to the Senator from Ohio that the railroad brotherhoods put up one-half of whatever is put up under the Railroad Retirement Acts, and the railroads put up the other half. What is happening is that the railroads, in order to get around the provisions of the law, have started to farm out some of their work.

Mr. TAFT. Is there any evidence that that has been done?

Mr. WHEELER. Definitely.

Mr. TAFT. Was there any evidence before the committee that there had been any serious abuse in that connection?

Mr. WHEELER. Definitely. Reference has been made to the Santa Fe Railroad, and other railroads.

Mr. TAFT. What has been described here was done during the war, because of war conditions, and not because of any particular effect of this act. Is it not natural to suppose that at the end of the war the railroads will go back to normal methods of operation?

Mr. WHEELER. Unquestionably the Santa Fe Railroad will do so. However, a short time ago, I called attention to a case involving the Pennsylvania Railroad. The Pennsylvania Railroad wanted to use trucks as a part of its transportation system, and filed an application for a truck line. The Pennsylvania Railroad applied to the Interstate Commerce Commission for authority to operate a truck line or bus line—I believe it was a truck line. The Pennsylvania Railroad was called upon to make a showing that adequate transportation did not already exist. The railroad company took the position that it was not required to make such a showing, because it was in an entirely different category from that of an independent trucking company or bus line. It contended that the truck line or bus line was part and parcel of its railroad service as a whole.

All we are seeking to do in the bill is to place the employees of truck lines or bus lines which are part and parcel of the whole transportation system in the same category with other railroad workers. When truck lines and bus lines are owned by the railroad, there is no reason why the employees of such truck lines or bus lines should not be included under the provisions of the act.

Mr. TAFT. One truck line happens to be owned by a railroad. Another truck line, alongside, is not owned by a railroad. One pays 15 percent and the other pays 5 percent, or whatever the social-security tax is. Why should there be a difference? A man working on one truck line gets certain benefits, and a man working on the other truck line gets something else. What is the reason or justification for each system?

Mr. WHEELER. If we followed the line of argument of the Senator from Ohio——

Mr. JOHNSON of Colorado. Mr. President, who has the floor?

The PRESIDING OFFICER (Mr. BURCH in the chair). The Senator from Colorado has the floor.

Mr. JOHNSON of Colorado. I am perfectly willing to yield, but I cannot hear what the Senators are saying, and confusion seems to reign supreme.

Mr. PEPPER. Mr. President, will the Senator yield for a further question?

Mr. JOHNSON of Colorado. I shall be glad to yield in a moment, but I wish to ask the Senator from Ohio a question.

Does the Senator from Ohio believe that railroad employees who are under the retirement system should allow their work to be farmed out to contractors, simply because the social-security rates are lower than their own rates? Does the Senator think that is fair?

Mr. TAFT. The effect of the rates is a very incidental question. The question whether the railroads shall be permitted to escape the operation of certain railroad laws by operating truck lines is something which must be dealt with on a far broader basis. I believe that it is a great mistake to create two systems which will be as radically different as these two will be when we get through with the bill. It seems to me that the two systems should be gradually brought together so that they will be substantially the same—if we are to have two systems. If we make such a vast difference as is proposed in the bill, then we have problems arising as to someone on one side of the street paying three times as much as someone on the other side of the street. Such a situation gives rise to all the problems which have been presented here. Fundamentally, the difficulty is in having two systems, which we are now making even more radically different than they were before. I believe that that part of the bill which conforms the Railroad Retirement Act and the Social Security Act by providing payment for survivorship, and even providing further benefits, is all right. But it seems to me that the railroad retirement system goes far beyond the Social Security System. It provides infinitely greater benefits and involves infinitely larger taxes. There is no real justification for the distinction. I think that is the problem which we must face in considering a bill of this kind.

Mr. JOHNSON of Colorado. Railroad employees see their work getting away from them and being farmed out to contractors. Naturally they are not pleased with that kind of a condition. The question has been in the courts. One case was in the courts for 8 years before it was decided.

I should like to place in the RECORD at this point a description of four or five cases.

The first case involved the coaling, sanding, and cleaning of locomotives. That was one railroad service which was taken away from railroad employees and farmed out under contract. Another case involved maintenance-of-way work. The Senator from Montana [Mr. WHEELER] mentioned that case. Maintenance-of-way work has always been done by railroad workers. It is being farmed out to contractors.

Another case involved the handling of locomotive coal and sand, unloading coal, removal of locomotive cinders, cleaning cars, and similar services. That work was let out to contractors. It is work which has always been done by railroad workers.

Another case involved freight-handling services. That work was farmed out under contract.

Still another case involved operations on railroad-owned ore docks, coal docks, sand houses, and cinder pits, and operations of railroad boarding camps—work which has always been done by railroad workers, and which is now farmed out under contract.

Another case involved railroad-controlled warehouses. In that case the warehouse was owned and controlled by the railroad.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. JOHNSON of Colorado. I yield.

Mr. TAFT. Does not the Senator believe that the difficulty was perhaps as much due to the fact that the railroad workers received higher wages than other workers, as it was to the Social Security System?

Mr. JOHNSON of Colorado. I should like to read a paragraph from a memorandum regarding railroad-controlled warehouses——

Mr. TAFT. The Social Security System is only incidental to the problem which the Senator is raising, as to whether or not railroads should farm out work. The railroads probably find that by doing so they can escape from the operation of the rules of railroad unions, and that it is cheaper to have the work done in that way. If we wish to stop the railroads

from farming out work, we ought to enact a law directly on the subject, and prohibit them from doing so. But I do not see what bearing that question has on whether or not certain workers are to be included in the Social Security System or the railroad retirement system.

Mr. JOHNSON of Colorado. I do not think we ought to enact a law prohibiting the railroads from doing what is complained of. I thought the Senator was a great believer in the free enterprise system. But when a railroad takes work away from its own employees, certainly such employees ought to come under the same retirement system that covers railroad employees.

Let me read a paragraph from the memorandum with regard to railroad-controlled warehouses. The case referred to has been in the courts for 8 years.

One wholly-owned railroad subsidiary (Duquesne Warehouse Co.) operates two warehouses owned and leased to it by the parent railroad (Pennsylvania Railroad Co.). At one warehouse the railroad subsidiary handles and stores carload sugar (all of which comes in and goes out over the railroad) under a so-called storage-in-transit privilege covered by tariffs filed by the railroad with the Interstate Commerce Commission. At the other warehouse, the railroad subsidiary handles freight which has come in, or is destined to movement, over the parent railroad's lines. The Railroad Retirement Board and the Bureau of Internal Revenue ruled that the railroad subsidiary was an "employer" under the Railroad Retirement and Carriers Taxing Acts because the unloading, storage in transit, and the subsequent loading of the sugar and other freight under the circumstances were services in connection with railroad transportation. The railroad subsidiary contested these rulings and after nearly 8 years of controversy the United States Supreme Court upheld the Railroad Retirement Board's decision.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point descriptions of the several examples of cases to which I have referred.

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

LIVING EXAMPLES OF THE FARMING OUT OF RAILROAD WORK TO CONTRACTORS OR RAILROAD SUBSIDIARIES AND OF THE PERNICIOUS CONSEQUENCES THEREOF

COALING, SANDING, AND CLEANING LOCOMOTIVES

One contractor (Colianni & Dire Co.) undertook to provide for two railroad companies (Boston & Maine Railroad Co. and Chicago & North Western Railway Co.) certain services consisting of coaling and sanding of locomotives, knocking and cleaning of locomotive fires and the wiping of engines. On one of the railroad companies the contracts cover the work in question at only four of the company's engine houses, at 18 of its other engine houses the work is being conducted by the railroad through individuals who are admittedly its own employees. Moreover, prior to the inauguration of the contracts, the operations at the four engine houses covered by the contracts were also performed directly by the railroad through individuals admittedly its own employees, and after the contracts became effective no particular changes occurred in the nature or manner of the work. The Railroad Retirement Board, after holding a hearing, issued a decision holding that the men in question had been employees of the two railroad companies and as such were entitled to the benefits of the Railroad Retirement Act, because the work was of such a nature as to make it impossible for the railroads to relieve themselves of the right to supervise the work, for otherwise the railroads could not possibly maintain their railroad time schedules. And the evidence was to that effect. The Bureau of Internal Revenue made a similar ruling in both cases. One of these companies (Chicago & North Western) accepted these rulings so that the employees doing this work on this road experience no difficulties in having their claims adjudicated, but the other company (Boston & Maine) has not accepted these rulings so that the employees doing the same work on this road have the adjudication of their claims unduly delayed. This not only demonstrates the lack of uniformity among railroad carriers in this respect, but shows further that the rights of employees to benefits are gambled with by some carriers by the means of employing a contractor to intervene between themselves and their employees.

MAINTENANCE-OF-WAY WORK

A construction contractor (Morrison-Knudsen Co., Inc.), agreed to perform maintenance-of-way work for one railroad (Southern Pacific Co.). The railroad furnished all materials, supplies, and equipment used in the rendition of the work; the contractor was merely a supplier of labor and was brought into the picture only because under the stabilization program the railroad could not pay the men prevalent higher wages, while the contractor could. The Railroad Retirement Board held the services to be covered as "employees" services performed for the railroad. The Board's decision is, however, being contested and may be thrown into the courts.

HANDLING LOCOMOTIVE COAL AND SAND, UNLOADING COAL, REMOVAL OF LOCOMOTIVE CINDERS, CLEANING CARS, AND SIMILAR SERVICES

One contractor (Shipley Co.) entered into contracts with one railroad (Chicago, St. Paul, Minneapolis & Omaha Railway Co.) covering the performance of labor in connection with the handling of locomotive coal and sand, the unloading of coal and briquets, the removal and disposal of cinders, the cleaning of cars, and similar services. The Railroad Retirement Board found that the individuals engaged in the performance of such work were subject to the railroad's authority to supervise and direct the manner of rendition of their work, and that such individuals were, therefore, employees of the railroad and entitled to benefits under the Railroad Retirement Act. The Bureau of Internal Revenue made a similar ruling. The railroad paid taxes to the Bureau of Internal Revenue under protest and thereafter brought suit against the Bureau for a refund of taxes paid. On June 14, 1946, a Federal district court (United States District Court, District of Minnesota, Third Division, Civil No. 712) found against the Government. The Department of Justice is presently considering whether an appeal should be instituted in the higher courts.

FREIGHT-HANDLING SERVICES

One contractor (New England Handling Co.) performed freight-handling services for carrier lessees (New York Central and Hudson River Railroad Co., and the New York Central Railroad Co.) of a railroad (Boston & Albany Railroad). The Railroad Retirement Board found that the individuals performing the contract work were subject to the railroad lessees' supervision and direction, and that their services were, therefore, creditable for benefits under the Railroad Retirement Act. The Bureau of Internal Revenue, however, ruled the freight-handling company itself to be an "employer" under the Carriers Taxing Act of 1937 as a carrier-controlled company performing services in connection with railroad transportation. Subsequently, the freight-handling company successfully contested the Bureau of Internal Revenue's ruling, the court finding that the company was not "directly or indirectly owned or controlled" by a carrier within the meaning of the Carriers Taxing Act of 1937 and, therefore, not properly taxable itself as an "employer" under that act. The Railroad Retirement Board's ruling was not affected in any way by the court's decision since it was based on the theory that the individuals performing the contract work were the employees of the railroad lessees, and not on the theory that the freight-handling company itself was an employer under the Railroad Retirement Act.

This leaves the situation in a very undesirable state. The Board has to pay benefits but the Bureau of Internal Revenue is not collecting taxes.

OPERATIONS ON RAILROAD-OWNED ORE DOCKS, COAL DOCKS, SAND HOUSES, AND CINDER PITS; AND OPERATIONS OF RAILROAD BOARDING CAMPS

One contractor (Addison Miller Co.) undertook to perform for a railroad (Northern Pacific Railway Co.) the operation of the latter's ore docks, coal docks, sand houses, cinder pits, and car-cleaning facilities, all owned by the railroad. In loading the ore from railroad cars into shipside, and vice versa, the contractor is performing the work which the railroad is obligated to do under its tariffs.

The same contractor also performed boarding camp operations for a number of railroads (Northern Pacific Railway Co., the Soo Line, the Great Northern Railway Co., and the Spokane, Portland, & Seattle Railway Co). Such operations consisted of furnishing meals and lodging to road gangs of the railroad companies. Both the Bureau of Internal Revenue and the Railroad Retirement Board ruled that the individuals performing such services worked subject to the railroads' control and were, therefore, employees of the railroad companies and entitled to benefits under the act. The railroads (Northern Pacific Railway Co. and Great Northern Railway Co.) brought suit against the Government for a refund of taxes paid the Bureau of Internal Revenue on the basis of such agency's ruling. A Federal district court found in favor of the railroads, and the Government is now considering whether an appeal should be taken from such adverse decision.

RAILROAD-CONTROLLED WAREHOUSES

One wholly-owned railroad subsidiary (Duquesne Warehouse Co.) operates two warehouses owned and leased to it by the parent railroad (Pennsylvania Railroad Co.). At one warehouse the railroad subsidiary handles and stores carload sugar (all of which comes in and goes out over the railroad) under a so-called storage-in-transit privilege covered by tariffs filed by the railroad with the Interstate Commerce Commission. At the other warehouse the railroad subsidiary handles freight which has come in, or is destined to movement, over the parent railroad's lines. The Railroad Retirement Board and the Bureau of Internal Revenue ruled that the railroad subsidiary was an "employer" under the Railroad Retirement and Carriers Taxing Acts because the unloading, storage in transit, and the subsequent loading of the sugar and other freight under the circumstances were services in connection with railroad transportation. The railroad subsidiary contested these rulings and after nearly 8 years of controversy the United States Supreme Court upheld the Railroad Retirement Board's decision.

RAILROAD-CONTROLLED REPAIR SHOPS

1. One railroad subsidiary (Despatch Shops, Inc.) whose stock is wholly owned by the parent railroad (New York Central Railroad Co.), owns and operates railroad freight-car repair shops at a point along the parent

railroad's main line; and has regularly performed various kinds of freight-car repairs for this parent company. The Railroad Retirement Board and the Bureau of Internal Revenue found that the railroad subsidiary was an "employer" under the Railroad Retirement and Carriers Taxing Acts because these repair services were in connection with railroad transportation. After nearly 6 years of controversy, the Board's decision was upheld by the United States Court of Appeals for the Second Circuit and for the District of Columbia.

2. A copper company (Utah Copper Co.) which owns a railroad (Bingham & Garfield Railway Co.) operates a repair shop for the railroad's equipment. The Board held the company to be an employer with respect to this repair shop only because the repairing of railroad equipment is a service in connection with railroad transportation. After nearly 4 years of controversy, the Board was upheld by the United States Court of Appeals for the Tenth Circuit, and the United States Supreme Court refused certiorari.

3. One railroad subsidiary (Lenoir Car Works) wholly owned by its parent railroad (Southern Railway Co.) manufactured railroad cars, supplies, and parts, and made repairs to the railroad equipment of its parent railroad. The Railroad Retirement Board found that such railroad subsidiary was an employer under the Railroad Retirement Act because such services were in connection with railroad transportation. After nearly 2 years of controversy, the company accepted the Board's ruling without court litigation.

LOADING AND UNLOADING OF FREIGHT CARS

One contractor (Jersey Contracting Corp.) agreed to perform for one railroad (Pennsylvania Railroad Co.) the loading and unloading of freight to and from cars, vessels, and platforms, and the transfer between cars, vessels, and platforms of freight arriving by vessel or car at certain piers and docks. The piers and docks are all owned by the railroad company, which also owns the machinery used by the contractors in the handling of the freight. The Railroad Retirement Board, the Bureau of Internal Revenue, and the Social Security Board all ruled the individuals performing the contract work to be the employees of the railroad company, since it was being performed subject to the railroad's supervision and direction. The railroad company's reply to all three rulings is a suit in the United States Court of Claims against the Bureau of Internal Revenue for a refund of taxes paid pursuant to that agency's ruling. To date that suit has not been decided by the court, and the rights of the employees in question to benefits under the act have changed from a reality intended by the act to a question mark.

FREIGHT-FORWARDING COMPANIES

Freight-forwarding companies assemble freight in less-than-carload lots from various shippers, and when they have accumulated enough to make a carload going to the same destination they ship it via the railroads under carload, rather than less-than-carload, rates, thus competing with trucks by taking away the business from them and giving it to the railroads.

The services they perform are clearly loading and unloading of railroad freight and should be covered under the act, regardless of whether they are railroad controlled. Whether or not freight forwarders are shippers as far as the railroads are concerned, they are clearly carriers of railroad freight as far as the public is concerned.

Of the three major freight-forwarding companies in existence, the Board ruled that two of them (National Carloading Corp. and Universal Carloading and Distributing Co., Inc.) are railroad controlled, and, therefore, are covered by the act. The third (Acme Freight Forwarding Co.) has not been found to be railroad controlled, and for this reason the Board, under the present law, could not rule it to be an employer under the act. The result is that the first two are being discriminated against because the third has a competitive advantage over them. Of those two, one (National) has complied with the Board's ruling for several years, but the other one (Universal) has questioned the Board's ruling all along. Because of this, the first (National) is now also questioning the Board's ruling.

Since all three of them perform the same railroad services, regardless of whether they are railroad controlled, the only sane solution to the problem (and in order not to give any of them unfair competitive advantages over the others) is to cover them all, regardless of railroad control over them.

Mr. JOHNSON of Colorado. I am sure the Senator from Ohio does not advocate that each of these border-line cases go through the courts and remain in the courts for perhaps 8 years before a decision can be obtained. It would be better for the employees of the companies, as well as for everyone else concerned, to have the matter settled by an act of the Congress. That is exactly what we are attempting to do at this time.

Mr. BARKLEY. Mr. President, will the Senator from Colorado yield to me?

Mr. JOHNSON of Colorado. I yield.

AMENDMENT TO RAILROAD RETIREMENT ACTS, ETC.

The Senate resumed consideration of the bill (H. R. 1362) to amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter D of chapter 9 of the Internal Revenue Code; and for other purposes.

Mr. SWIFT. Mr. President, I should like to ask the Senator from Colorado a question. In paragraph 4, beginning on page 2 and ending on page 3, it is proposed to cover any person engaged in rendering certain services. The language at the end of the paragraph is, in part, as follows:

> With respect to passengers or property transported by railroad, at point of departure or shipment or at destination or between such points.

The words "or between such points" are what I should like to have cleared up.

As an illustration, suppose that a shipment of forest products, such as cross ties, timbers, piling, poles, or anything of that nature, is shipped from a point in the Gulf coast area under a through bill of lading to, let us say, Chicago. On that bill of lading there is a stop-over privilege for treatment of the shipment. The privilege is accorded to the shipment to stop at Cairo, Ill., for example, for creosoting. That shipment is handled by the railroad on a through bill of lading from the point of origin to final destination. But, as I have said, a stop is made at the plant at Cairo for treatment. The plant has an arrangement with the railroad to treat such articles in transit. Would the employees of that treating plant be covered?

Mr. JOHNSON of Colorado. They would not. The same situation was suggested in regard to milling. Wheat, for example, is shipped on a railroad and goes to a mill. It is then ground into flour and the flour is shipped from the mill. Under those circumstances the employees of the mill would not come under the act.

The Senator referred to the words "or between such points." That language takes care of the cleaning of engines, the cleaning of cars, examining and treating hotboxes, or matters of that kind which would ordinarily be handled by employees of the railroad.

The Senator is talking about shipments. While, of course, shipments are closely related to transportation, a distinction must be made between the shipment itself and the equipment used in the transportation of the shipment.

Mr. SWIFT. The language first refers to services. Near the end of the paragraph at the top of page 3 the language reads:

> Property transported by railroad, at point of departure or shipment or at destination or between such points.

Reference is there made to property transported by railroads between certain points.

Mr. JOHNSON of Colorado. The Senator may read what is said in line 1, page 3. There the language is, in part:

> Constitutes a part of or is necessary or incidental to the operation or maintenance of way, equipment or structures devoted to transportation use—

And so forth. I wanted to invite the attention of the Senator to that limitation.

On page 2 the language is, in part:

> Is of such nature as to be susceptible of indefinitely continuous performance—

And so forth. That refers to services to cars and engines which are beginning to be farmed out to contractors.

Mr. SWIFT. The language near the end of the paragraph at top of page 3 contains the words "with respect to passengers or property transported by railroad."

Mr. JOHNSON of Colorado. Yes, or services rendered with respect to passengers. Passengers or property are hauled. That would be service which was rendered. But passengers are not covered under the bill, and neither is the freight.

Mr. SWIFT. I am receiving many requests from persons to tell them whether they come under the bill. I am really trying to clear up the matter in my own mind.

Mr. JOHNSON of Colorado. I know the Senator is. I may say that I have been called out of bed many times during the past 10 days by persons who called me over the telephone and asked whether they came under this bill.

Mr. SWIFT. The difficulty is that some folks have a habit of calling us late at night and others have a habit of calling us early in the morning.

Mr. President, allow me to cite another illustration of the point which I have in mind. Let us take, for example, manufactured articles such as agricultural machinery, which is moving from a point on the Great Lakes or on the Ohio River from Pittsburgh, say, or Cincinnati, down to Tennessee over the TVA inland waterway system, under a through bill of lading from the factory, first by water transportation and then by rail transportation to a ship at some port, as, for example, Savannah.

Let us say that the shipment has moved from Chicago to Savannah. There are many points on the Tennessee River where commodities are taken from the barge line, reloaded into cars, transported by the railroad to the port, and the bill of lading is a through bill of lading from the point of origin to the ship. Do the stevedores or other persons handling that commodity, when it is taken off the barge, put on the car, and at the port taken off the car and delivered to the ship, come under the bill?

Mr. JOHNSON of Colorado. The service rendered by the railroad would of course come under the bill and the employees taking part in that service would be covered. But all others would not be covered. I invite attention to page 5, line 5, where the following language appears:

> By reason of operations in the conduct of which such person holds itself out directly to the public as a common carrier by water, air, or motor- or animal-drawn vehicle, or as a contract carrier by any of such means, other than contract carrier service regularly offered to railroad passengers, shippers, or consignees pursuant to arrangements with an employer such as defined herein.

At the beginning of the paragraph it is stated that those are exceptions.

Mr. SWIFT. I thank the Senator for his explanation. The Senator has said there are only two categories which are not already included.

Mr. JOHNSON of Colorado. That is correct.

Mr. SWIFT. But there are nine numbered sections of the bill describing the persons who are included.

Mr. JOHNSON of Colorado. That was for purposes of clarification. As I indicated once before, there are many cases in the courts in connection with the problem of coverage. The question is not exactly a new one. It has been a difficult one from the beginning. The reason for the language in the bill is to clarify the subject of coverage. As I have already said, the authors of the bill have left something to be desired in connection with the clarity of some of the statements which the bill contains, but the intention was to keep those cases out of the courts so that they could be determined by an act and not be drawn out through the courts year after year. We wanted to in this bill settle the question of coverage.

Mr. SWIFT. If the Senator will permit one more observation, did it not take a great many words to clear it up, and is not the use of too many words by those who draw an act a very good way of getting the matter into court?

Mr. JOHNSON of Colorado. I do not claim to be an expert at drafting laws, and I had nothing to do with drafting the pending bill. That is a very technical job. It requires technicians, and it seems to me that sometimes too much language is inserted in laws.

Mr. PEPPER. Mr. President, will the Senator from Colorado yield?

Mr. JOHNSON of Colorado. I yield.

Mr. PEPPER. I think it has already been made clear, by the report of the committee, and by the statements previously made by the Senator from Colorado, and the chairman of the committee, the Senator from Montana [Mr. WHEELER], and the majority leader, that operations carried on by trucking companies are not such as to bring the employees within the coverage of the law, unless the trucking companies are owned or controlled, directly or indirectly, by a common carrier subject to part I of the Interstate Commerce Act.

To make the matter doubly sure, I wish to put to the able Senator in charge of the bill one additional hypothetical case. Suppose a trucking company does business in a city, and that a part of its business is under contract with a railroad company, under which they pick up and deliver certain property for the railroad company. Would the fact that an incidental part of the business of that generally operated trucking company is pick-up and delivery service for the railroad bring the trucking company within the coverage of the act, if the trucking company is not owned or controlled, directly or indirectly, by a railroad or carrier covered by part I the Interstate Commerce Act?

Mr. JOHNSON of Colorado. I do not quite understand the contract the Senator mentions. He says it is delivery service that is contracted by the railroad company. Will he clarify that a little?

Mr. PEPPER. Does the very fact that a trucking company, engaged in the general trucking business about a city, under an agreement with a railroad company does some pick-up and delivery service for the railroad company, although it is not owned or controlled, directly or indirectly, by the railroad company, bring it under the coverage of the act?

Mr. JOHNSON of Colorado. No. In that case the employees of the delivery service would not be covered. I call the Senator's attention to page 3 of the bill, paragraph (5), line 10, where he will find this provision:

> Any person which, through any form of property interest, is directly or indirectly subject to control by or to common control with a carrier and which—

Then, skipping over the intervening language, the sentence is finished with the words on page 4, line 2:

> is engaged in transportation by motor vehicles.

Mr. PEPPER. In other words, in the case I put, the employees of the trucking company would not be covered by the act?

Mr. JOHNSON of Colorado. That is correct; they would not be covered.

Mr. PEPPER. I thank the Senator. I wanted to make the point doubly clear.

Mr. DONNELL. Mr. President, will the Senator from Colorado yield?

Mr. JOHNSON of Colorado. I yield.

Mr. DONNELL. During the course of the debate the majority leader introduced into the RECORD a portion of the report of the Committee on Interstate Commerce appearing on pages 6 and 7. In the course of the portion of the report that was introduced is this language:

> Many representations have been made to the committee indicating that persons (other than carriers subject to pt. I of the Interstate Commerce Act) engaged in manufacturing, harvesting, storing, distributing, selling, or delivering refrigeration or ice to or into equipment used for refrigeration purposes in connection with the transportation of passengers or property are included in the term "employer," and that therefore their employees will be considered to be railroad employees. The committee would like to state categorically that there is no purpose or intent to include such person as employers under the act and that it is the unanimous understanding of the committee that such persons are not so covered. The committee also unanimously understands that notwithstanding the provisions of subsections (2) and (4) of section 1, there is no purpose or intent to include warehouse or trucking companies, or individuals carrying on either of such businesses, within the term "employer," if they are not owned or controlled, directly or indirectly, by, or under common control with, a carrier subject to part I of the Interstate Commerce Act.

Does the Senator regard the paragraph which I have read as of importance in determining the intent of the Senate in adopting the proposed legislation, if we do adopt it?

Mr. JOHNSON of Colorado. I think it is important to show the intent of Congress in enacting the legislation inasmuch as so many persons throughout the country have become concerned about the matter. Telegrams and telephone calls have come in from veterans and others inquiring whether they were covered and the committee thought it advantageous to make it clear to them that they were not covered by the proposed legislation. It is included as much as an assurance to the inquirers who have sent in the messages, indeed, more so, than for any other purpose, because we wanted to show the intent of Congress, and we wanted to assure people who were concerned, and industries concerned.

Mr. DONNELL. Does not the Senator agree that this paragraph could not do more than express the intent of the Senate, namely, one branch of the Congress, and could not directly or indirectly express the intent of the House of Representatives?

Mr. JOHNSON of Colorado. Oh, of course, we could not express the intent of the House of Representatives. But I call the Senator's attention to the fact that the bill could not pass without the action of the Senate.

Mr. DONNELL. But does not the Senator think this paragraph, directly or indirectly, indicates, or tends to indicate, what the House of Representatives felt and what it understood when it passed the bill?

Mr. JOHNSON of Colorado. Of course we have no way of knowing, at least the Senator from Colorado has no way of knowing, what the intent of the House of Representatives is, other than from the hearings.

Mr. DONNELL. There is no statement the Senator knows of, is there, issued officially by any Member of the House of Representatives or by the House itself, as a declaration, which would define, in similar effect as does the quoted paragraph, what the conclusion of the House of Representatives is as to whether these various refrigeration, ice, and other companies are included?

Mr. JOHNSON of Colorado. This is the only thing I know of on that point: A Representative whose name is HARRIS asked Mr. Robertson, the president of the Locomotive Firemen and Enginemen, the following question in the House hearings:

> Now, Mr. Robertson, I would like to ask, merely for clarification in my own mind, about the intent with reference to coverage that is proposed in this legislation.
>
> Could you or would you state whether or not it was the intention to take in such industries as ice companies, the ice industry, cold-storage warehousing industry, cotton compresses, and so forth?

Mr. Robertson, who was a witness before the House committee, replied——

Mr. DONNELL. He was a witness; he was not a Member of the House of Representatives?

Mr. JOHNSON of Colorado. He was a witness appearing before the committee of the House. Mr. HARRIS is a Member of the House, and propounded the question to Mr. Robertson. Mr. Robertson, who is the president of the Locomotive Firemen and Enginemen, as I have said, made this reply:

> Mr. ROBERTSON. Well, I can make a definite answer to that. No; it was not. We might just as well face the facts. We did not come here with any legislation designed to impose a railroad-retirement act on ice companies. We do not work for ice companies.

That is the only evidence I have, other than the fact that certainly the House has received many letters and telegrams and inquiries, as the Senate has. Members of the House no doubt have received just as many inquiries as we have, or more. Yet they were satisfied with the bill as is, and passed the bill as is. So I take it for granted that the House must have given consideration to these points and satisfied itself with respect to the matter and passed the legislation with that knowledge.

Mr. DONNELL. But the Senator does not know of any declaration similar to the paragraph I have quoted from page 7 of the report of the Senate Committee on Interstate Commerce which was issued by the committee of the House.

Mr. JOHNSON of Colorado. No; I do not.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. JOHNSON of Colorado. I yield.

Mr. TAFT. The Senator says that a company icing cars is not subject to the provisions of the act. Suppose the railroad itself in some cases were icing cars and proceeded to transfer that function to a private company.

Mr. JOHNSON of Colorado. That is, farm it out by contract?

Mr. TAFT. Yes; farm it out by contract. Would the Senator say that the new company was subject to the act?

Mr. JOHNSON of Colorado. Yes; if the railroad company owned the ice house and owned the ice and simply made a contract with someone to ice the cars out of the railroad's ice house.

Mr. TAFT. Suppose the railroad sold its ice house to someone and transferred the whole business to him.

Mr. JOHNSON of Colorado. I do not think he would be covered by this measure.

Mr. TAFT. The Senator thinks he would not be covered. So it depends upon the character of service as to whether there is coverage or not. Is that correct?

Mr. JOHNSON of Colorado. It depends on the service rendered to the railroad. If men are working for the railroad company most of their time, they are employees of the railroad company, of course.

Mr. CONNALLY. Mr. President, will the Senator yield?

Mr. JOHNSON of Colorado. I yield.

Mr. CONNALLY. Is not this one of the tests? For instance, the railroads in many cases operate their own trucks as a part of their business. In such a case, of course, the employees on the trucks would be covered.

Mr. JOHNSON of Colorado. Yes.

Mr. CONNALLY. But on the other hand, if a trucking company simply brings the goods to the railroad and delivers them to the railroad, its employees would not be covered.

Mr. JOHNSON of Colorado. No.

Mr. CONNALLY. Because they are working for the trucking company, and it is only an incident of their employment that they haul the freight to the depot or put it on the cars. But if the men are in the employ of the railroad they would be covered. Is that correct?

Mr. JOHNSON of Colorado. That is correct. That is my interpretation.

Mr. CONNALLY. That is the Senator's theory at least. That is the contention of those who favor the bill.

Mr. JOHNSON of Colorado. That is the contention of the proponents of the bill and the authors of the bill.

Mr. CONNALLY. I am sympathetic with the Senator's attitude. If that be true, would there be any objection to an amendment making that absolutely clear? There is evidently some confusion, because some contend one way and some contend another way.

Mr. JOHNSON of Colorado. The difficulty in amending the bill is this: The parliamentary situation is such that there is not likely to be a conference on this bill. If any amendment goes into it, there probably will not be a conference and the bill will not be enacted into law. That is the reason we are trying to get away from amendments to the bill. The bill contains 60 pages. It is unreasonable to expect that anyone can write a bill and have it perfect in all details and in all particulars, and have it satisfactory in every way. That simply cannot be done.. It is a physical impossibility to do so, and every Senator knows it. I do not care how expert the author may be; he cannot write that kind of a bill. Of course, there are little things about the bill that perhaps should be corrected. But the major things in the bill are so much more important than the little matters which should be corrected and perhaps clarified by amendment, and since we are in the parliamentary situation in which we find ourselves, I for one am willing to accept some of the small matters that are not of such great importance in order to get the larger things which I consider to be of great importance. Every Senator, of course, will have to make up his own mind and take his own position on that matter. Therefore, so far as I am concerned, I am willing to accept the bill as it is, because after going over it from one end to the other and studying it very carefully I find that it contains much merit. It contains many splendid provisions. We either have to take the bill, unsatisfactory as it is in some details, in order to get any bill at all, or have no bill. So far as that is concerned, another bill could be started through the House and through the Senate to correct any of these matters that need to be corrected and clarified before any great harm can be done. No harm will be done anyway.

Another bill can follow this bill which will correct such matters. I have no doubt it will do that. The sponsors of the bill have certain amendments which they are ready to offer to the bill, all amendments dealing with little details that need to be corrected. So the opponents and the proponents both are in favor of some amendments. No doubt a bill will come along which will correct all the things that will need to be corrected in this piece of legislation.

Mr. KNOWLAND. Mr. President, will the Senator yield?

Mr. JOHNSON of Colorado. I yield.

Mr. KNOWLAND. I should like to say to the Senator first of all that it seems to me to be very bad legislative practice to have legislation of this importance and of this magnitude and so far-reaching as this is, come to the Senate under the general theory, as propounded by the majority leader and by the able Senator from Colorado who is handling the bill, to the effect that due to the limitations of time under which we are laboring the Senate has either to take it or leave it, so to speak. I do not think we are per-

forming our correct legislative function if we become jockeyed into such a position. It seems to me that if the facts are as the Senator presents them—and I have no doubt he feels they are—that certain ice companies and others are not expected to be included under the bill, it would be a very simple process to have an amendment put into the bill making is a sound piece of legislation, so that there could be no question of doubt in anyone's mind, and then have the House accept the Senate's amendment. If the facts are as presented in the report of the committee, there is no question of doubt on the part of any Member of the Senate, be he a proponent or an opponent of this legislation, that such amendments are sound and are reasonable. So I do not believe the argument that we are running up against a time limitation should prevent us from correcting the bill so that there could be no question of doubt in anyone's mind about it.

Now I call the able Senator's attention to this fact: He will notice in the committee report——

Mr. JOHNSON of Colorado. If the Senator will permit me, I should like to comment on his observations on that point. This legislation has been pending for a long long time in the House. This is not the first bill dealing with the matter. Similar bills were pending even before this session of the Congress. This bill went to a committee in the House. I am not criticizing the House. They were acting as they thought they should act, and patriotically, and I do not quarrel with them. But the fact is that the bill did not come out of the committee that handled the matter on the House side until it was petitioned out, and then when it was petitioned out it was delayed, and House action was very slow on it, and it came to the Senate only in recent days. We completed our hearings on the measure in 1945, but the Senate could not proceed because this bill affects the revenue, so it must originate in the House. The Senate was helpless in the matter.

I am informed—I do not know whether the information is correct, but I believe it to be—that if we amend this bill in any particular, the committee which is handling it in the House is very likely to hold it and not take it to conference. So the bill will die.

Mr. KNOWLAND. I will say to the Senator, in response to his statement, that it seems to me that as Members of the Senate of the United States we have a responsibility to see to it that no bill is passed by the Senate which is not in as sound shape as it can possibly be put into, because to do otherwise is to avoid our responsibilities.

I might observe in passing that this seems to me to be a very great argument for some streamlining of Congress such as proposed by the able Senator from Wisconsin [Mr. LA FOLLETTE], who has worked in this body over a period of many months in order to streamline the legislative processes, so that in the closing hours of a congressional session we will not be presented with what in effect is an ultimatum that we have to take this without even crossing a "t" or dotting an "i." I sincerely believe that that is a most unsound legislative procedure.

Mr. WHITE. Mr. President, will the Senator yield?

Mr. JOHNSON of Colorado. I yield to the Senator from Maine.

Mr. WHITE. The Senator has—I do not know whether "complained" is the right word or not, but the Senator made reference to the fact that there has been an inadequacy of time to give consideration to this legislation. The truth of the matter is that this bill passed the House and came to the Senate on the 3d day of July. Today, I believe, is the 25th day of July. More than 3 weeks have passed since the bill came from the House to the Senate. The Committee on Interstate Commerce in that 3 weeks of time has held one meeting of approximately 1 hour, given to this bill, and that entire time was devoted, I think I am justified in saying, to making explanations as to why Senators knew nothing about the legislation, and why they regretted to vote upon the bill. The fault is not altogether with the calendar and with the clock. The fault lies with the Members of the Senate, and particularly with the members of the Committee on Interstate Commerce.

Mr. JOHNSON of Colorado. Let me say in reply to the Senator that according to the data we have here, the bill came from the House on July 5, and it came out of committee on July 12. That is a period of 7 days. We have had the bill on the calendar for 12 days, of course; but the Senator from Maine knows very well that our calendar has been full. We have been working all the time. We have had to handle many important matters as quickly as possible.

Mr. WHITE. I recognize all that. It is perfectly true that we have been working all the time. We have been overworking all the time. To me that is another reason why we should not attempt, in the closing days of a session of Congress, with no adequate consideration having been given to a measure 60 pages long, to pass it without even looking it over once.

Mr. JOHNSON of Colorado. The Senator will have to reach his own determination on that point.

Mr. SMITH. Mr. President, will the Senator yield?

Mr. JOHNSON of Colorado. I yield.

Mr. SMITH. I should like to ask a few questions of the distinguished Senator from Colorado with regard to the pending measure. I wish to clear up my own thinking. Possibly it may be helpful to have some of these questions answered in the RECORD.

As I understand, the bill involves two separate funds. The first is the so-called retirement fund, which is contributed to by both the employer and the employee—that is the railroads and their employees.

Mr. JOHNSON of Colorado. That is the retirement system.

Mr. SMITH. I understand from my study of this matter that that fund is not adequately financed, and that there should be some strengthening of the financing of the fund. That is one of the purposes of the bill.

Mr. JOHNSON of Colorado. It is admitted to be not actuarially sound.

Mr. SMITH. That is what I understand. On the other hand, there is a fund known as the unemployment-insurance fund, which has an accumulation of approximately $790,000,000 in it.

Mr. JOHNSON of Colorado. Seven hundred and thirty million dollars, according to the latest figures I have heard.

Mr. SMITH. I understand that the drain on that fund up to date has been not to exceed $14,000,000 or $15,000,000 a year, so far as it has been used to meet the unemployment requirements. Therefore, there is a larger amount in that fund than is immediately needed. The suggestion has been made to me by those who have studied the bill that an adjustment might be made—and this is a very fundamental part of the bill—between the money which comes into the retirement fund and the money which comes into the unemployment-insurance fund, to the end that the railroads may not be called upon to increase their contributions to the fund because of the fact that if they do increase their contribution, as called for in the bill, possibly $100,000,000 more a year will be required, which will inevitably mean an increase in freight and passenger rates and a tendency to boost prices—something that we are trying to avoid all along the line to prevent inflation.

I am raising the question as to whether those conclusions are correct, and what the Senator has to say with regard to them. Let me make one further observation before the Senator answers the question.

I understand that objection is raised to making a change in the amount which goes into the unemployment insurance reserve because of the desire to increase the benefits from that reserve. Yet if those benefits are increased such action will throw that reserve out of line with unemployment insurance benefits in other industries, thereby placing railroad employees in a preferred position as compared with other industrial workers.

I should like to have those points clarified in my own mind, because it seems to me that they have a great bearing on the soundness of legislating to prefer one group of our society over other groups. It seems to me that we should be thinking in terms of the general policy under the Social Security Act, as well as under this act.

Mr. JOHNSON of Colorado. The general Social Security Act may be all right; but the fact is that the railroads and the railroad employees pioneered in this field.

Mr. SMITH. I realize that, I give them great credit for it. I am for their fund. I think they are working on the right basis, and I think every group should try to improve its position. But it seems to me that if we are to legislate for one special group we should think of our national policy on the subject and consider whether we should give one group privileges which another group does not have.

Mr. JOHNSON of Colorado. The railroad employees and the railroads are financing their own railroad retirement system. Both parties are trying to put it on a sound actuarial basis.

I do not know that I completely understand the Senator's question in regard to the unemployment insurance fund. I hope that he is not advocating taking money out of one fund and transferring it to the other.

Mr. SMITH. No.

Mr. JOHNSON of Colorado. That ought not to be done. The unemployment insurance fund is contributed solely by the railroad companies, by the employers. I think, perhaps, one or two or three States have permitted employees to participate in social security unemployment insurance; but the railroad fund is contributed entirely by the railroads themselves. I think, perhaps, the reserve is larger than it needs to be, and that with the proper kind of legislation perhaps the railroads could be temporarily relieved of contributing to that fund, which, of course, would give them considerable relief without endangering the fund. Whenever the fund dropped below a certain point, of course, their contribution would have to be increased.

But that is not in this bill. I hope that before too long some legislation will come from the House on that subject, which will give the railroads some relief, which I think they could very safely have without jeopardizing the unemployment fund. So far as the Senator from Colorado is concerned, he would vote for that kind of a bill. I would vote for that kind of a provision in this bill if I thought that we could go to conference and come out of conference—as we usually can—with legislation. But we face a situation in which we almost know that if we amend this bill in any way we cannot come out of conference with a bill. Of course, that does not give us a fair opportunity to make the proper arrangement.

Mr. SMITH. I should like to make my position clear. I did not intend for a moment to be understood as advocating taking any of the unemployment insurance fund for the retirement fund. I did intend to suggest that inasmuch as the railroads are paying 3 percent a year, as I understand, into the unemployment insurance fund, so long as a large reserve exists they might pay a smaller percentage into the insurance fund and a larger percentage into the retirement fund; and, as the Senator suggested a moment ago, as the reserve became lower and lower they would pay a higher percentage into the reserve. I think the Senator's suggestion is sound. I understood that such an amendment was suggested in the House, and that the amendment was incorporated in the committee version in the House. I understood that both the brotherhoods and the railroads were willing to adopt that kind of a plan. Now a change is made, and the railroads are called upon to increase their participation, which it seems to me inevitably will call upon them to go to the Interstate Commerce Commission and request an increase in freight and passenger rates. If that is to be the result, I think we are legislating pretty fast in determining a policy of that kind overnight.

Mr. JOHNSON of Colorado. Does not the Senator believe that another bill could follow? This is not the last Congress that will ever sit. That idea could be incorporated in a subsequent bill, and I am sure it would meet with favor in this body. It seems to me that the idea is perfectly logical. No one wishes to collect a great deal more money from the railroads than is needed to build up the reserve to its proper level. The reserve should not be built up far beyond the need. I am sure that we do not want to do that.

Mr. SMITH. If I may say so to the Senator, with all due respect to him, the fallacy in his suggestion is that this bill contemplates an increased tax on the railroads and increased benefits from the insurance fund, which no other social security group enjoys. I refer to health benefits and other benefits.

Mr. JOHNSON of Colorado. The increases in benefits do not amount to very much. I think they have been over emphasized.

Mr. SMITH. That is the point on which I am seeking information. What are the differences?

Mr. JOHNSON of Colorado. I know that the pending bill does not provide for spending all the accumulated reserves. The increases in benefits are very moderate. I am sure that if we pass this bill as it is, legislation will follow which will do what the Senator is suggesting. Some relief will be given to the railroads with respect to the payment of unemployment insurance, to as great an extent as it is safe to go.

Mr. SMITH. I do not want relief for the railroads. Let me make myself clear. I do not believe that the railroads are asking for relief. But they are asking not to be taxed more now if they are to be compelled to request rate increases.

Mr. JOHNSON of Colorado. I think the Senator must keep the two systems separate. We must not run them together, because they are two entirely different systems. I think it is unfortunate that the two of them are in this bill. I think they should be legislated on separately. That is my own private opinion. But we have legislation on both systems in the same bill. However, another bill could follow from the House if such is the desire of the House. I am sure that the railroads could be granted relief if it were properly safeguarded. It would have to be properly safeguarded so that whenever the reserve fell below a certain amount the rates would be increased.

Mr. SMITH. I agree with the Senator on that point. I think that is the real way to deal with a fund of that kind. When the reserve gets down to the danger point the rate should be increased, and it should be adjustable along that line.

I am simply suggesting now that with this large reserve the amount needed for the retirement fund could be taken care of by reducing the rate which the railroads pay for the other fund. If that were reduced to approximately 2½ percent, exactly what is needed for this fund could be obtained.

Mr. JOHNSON of Colorado. Of course, Mr. President, I do not think the railroads are entirely without blame in this matter. I think they did everything they possibly could do to obstruct the passage of the proposed legislation in the House and in the Senate. I do not think they tried to reach a basis of equity as between their employees and themselves. If they had made a different approach to this whole matter I think that today we would have a much better bill. But they have been obstructionists, so far as this proposed legislation is concerned, all the way along.

Mr. SMITH. Then, does not the Senator think that a matter of this kind should be adjusted on the basis of the collective-bargaining principle, as between the railroads and their employees, rather than to have us serve as arbiters between the employees and the railroads? That is what troubles me. I believe in the insurance fund. I wish to make the system as strong as possible. But I am seriously concerned about being required to vote in haste "yea" or "nay," when I think the proposal is fiscally unsound. I also think it will involve an increase in freight rates, and that will be another element in the picture.

Mr. JOHNSON of Colorado. I think that that position is sound. I do not think the Senate often has an opportunity to vote for perfect legislation. But this measure is a long step in the right direction, and it could be followed by other steps. Other corrections can come from the House and from the Senate, and we can fix up the matters that are troubling the Senator from New Jersey.

Mr. SMITH. I thank the Senator. I feel a great sense of responsibility in a situation of this kind.

I feel that what the Senator from California [Mr. KNOWLAND] said a moment ago is very much to the point. I feel that we are abdicating our responsibilities as Members of this body if we say that we cannot make any changes or any amendments because it is too late in the session to do so. That position seems to me to be indefensible.

Mr. JOHNSON of Colorado. No; I think it is a matter of taking two bites at it. I think two bites should be taken. That is my position.

Mr. SMITH. Is the Senator from Colorado willing to eliminate from this bill certain features which can be fitted into the next bill; and is the Senator willing to have this bill passed in that way, without having it contain those features?

Mr. JOHNSON of Colorado. I should like to have this bill passed as it is, and I should like to see separate legislation enacted later. I think that is the only way we can handle the matter. We must take into consideration the long months of delay which this bill encountered in the other body. We cannot ignore that. I say to the Senator that this is not the first bill on this subject which has been in such a situation. At other sessions of Congress the railroad employees have tried to obtain legislation to correct the situation insofar as they were concerned, and such bills have been introduced early in the session; but they simply were placed in pigeonholes, and nothing came of them.

Now this bill has gotten this far. It had to be petitioned out of the House committee; and on the floor of the House amendments were offered to it both by the proponents and by the opponents. That indicates, of course, that the bill is not exactly perfect. But the only

way we can secure the enactment of this measure—and we know it—is to pass the bill as it is, and then let the corrections come, as they will come.

If we pass this bill as it is, I think I can almost assure the Senator from New Jersey that the corrections which he has in mind will come about. They will follow. It will not be nearly so difficult to get those corrections as it has been to get this original bill.

Mr. KNOWLAND. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. HOEY in the chair). Does the Senator from Colorado yield to the Senator from California?

Mr. JOHNSON of Colorado. I yield.

Mr. KNOWLAND. Relative to the information which was obtained at the hearings before the House committee, let me inquire whether it is a fact that a bill substantially the same as the bill now before us was introduced in the House and was referred to the Committee on Interstate and Foreign Commerce, and that committee held on that bill extensive hearings, which lasted over a number of months? Witnesses were heard. Witnesses from labor, from management, and from other interested groups testified. The committee worked on the measure and finally rewrote it. The bill was reported from the committee. Then on the floor of the House an amendment was offered, and it completely did away with the bill as reported by the committee and returned the bill to substantially the same form as when it had been originally introduced, the form in which it was prior to the time when the hearings were held. It not that a substantially correct statement of the facts?

Mr. JOHNSON of Colorado. Yes; that is correct. The bill now before us was passed by the House of Representatives, without amendment, by a vote of 235 to 49. The hearings were held, as the Senator has stated; and I have procured for the benefit of the Senate the House hearings on the bill. I have kept them all these months. I got 100 copies of them from the House committee just as soon as the hearings were finished. The hearings before the House committee began on January 31 and ended on April 26. As soon as the hearings were concluded I asked the chairman of the House committee to give me 100 copies. So those hearings are now on the desks of all Senators. I have kept the copies for that very purpose.

Mr. KNOWLAND. That is the very point I am raising. The hearings were held, and all of us have the several volumes on our desks now. As a result of those hearings, the members of the committee, who had listened to all the testimony contained in the three volumes, completely or substantially rewrote the bill, based on the testimony which had been presented to them. The committee submitted its report to the House of Representatives. Then, on the floor of the House, the recommendations of the committee were ignored, even though the committee had gone through such extensive hearings; and on the floor of the House there was offered as an amendment to the bill as reported by the committee, the original bill which had been introduced prior to the holdings of any hearings whatsoever.

Mr. JOHNSON of Colorado. The majority of the committee did rewrite the bill; there is no question about that. The committee was sharply divided, however.

But I desire to call the Senator's attention to this fact, which is very significant: They did not rewrite the bill and they did not prepare legislation, as I understand it, until the petition was filed and until sufficient signatures were secured to the petition to force the bill to the floor of the House. When that was done, I am informed, a majority of the committee hurriedly prepared the substitute and reported it from the committee. That substitute was rejected by the House. Then the original bill finally came before the Committee of the Whole of the House, and it was amended. It was amended by the opponents of the bill and by the proponents of the bill, until virtually the same language as that of the substitute proposal was placed in the bill. That was done by the House, sitting in Committee of the Whole. When the House came out of Committee of the Whole, the House voted out all of the amendments which had been put in by the proponents and the opponents, and that brought them back to the original bill, and the House finally passed the original bill and sent it to the Senate.

Mr. KNOWLAND. I thank the Senator for his statement.

Again I call the Senator's attention to the section of the committee report dealing with the fact that it was not the intent of the Senate committee to cover refrigerating plants and warehouses and trucking companies. I understand that the Senator from Colorado has stated that there is no intent that they be covered by the bill, although there is grave doubt in the minds of many persons regarding that matter.

What concerns me at that point is that inasmuch as the committee report lists three or four specific cases, I wonder what the situation is in the case of a firm of a type which is not listed in the report. Is not the impression then given that anyone else, anyone except those that are mentioned in the report, would be covered under the act?

Specifically I wish to ask the able Senator from Colorado this question: In his opinion, are water carriers covered under the bill as now written?

Mr. JOHNSON of Colorado. No; water carriers are not covered under the bill.

Mr. KNOWLAND. So far as I can ascertain from the report, water carriers are not among the groups listed as being exempt, in the view of the committee or according to the intention of the committee. I may have missed the statement, and I wonder whether the Senator from Colorado can call my attention to a place in the report where such a statement appears.

Mr. JOHNSON of Colorado. There was no necessity for including such a statement. No one ever intended or considered that water carriers would be covered.

Mr. KNOWLAND. Let us consider the situation of a water carrier on the Great Lakes, for instance, where the cargoes are unloaded from the railroads and are loaded onto barges or ships, and then move in transit, and finally are unloaded from the barges or the ships and are placed back on the railroads again. Is it the Senator's statement that in his opinion such a water carrier is not covered under the bill as now written and is not intended to be covered?

Mr. JOHNSON of Colorado. No; such a water carrier is not covered in the bill now pending before us.

Mr. KNOWLAND. And is it the Senator's opinion that no water carrier is covered under the bill, except one that might be owned by a railroad?

Mr. JOHNSON of Colorado. Ownership and control applies to trucks, and no one who was considered to be a water carrier would in any way be covered by the bill. Water carriers and their employees are not covered by the bill.

Mr. DONNELL. Mr. President, will the Senator yield?

Mr. JOHNSON of Colorado. I yield. However, I have promised the Senator from Nevada [Mr. MCCARRAN] that I will yield to him.

Mr. McCARRAN. Mr. President, if I may have the attention of the minority leader, I ask unanimous consent that the Senate proceed to consider Calendar No. 1698, Senate 2359.

Mr. JOHNSON of Colorado. Will the Senator from Nevada withhold his request for a moment? I wish to complete my reply to the Senator from California.

Mr. McCARRAN. I withhold my request.

Mr. JOHNSON of Colorado. I invite the attention of the Senator from California to page 5 of the bill where a list of exclusions is set forth. He will notice the words: "by reason of operations in the conduct of which such person holds itself out directly to the public as a common carrier by water, air, or motor or animal-drawn vehicle, or as a contract carrier by any of such means, other than contract carrier service regularly offered to railroad passengers," and so forth.

That is the language which covers the point which the Senator from California has raised, and it excludes a water carrier from the provisions of the bill.

Mr. KNOWLAND. Is it the Senator's opinion that it is not the intention of House bill 1362 to extend coverage to maritime employees, seamen, longshoremen, dock clerks, warehousemen, and others who are not employed on a railroad?

Mr. JOHNSON of Colorado. For the most part, the answer is that they are not included, but in some cases stevedores are included. However they are included already under the present act.

Mr. KNOWLAND. The Senator said "in some cases." For the benefit of the record, in the event that a judicial determination is made later, will the Senator differentiate between some who might be included and some who might not be included?

Mr. JOHNSON of Colorado. Where freight is unloaded by a stevedore from a freight car directly onto a ship, and he is paid by the railroad company, of course he would be covered.

Mr. KNOWLAND. Yes; if he is a railroad employee.

Mr. JOHNSON of Colorado. If he is paid by the railroad company he would be covered.

Mr. KNOWLAND. But if he is not paid by the railroad company, what then?

Mr. JOHNSON of Colorado. If the employment is railroad employment, of course the man would be covered.

Mr. KNOWLAND. We understand that railroad employees are covered. I do not believe there is any question in any Senator's mind on that point. But the question which we are now trying to determine is whether a person who is not a railroad employee, and is not on the pay roll of a railroad, is covered under this bill.

Mr. JOHNSON of Colorado. He is covered under the bill if railroad employment is farmed out to him. If he contracts to do railroad work, he is covered under the act.

Mr. KNOWLAND. How does the Senator differentiate with reference to some other type of firm, such as an icing firm which, perhaps, is furnishing services and materials to railroads, and to others in connection with similar activities?

Mr. JOHNSON of Colorado. There are many borderline cases and when the bill is finally enacted into law it will be the purpose of the sponsors of the bill to offer a concurrent resolution correcting some of the typographical changes which need to be made in the bill. The concurrent resolution will also contain a provision attempting to clarify the coverage points which have been raised.

Mr. KNOWLAND. With all due respect to my able colleague from Colorado, I feel very strongly that the correct place to clarify these matters so that there can be no question about them later, is in the bill. If it is the intention of the proponents of the bill that such persons or such firms as those to which the Senator has referred are not included, I can see no objection to the Senate making the necessary correction by amendment on the floor, and sending the bill back to the House where the amendment can be accepted.

Mr. WHERRY. Mr. President, will the Senator yield?

Mr. JOHNSON of Colorado. I will yield in a moment. I wish first to reply to the Senator from California.

Mr. WHERRY. There are other Senators who are very much interested in the points which the Senator from Colorado is attempting to clarify.

Mr. JOHNSON of Colorado. Will the Senator allow me, please, to answer the question of the Senator from California?

Mr. WHERRY. I merely wished to ask the Senator from Colorado to yield in order that I might suggest the absence of a quorum.

Mr. JOHNSON of Colorado. I wish first to complete my answer to the Senator from Colorado. He asked me what distinction could be made. When a railroad company holds itself out to deliver freight to a ship, for example, and the employment of a stevedore is a part of the fulfillment of the contract, of course the stevedore is covered by the bill.

If the railroad company holds itself out to deliver freight to a dock, the stevedore who takes the freight from the dock and puts it on the ship is not covered by the bill.

I know that these lines of demarcation are difficult, but I think there is no question about the point which I have just explained.

Mr. McCARRAN. Mr. President——

Mr. JOHNSON of Colorado. I now yield to the Senator from Nevada, but it is perfectly all right with me to have a quorum call.

Mr. WHERRY. I did not want to take the Senator off his feet, but I knew that the point the Senator from Colorado was discussing with the Senator from California was of interest to many Senators who are not present at this time, and before a vote is taken on the bill they will probably be asking similar questions of the distinguished Senator. Many of the questions already asked will be asked all over again.

Mr. President, I feel that if we are to continue to hold night sessions there should be a quorum present in the Senate Chamber. At the present time there are present only a few Members of the Senate. So far as I am concerned, I shall not object to the Senate proceeding to consider the bill which the Senator from Nevada desires to have disposed of, but I know there are Senators who are interested in the pending bill and want to be present.

If the Senator from Colorado feels as I do, I will suggest the absence of a quorum.

The PRESIDING OFFICER. Does the Senator from Colorado yield for that purpose?

Mr. JOHNSON of Colorado. Does the Senator insist on suggesting the absence of a quorum before the Senator from Nevada succeeds in having the Senate dispose of the bill which he wishes the Senate to consider?

Mr. WHERRY. I do not insist on doing anything at all, but I think there should be a quorum present in the Chamber.

Mr. JOHNSON of Colorado. Let us first allow the Senator from Nevada to make his request. The bill to which he refers is a noncontroversial measure.

AMENDMENT TO RAILROAD RETIREMENT ACTS, ETC.

The Senate resumed consideration of the bill (H. R. 1362) to amend the railroad retirement acts, the Railroad Unemployment Insurance Act, and subchapter B and chapter 9 of the Internal Revenue Code, and for other purposes.

Mr. WHERRY. Mr. President, if the Senator from Colorado does not object, I suggest the absence of a quorum. I should like to say also that we want a real quorum present if we are to have any at all.

Mr. JOHNSON of Colorado. The calling of a quorum will not take me off the floor, will it?

Mr. WHERRY. Mr. President, I ask unanimous consent that the Senator from Colorado be allowed to resume the floor immediately after the quorum call has been disposed of.

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

The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Austin	Hawkes	Moore
Ball	Hayden	Morse
Barkley	Hill	Murdock
Brewster	Hoey	Radcliffe
Brooks	Huffman	Reed
Buck	Johnson, Colo.	Revercomb
Capehart	Johnston, S. C.	Russell
Capper	Kilgore	Shipstead
Carville	Knowland	Smith
Connally	La Follette	Swift
Cordon	Langer	Taft
Donnell	McCarran	Thomas, Okla.
Ferguson	McClellan	Thomas, Utah
Fulbright	McFarland	Vandenberg
George	McKellar	Wheeler
Green	McMahon	Wherry
Guffey	Magnuson	White
Gurney	Mead	Wiley
Hart	Millikin	Young

The PRESIDING OFFICER. Fifty-seven Senators having answered to their names, a quorum is present.

AMENDMENT TO RAILROAD RETIREMENT ACTS, ETC.

The Senate resumed consideration of the bill (H. R. 1362) to amend the railroad retirement acts, the Railroad Unemployment Insurance Act, and subchapter B and chapter 9 of the Internal Revenue Code, and for other purposes.

Mr. JOHNSON of Colorado. Mr. President, I wish to refer very briefly to some of the things the bill does. Certainly the Senate does not have freedom from fear, because we have been discussing provisions which appear in the bill of which the Senators seem to be afraid. I wish now to discuss some of the things which the pending measure really does.

First let me say that the railroads and the railroad employees were the pioneers in developing security. For more than 50 years they have had pension plans, which have been of great advantage to the railroad companies, to the employees, and to the shippers. The shipper is very directly interested in good service. He receives good service when the railroad employees are enthusiastic about their vocation and their industry. So everyone has been benefited by it.

But during the depression, in the early thirties, it was disclosed that the pension system which had been set up by the railroad companies had no reserves, and the men were being paid out of current receipts of the railroad companies. So when the hard times came, when the depression came, at the very time when the pension moneys were needed most, the railroad companies had to curtail the pensions from 10 to 40 percent. The late Joseph Eastman, who was one of the Interstate Commerce Commissioners, was considerably troubled by the plans which the railroad companies had of paying the pensions out of current receipts instead of building up reserves. So the matter came to the Congress, and in 1934 a retirement plan was passed by the Congress. The Supreme Court declared it unconstitutional. Then another plan was worked out by the Congress, and passed, and immediately litigation ensued. I do not know that the second plan which was passed in 1935 was declared unconstitutional. I do not recall, but at least there was litigation in connection with it, so it never became operative.

About that same time the social security law was made effective, and the 1935 statute exempted railroads from the social-security law. Then finally the railroad companies and the railroad operatives sat around the table together and worked out a retirement plan and an unemployment-insurance plan, and both sides agreed at that time that no question would be carried to the courts in regard to the validity of the retirement plan. The companies and their operatives worked out a very good plan, but the plan which they worked out is not actuarially sound. The Railroad Retirement Board, which is made up of a representative of the railroads, a representative of the employees, and a representative appointed by the Treasury, representing the public interest, declared in 1941 that the plan which had been set up by the Congress for the railroad men was not actuarially sound, and that the rate would have to be increased. The employees themselves reached the decision that the rates would have to be increased. Congress passed the law, and Congress must assume responsibility for making the plans actuarially sound. Congress has a responsibility in this matter.

I know that social security is not actuarially sound—everyone knows that—yet Congress keeps postponing year after year the increased payment on the part of the employees and on the part of industry by way of contribution which each shall make to social security. Congress has been warned by Mr. Altmeyer time without number that if that shall be continued, and a reserve not be built up, sooner or later the Government will have to make a contribution to social security. But no one has offered the suggestion that the railroad-retirement plan is eventually going to be supported by the Federal Treasury. No one has that idea in mind. The railroads themselves and the railroad workers want to make the plan actuarially sound so it will stand on its own feet, and be contributed to solely by the railroad employees and by the railroads themselves.

So much for that, Mr. President. I think it also should be said that the railroads require as workers the most alert persons who can be secured. Railroading is a serious business. A few weeks ago an engineer on a train moving out of Chicago at 80 miles an hour, an old engineer of the road, a trusted and faithful and dependable man, for some reason or other had some sort of a mental lapse for a second or two. He did not observe that the signal was in "caution." In another split second he noticed a stop signal ahead of him, and, of course, he slapped on the brakes, but it was too late. He plowed into another passenger train and there was a tremendous loss of life, and a million dollars' worth of property was destroyed. Such things are apt to occur in railroading all the time. Railroad men have to be alert. They have to be enthusiastic about their work. There is no industry which depends so much upon alertness and efficiency—and I might say enthusiasm—on the part of the employees for success as does the railroad business. That is one of the reasons why the railroad companies were so anxious 50 years ago to

establish pension systems, and that is why the railroad-pension systems have worked so well because mankind has always wanted security. That is instinctive in mankind. A man tries to get security. If he is working in an industry which furnishes him security, he is going to be more satisfied and do better work. At least that has been the experience of the railroad companies.

The plans which were worked out in 1937, through collective bargaining, between the employees and the employers, while they represented a great step forward, did not do a perfect job. The most glaring deficiency in the present law is in regard to disability benefits. This bill corrects that deficiency in respect to disability benefits. What do Senators think of a provision which requires a man, before he can draw annuities, to be totally disabled for employment in any capacity, of any kind, not simply railroad employment? He must be unable to do anything at all, to entitle him to draw annuities. He must be 65 years old, or he must have served 30 years for the railroad company. If he does not meet these qualifications he does not get his total disability payment.

Under the pending bill that situation is being corrected, as it ought to be corrected. The previous situation was disgraceful, if I may say so. Under the provisions of this bill a man who has served a railroad for 10 years, I think it is, and becomes totally disabled for railroad work, is entitled to disability benefits. What does that cost the railroad companies? It costs the companies $10,625,000 to make that change in respect to disability. Those figures are based on a pay roll of $2,500,000,000, and which is what the railroads contend the pay roll is going to be. So making that change in disability benefits will cost the railroads $10,625,000, and it will cost the men that much too. This is a 50–50 proposition. Whatever it costs the railroads it costs the men. The men are anxious and willing to meet that requirement.

About one-fourth of the 60-page bill which Senators have before them provides for survivor and death benefits. The survivor and death benefits, with a pay roll again of $2,500,000,000, are going to cost the railroads $29,375,000 and they are going to cost the men $29,375,000. But the survivor and death benefits which the railroad employees are going to receive are all contained in the social-security law. They are in the social-security plan. The only difference is that under the pending bill they are increased about 25 percent above the benefits under the social-security plan. But we must remember that railroad employees pay six times the amount of pay-roll taxes that a person pays under the social-security plan, and why should not they be entitled to a little more benefit when they pay six times as much? They are given a 25-percent better arrangement than is provided in connection with the social-security plan.

Another change which is made by the bill is that the minimum annuity payable to railroad men is increased from $40 to $50 for men who have had 17 years of experience. If a man has had 17 years of experience on a railroad, his minimum annuity is increased by the bill from $40 to $50. That increase will cost the railroads $375,000 and it will cost the men $375,000.

The provision that a maximum of $120, as the total amount, can be paid is not changed by this bill. The average annuity payment under the retirement plan is $67. Does not the Senator think that is moderate? Does he think there is anything extravagant or luxurious about such a payment? Of course, the answer is that there is not.

Something has been said about the great benefits that are to be given under the unemployment-insurance plan. The Senator from New Jersey [Mr. SMITH] asked some questions about that a while ago. He inquired about the great benefits that are now proposed by the bill, in connection with unemployment insurance. Let me state what the benefits will be. Under the provisions of the bill, unemployment due to sickness will be regarded the same as unemployment due to lack of a job. That may be an innovation, but is it not justice? The older railroad men are in no danger of losing their jobs, because they have seniority. If such a man has worked for a railroad company for 10, 15, or 20 years, he will not have any unemployment due to a shortage of jobs, because if there are any shortage of jobs in the division in which he works, the men without seniority will be laid off.

But the older men, in many instances the gray-haired men, will have sickness, and they are entitled to insurance to take care of their situation when they are sick.

Another change which the bill provides is in connection with unemployment insurance. The present law provides for the payment of $4, in the case of men whose salaries are $1,600 and over. Under the pending bill a ceiling is established. Under existing law, every man is paid $4 a day if he draws $1,600 or more a year. That is the top. Under the bill he will get $4 a day if his annual salary is between $1,600 and $2,000. If his salary is above $2,000 and under $2,500, he will get $4.50 a day; and if his salary is above $2,500, his unemployment-insurance payment will be $5 a day. Mr. President, there is nothing extravagant about that. These rates were deemed necessary in order to bring the unemployment-insurance plan within some range of the social-security benefits. We do not go way beyond the social-security benefits. We are simply attempting to bring the railroad unemployment-insurance benefits within the range of those benefits. The benefits I have enumerated are, in many instances, below the social-security rates in some of the States.

So there is nothing extravagant about this bill. There is nothing about it which should not be adopted by the Congress. We have a few fears about a few of the details of the bill. But the bigger things, the important things, are not extravagant. They should be adopted, and I am sure they will be adopted by the Senate.

I notice that the railroad companies claim that the bill will cost them $100,000,000. The part of the bill which makes the unemployment system or the retirement system actuarially sound takes up 60 percent of that amount. Sixty percent of the $100,000,000 is needed in order to make the system sound, as Congress promised the men it would be. If the figure of $100,000,000 is correct, 60 percent of that amount will go to make the system actuarially sound. When the law was first enacted, Congress pledged that the system would be actuarily sound; and 60 percent of the $100,000,000 will do that. Forty-three million dollars-plus will be for the so-called increased benefits and increased annuities. I cannot see why a piece of legislation should be hailed as completely devastating, when it provides for benefits of 40 percent of $100,000,000 for increased annunities and for increased benefits.

I am sure the bill is nothing of the kind. I am sure it is a very progressive piece of legislation. I think it should be passed by a very large vote in the Senate, just as it was passed by a large vote in the House of Representatives. In the House, the vote was 235 to 49. I believe that the Senate should pass the bill by at least a corresponding majority.

I realize that there are 60 pages of very technical language in the bill, and of course there will be a great many questions. I have tried to answer the questions which have been propounded up to now. As other questions occur to other Senators while the bill is under consideration, we shall try to supply the answers.

I do not think it is necessary for me to attempt to describe the bill any further. If there is any particular interest in any special part of the bill, we shall try to supply the answers to the questions which may be propounded.

Mr. CAPEHART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CAPEHART. Will the Chair state what the present parliamentary situation is?

The PRESIDING OFFICER. The bill is pending before the Senate and is open to amendment.

Mr. CAPEHART. Mr. President——

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

The PRESIDING OFFICER (Mr. REED in the chair). Does the Senator from Indiana yield for that purpose?

Mr. CAPEHART. I do.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Aiken	Capper	Gurney
Andrews	Carville	Hart
Austin	Connally	Hawkes
Ball	Cordon	Hayden
Barkley	Donnell	Hill
Bilbo	Downey	Hoey
Brewster	Eastland	Huffman
Brooks	Ferguson	Johnson, Colo.
Buck	Fulbright	Johnston, S. C.
Burch	George	Kilgore
Bushfield	Gerry	Knowland
Byrd	Green	La Follette
Capehart	Guffey	Larger

Lucas	Murray	Taft
McCarran	O'Daniel	Taylor
McClellan	O'Mahoney	Thomas, Okla.
McFarland	Overton	Thomas, Utah
McKellar	Pepper	Tobey
McMahon	Radcliffe	Vandenberg
Magnuson	Reed	Wagner
Maybank	Revercomb	Walsh
Mead	Russell	Wheeler
Millikin	Shipstead	Wherry
Mitchell	Smith	White
Moore	Stanfill	Wiley
Morse	Stewart	Willis
Murdock	Swift	Young

The PRESIDING OFFICER. Eighty-one Senators have answered to their names. A quorum is present.

Mr. HOEY. Mr. President, I offer the amendment, which I send to the desk and ask to have stated.

The PRESIDING OFFICER. The amendment offered by the Senator from North Carolina will be stated.

The CHIEF CLERK. It is proposed to strike out all of section 1, and renumber the remaining sections of the bill; and on page 60, it is proposed to strike out lines 18 through 20.

Mr. HOEY. Mr. President, the purpose of this amendment is clearly indicated by the language of the amendment. It would strike out section 1 of the bill. This section is the one which increases the coverage of the law. If this section were stricken out the coverage of the bill would be exactly as it now is in the law.

I cannot subscribe to the view that we ought not to make any change in the bill. The House of Representatives did not have the opportunity to pass upon any of the several amendments which were offered in the House, because the vote was had upon the amendments en bloc. When the committee in the House of Representatives considered the bill it made more than 20 amendments. The Committee of the Whole in the House adopted almost all those amendments. Then when the matter came before the House of Representatives the vote was had upon the amendments en bloc. So no opportunity was given to the House to vote on any of those amendments. The House either had to kill all of them or adopt all of them, and therefore they were not adopted and the bill was passed as introduced.

The suggestion is made that the committee report will allay the fears of those who believe that the bill would cover them. I cannot subscribe to that position. The language of the bill is clear and unequivocal. It denotes just who is to be included. There is no means by which the statement of a committee in support of a bill can modify or change the plain written words of the bill.

If there is any ambiguity about this, the report of the committee might be useful in enabling the court properly to interpret the matter; but when the language is clear and unequivocal no purpose would be served because the court would construe the act according to its language.

Mr. President, let us see what is the purpose of section 1. The committee says that it is not the purpose to cover a large number of persons who apprehend they are covered. If the object is not to cover them, why is section 1 placed in the bill? It covers nearly 8 pages. There are 11 subsections under section 1. Why was it necessary to write in the bill 11 subsections?

In the committee report, on page 6, there is the following statement:

> The bill brings under the Railroad Retirement and Unemployment Insurance Acts two new groups of employers, namely, railroad-controlled trucking companies and those freight forwarders that are not now covered. The railroad-controlled trucking companies are operated as part of the railroad plant for the performance of railroad transportation.

If the purpose of the bill is to include only those two classes, why does not the bill say so? Why was it necessary to write 11 subsections to section 1? If it is the purpose of those who are sponsoring the bill to cover only those two classes, why does the bill contain 8 pages in setting forth the first section?

Mr. PEPPER. Mr. President, will the Senator yield?

Mr. HOEY. I yield.

Mr. PEPPER. I wish the Senator from Colorado would state what he stated earlier in the day.

Mr. JOHNSON of Colorado. Mr. President, will the Senator yield to me?

Mr. HOEY. I yield.

Mr. JOHNSON of Colorado. I stated this afternoon that the reason for all the language to which the Senator has referred is to enable the entire matter of coverage to be clarified. A great many cases with regard to the subject have been in the courts and some of them have been in the courts for a long time. It was necessary to have a clarification of the point which has been raised. Otherwise every little question which might be raised would have to go through the courts and finally to the Supreme Court. Of course, no one wants that to be made necessary. So it was essential in the bill to clarify the matter of coverage.

Mr. GERRY. Mr. President, will the Senator yield?

Mr. HOEY. I yield.

Mr. GERRY. I cannot understand the argument of the Senator from Colorado. When a new statute has been enacted for the purpose of clarifying something, the courts then have to pass upon the matter. Therefore, we are no better off than before.

Mr. HOEY. The Senator is correct. Let us examine the statement of the Senator from Colorado. He is a good lawyer.

Mr. JOHNSON of Colorado. No; I am not a lawyer at all.

Mr. HOEY. I submit that section 1, instead of clarifying, confuses the whole issue. That section not only confuses the question but leaves an absolute doubt as to who is covered. Under the present law it has been practically settled, and in recent years there have been practically no cases in the courts with regard to who was covered by the law. The Senator is as familiar with Supreme Court decisions in regard to this subject as I am, and he knows that in recent years there has been very little controversy with regard to who is covered, because the matter was previously settled. The language of this bill would open Pandora's box.

Let us consider a few passages of the bill.

Mr. HAWKES. Mr. President, will the Senator yield?

Mr. HOEY. I yield.

Mr. HAWKES. I think that I may be in position to throw a little light on the reason for consuming so many pages in setting forth the section to which the Senator from North Carolina has referred, in an effort to define coverage. In the hearings before the subcommittee on Senate bill 293, I wish to read briefly from the testimony of Mr. Leo M. Nicolson, warehousing consultant. Mr. Nicolson said:

> Well, I would think, Senator, that you might just as well scrap the Social Security Act and let everybody come under the Railroad Retirement Act, and treat them uniformly, and then go along from there, because I can't think of any industry which manufactures any product—

He then mentioned some of the products—

> which are subsidiaries, stores for hire its steel products in normal peacetime operations. Most everybody buys a quantity of a certain type and kind of bar or sheet or something else, and they want it stored for them until they call for it. The steel company, or through its warehouse, assesses a storage charge for this service. That is storage for hire of freight which has been transported or will be transported by a common carrier.

I am now coming to a portion of the testimony which I wish particularly to read:

> We can't get away from the wording of that section. If that subparagraph (2), gentlemen, is confined to transportation as that term is interpreted by the Interstate Commerce Commission, I think all of the private industry that is opposing this bill will walk out and say, "We are entirely satisfied. We have no complaint at all. We will be perfectly willing to rely upon the wisdom of the Interstate Commerce Commission in determining what is a transportation function and what is not a transportation function under the Transportation Act."
>
> Senator WHEELER. Well, wouldn't the thing to do be to write a definition in, not leave it to a changing definition? In other words, the Interstate Commerce Commission might at some future time change their definition of what was transportation, and so forth; whereas, if you wrote definitely into the act a definition, then you would have something that would be stable.

I now skip a portion of the hearings and come to Mr. Nicolson again.

The Senator from Colorado said to the Senator from Montana, "He is talking about the law." I continue reading from the testimony:

> Senator WHEELER. I am talking about the law.
>
> Mr. NICOLSON. Oh.
>
> Senator WHEELER. I am talking about the law; I am not talking about the agency. After all, when you leave it up to the agency to define it, your agency may change its views on it. The Interstate Commerce Commission sometimes change their views, and certainly the courts of the country have changed their views quite frequently.
>
> Senator JOHNSON of Colorado. The trouble is, somebody has to interpret the law.
>
> Senator WHEELER. Surely.

Senator HAWKES. Mr. Chairman, may I, for the benefit of Senator WHEELER, the chairman of the Interstate Commerce Committee, say that Mr. Schoene—

Mr. Schoene was the attorney for the labor group—

who will appear in a few moments, has stated before this hearing that he recognized this problem and that it was a very difficult thing to define.

Is that right? Am I quoting you correctly, Mr. Schoene?

And I turned to Mr. Schoene and asked him that question.

Mr. SCHOENE. You are, Senator; yes.

Mr. President, I wish to bring that testimony to the attention of the Senate while we are discussing the amendment of the Senator from North Carolina because it was clearly shown at the time of the hearing that my good friend, the Senator from Montana, felt that the matter should be defined in the law.

Mr. HOEY. I thank the Senator. It is very evident that no one at the hearing maintained at any time that this bill contained a clear statement of who was covered. I maintain that under the coverage of the bill ice manufacturers who refrigerate cars of railroads are covered. I maintain that the bonded warehouses which store goods in transit, or goods which are to be transported on the railroad, are covered. I maintain that the truckers who haul any goods for a railroad company to be shipped by the railroad company, are covered. I maintain that any trucking company in which the railroad has an interest, is covered, and a trucking company in which the railroad has no interest would also be covered. I maintain that every commissary which furnishes anything to a railroad is covered. I maintain that stevedores are covered. Is it not beyond any question unwise for the Senate to pass a bill which contains matters about which many of the persons who are involved may be apprehensive, especially those who are engaged in business and who have any relations with railroads?

Mr. GEORGE. Mr. President, will the Senator yield?

Mr. HOEY. I yield.

Mr. GEORGE. If the Senator will permit me, I should like to propose some amendments to the bill for the purpose of having them printed. I think it is quite obvious that a final vote on the bill will not be taken tonight. These amendments relate to matters in which the Treasury is very much concerned. While they consist of 13 pages, they relate to the same subject, and I am asking that they be printed and lie on the table.

The PRESIDING OFFICER. The amendments will be received, printed, and lie on the table.

Mr. LUCAS. Mr. President, will the Senator yield?

Mr. HOEY. I yield.

Mr. LUCAS. Am I correct in understanding that the Senator is a member of the Interstate Commerce Committee?

Mr. HOEY. Yes; and I am also a member of the subcommittee.

Mr. President, the subcommittee heard testimony covering a period of many days. It submitted a report on March 15 to the full committee. In the report it was stated that this subject was so complicated that the members of the subcommittee wished the full committee to settle the matter of policy. We submitted the report, which had been written by the distinguished Senator from Colorado, and in which the controverted question was set forth. We said that before a matter of this importance should be passed on by the subcommittee, the full committee should decide on the question of policy.

I shall not discuss the entire bill tonight, but I assert that in its present condition it is a monstrosity. No legislative body should pass it. It does not meet any of the requirements. Those who are engaged in labor service, and are familiar with the bill, will not subscribe to it because it includes many persons to whom they do not wish it to be applied.

The railroads have mutually agreed about this legislation. They have agreed on former occasions. The pending bill ignores the possibility of any kind of conference being held between railroad unions and railroads in an attempt to agree about what must be done.

The railroads pay 3 percent on their entire pay roll for purposes of unemployment benefits. The employees themselves do not contribute a cent to that. That is 3 percent of the entire pay roll. Then they divide equally 3¼ percent each of the pay roll for purposes of maintaining the retirement fund. It is necessary, because of an approaching deficit in the fund, and because it is not sufficient to maintain the present retirement benefits on the present basis, on the levy which is now made. In this proposal they increase it by three-fourths of 1 percent on the entire pay roll, to make up for what would be a deficit, and actuaries say that is necessary, and certainly that should be done, because those who are now paying in should not be denied at some future date what may be due them from the retirement fund. Unless this fund is increased in the years to come it will be insufficient to meet the needs.

Furthermore, there will be this additional amount levied equally on employers, the railroads, and on the employees. It is a rather large sum, and if this proposal is enacted in this sort of fashion, it is going to dislodge, it is going to dissatisfy, it is going to change the attitude of all the people who are covered by social security, because it will mean to the railroad employees an amount far beyond anything that is granted to the others.

The railroad employees have been pretty well taken care of and I am glad they have been. They are a very fine body of men. I have much admiration for the railroad employees of the country. Some have described them as the aristocrats of labor. I am perfectly willing that they be so designated. I think they have a great spirit of loyalty to their work, and they render excellent service. I should like to see their retirement compensation increased. I think it should be done, but I believe it should be done after due consideration, and after we have weighed all the conditions, and after we see what effect it will have on the whole social-security fabric of our people. It should not be done in haste, it should not be done without consideration, it should not be done when the Senate does not know what it is doing.

There is not a single Senator, outside of those on the subcommittee, who had opportunity to hear the testimony in this case, and even those who heard it do not understand it. I place myself among that number, because it is a very complicated question; it involves a great many considerations, and is not the sort of matter which should be rushed through without giving it due consideration.

Mr. President, I am anxious to see everything done for the railroad employees which should be done, but I do not believe we should select one group and pass a bill benefiting them without giving it any consideration, and saying, "Here is a measure we are going to pass, and if there is anything wrong with it we will take care of that in the future." I do not believe that is sound legislative policy and I do not feel the Senate should do that.

Mr. BARKLEY. Mr. President——

Mr. HOEY. I am glad to yield to the Senator.

Mr. BARKLEY. I thought the Senator had concluded.

Mr. HOEY. Oh, no; I have a great deal more to say.

Mr. HAWKES. Mr. President, will the Senator yield to me for a moment?

Mr. HOEY. I yield.

Mr. HAWKES. I have made it my business in the last 2 or 3 weeks to talk to a number of conductors and brakemen who are very dear friends of mine, and I wish to say to the Senator that they tell me almost precisely what he said a few minutes ago. They are interested in one thing more than anything else in the world, that is, to be certain that the retirement fund is actuarially sound, and is kept so. They are very deeply interested in that. Of course, like everybody else in the world, they want a little more here and a little more there. So far as I am concerned, I believe, with the Senator, that this question of making the retirement fund sound should have our attention. If we will take a little time we can attend to that. I believe everybody is in favor of it, but I must say that I agree with the Senator from North Carolina that this question involves matters which affect the entire structure of the economy of the United States, and certainly affect a very vital part of the social-security system.

Mr. HOEY. I thank the Senator. It is not my purpose to discuss the merits of the entire bill. I mentioned this one matter incidentally to meet the argument that it is so important to have the bill passed immediately.

Even if the bill does not become a law until next year, when we meet in January, we can take time enough to pass a bill which will meet the situation and which will take care of the employees, will increase proportionately and properly their retirement pay, and will make secure their status for the future. I think that would be better for the railroad employees. I know it would be better for the country.

What I want to address myself to particularly is the amendment I am offering, which relates to the method of coverage. Let us analyze for just a moment the fact that the bill does not cover all the people I mention. As I said, I shall not read it at all, because it begins on the first page and embraces several sections. So I go to section 5. After mentioning several other people who are included, it says this, and these are the people to be covered:

Is engaged in performing services necessary or incidental to the conduct of the transportation carried on by such carrier, or services in the manufacture of equipment or equipment parts or in the processing of materials for use in the operation, servicing, or maintenance of way, structures, or equipment devoted to use in transportation—

And this especially—

or services in connection with the storage—

That is, warehouses—

elevation—

Grain plants, or anything like that—

or handling of property transported, being transported, or to be transported if such storage, elevation, or handling services are provided with respect to property accorded privileges of storage in transit.

It not only provides as I have read, but it takes in the other services. Let us consider the word "service" in transportation. What does it mean if it does not mean service by refrigeration plants, and all that? That language indicates just that.

Let us consider the definition given. It has been said in the argument tonight that the Interstate Commerce Commission would not interpret the bill in the way some contend, and that they do not deal with it. Let us read from the Interstate Commerce Act and see whether or not that is a proper interpretation of it. I come to section 3 of the Interstate Commerce Act, together with amendments, which defines the term "common carrier," and we find this language:

The term "transportation" as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services—

In connection with what?

in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.

That is the Interstate Commerce Act defining just what is meant.

When it is said that the Interstate Commerce Commission would not for 1 minute include this, I say it is already included, and it is included under the law creating the Interstate Commerce Commission. The very language that is used in the bill would cover icing, refrigerating plants, bonded warehouses, and any use in transportation. Then it reaches out to cover many other employees.

What sort of confusion would that cause in the minds of all these employees and employers? Let us take a bonded warehouse, for instance. Suppose it has 500 employees. If 50 of them are engaged in loading anything on cars, if they put in 50 percent of their time on such work, the warehouse has to separate them and take them out of social security—they are all covered by social security now—and put them under railroad retirement. They have to keep a record of the time they work, because if they work more than 40 percent of the time in the loading they have to come from under social security and be placed under this proposed law. What sort of confusion would that bring to ice manufacturers and trucking plants?

Let us consider a trucking concern—and such concerns operate all over the country—in which a railroad has no interest, direct or indirect, but let us suppose it has a contract to do hauling for a railroad. It would have to take all its employees who have to haul anything to be shipped under the contract, and put them under the law. The company would have to keep a record of their time, because if the hauling takes more than 40 percent of their time, they have to be included. If less than that, they are left out.

Does the Senate want to impose that sort of obligation on all those who are engaged in the trucking business? Does it want to impose that sort of obligation on those engaged in operating bonded warehouses or on ice manufacturers, and various other businesses?

It is no answer to tell us that it can be interpreted in some other way. Here is the law written plainly, and when it is written that way, how can anyone get around it? Does the Senate want to legislate with the idea that someone will come along and correct the mistakes we make?

Mr. President, I am offering the amendment in the utmost faith. If it is said that it would delay the passage of the bill, the Senate is not responsible. If the House of Representative desires, it can accept the bill when it goes over there with this amendment in it. All it does is change the coverage. The House would not even have to appoint a conference committee, if they were unwilling to accept it. The House has not had an opportunity to pass on this question separate and apart from the disposition of 21 amendments which were offered en bloc on the floor of the House.

I submit that in legislating about this matter it is the duty of the Senate to deal with the measure on the basis of what is right from the legislative standpoint, and let results take care of themselves. If it should result in the defeat of the measure I think it would be for the benefit of all concerned. If it is reviewed and dealt with in a common-sense manner, and these problems worked out so that when the bill is passed it will deal with the needs and administer to the necessities of the railroad employees, I believe they would be better satisfied.

They may be momentarily disappointed at not having the bill passed immediately. I know it has been in Congress in one form or another for some time; I heard it said this evening it has been here 3 years. If it has been here that long, is it not better to take a little longer and pass a bill concerning which we will know what it provides and what it will cost, rather than rush one through about which we are in doubt?

I am offering the amendment because I believe it would tend to relieve and would relieve the apprehensions—which I think are well founded—of those who think they are covered under the bill, and that they are going to be subjected to all the penalties and burdens imposed without either themselves or their employees desiring to be covered, against the protests of a great many railroad employees.

I have a number of telegrams from conductors and from engineers and from other railroad employees saying, "We do not want these other people taken into our organization." It is said that this bill would take in not more than 10,000. But it is not the number of individuals who are taken in that causes concern; it is the disruption and the confusion that will be caused every employer of labor who employs any of those who would be included in the law. It would disrupt the organization of the employer, for some men would be under the Railroad Retirement Act and others would be under the Social Security Act. Some would be getting the railroad retirement pay while others would be receiving other benefits, and they would be in different amounts.

I do not care to trespass longer on the time of the Senate, but I feel deeply that it would be a serious mistake to pass the bill in its present form.

Mr. BARKLEY. Mr. President, I rise in opposition to the amendment offered by my good friend the Senator from North Carolina, who, I am sure, is opposed to the legislation, aside from the amendment which he has offered.

I think it ought to be stated that there has never been any effort on the part of Congress nor any sentiment on the part of the people, so far as I know, to merge the Railroad Retirement Act and the benefits derived from it by railroad employees with the general social-security law of the United States.

Mr. HOEY. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. HOEY. I understood the Senator to say that I was opposed to the bill without regard to my amendment.

Mr. BARKLEY. I understood the Senator to be in opposition to the bill.

Mr. HOEY. I said I was opposed to it in its present form. I am in favor of increases in pay from the retirement fund. I am in favor of increased disability benefits. But I am not in favor of the bill in its present form.

Mr. BARKLEY. I understood the Senator to say that, even if his amendment to the bill were adopted and the bill were not changed otherwise, he would still not support it.

Mr. HOEY. I would not be in favor of it. I did not say that I would not support it. But I think there are other changes necessary to be made.

Mr. BARKLEY. There may be a technical difference between not being in favor of a measure and not supporting it.

Mr. HOEY. I want to say distinctly that I am not opposed to increase in payments to these employees. I should like to have it done. But I think it ought to

be done with fair regard for all the circumstances.

Mr. BARKLEY. I understand the Senator, and I thank him for the correction.

As I was saying, Mr. President, there has never been any sentiment in Congress or any effort made to merge the railroad retirement benefit laws with the general social-security laws of the country. The same is true of labor legislation. When we enacted the National Labor Relations Act and set up the National Labor Relations Board we exempted the railroad employees from its operations, because we had long before that passed a Railway Labor Act applicable to railway labor, because Congress recognized that, engaged as they were in interstate transportation, being the employees of our great transportation system, they occupied a situation which entitled them to special treatment and prior treatment before any other similar legislation was enacted in the history of the United States.

The first labor laws we passed dealt only with railroad labor. In the Adamson law away back yonder in 1916, the Transportation Act of 1920, the Railway Labor Act of 1926, and the amendments that have been added thereto, covering a period of more than 30 years, we always dealt with railroad labor separate and apart from the dealing by Congress with other labor in regard to labor relations or benefits conferred upon labor by any legislation that we might enact.

So we passed the Railway Labor Retirement Act before we passed to social-security law, and in that legislation we still kept railway labor separate and apart from the general run of employees in the United States with respect to the benefits. It would be a very difficult thing, and in my judgment an unwise thing, to try to level off and scramble the situation as between railway labor all over the United States and other classes of labor with which Congress has attempted to deal.

So that it seems to me that the argument that we ought not to deal with amendments of this law because it is not a part of the social-security system are not well founded. The coverage in the law as it now exists has not been changed by legislation since 1937—9 years.

All of section 1, which the Senator from North Carolina seeks to strike out, is nothing more than a rewriting, nothing more than a spelling out of the coverage of the present law in such a way as to clarify it and not leave it up to individual interpretation, which it has been for the last 9 years, plus the coverage of two other classes not now covered. One is the freight forwarder. The freight forwarder is engaged in interstate commerce. He is not under the act to regulate commerce. We passed a special law through the Congress of the United States dealing with freight forwarders because they are a part of our transportation system, and it is impossible to distinguish in their ordinary operations between their employees and the employees of the railroads. Therefore, in section 1 we have included this new class of freight forwarders under the coverage of the law.

The other class is the railroad-owned or controlled truck lines. The reason that they were not included when the original coverage was enacted into law was because they were under the NRA and were operating a code which was adopted in the NRA while it was in existence, and, therefore, railroad-owned trucks were not included in the coverage which we are seeking now to provide.

There is nothing complicated about it. Section 1 does take up several pages, but it is a mere rewriting of the present law, spelling out the coverage, clarifying it, so as not to leave it to individual cases for the Retirement Board to interpret whether they are covered or are not covered. We are trying to write out whether they are covered or are not covered.

The only important respect in which the legislation, as interpreted and applied by the Railroad Retirement Board, is broadened with respect to coverage is by the inclusion of freight-forwarding companies not railroad-owned or controlled and by the inclusion of railroad-connected trucking services.

In paragraph (1) of the long section 1 the definition of carrier covers the employers of the great bulk of the employees affected. That is merely a rewriting of the present law.

Paragraph (2) is directed to the inclusion of companies which are performing railroad transportation as defined in the Interstate Commerce Act and, therefore, are under the Interstate Commerce Act.

Paragraph (3) refers to freight forwarders who are not now included.

Paragraph (4) is addressed to the coverage of work which is not itself transportation, but is a part of the regular operations which a railroad must carry on in order to perform transportation.

Paragraph (5) is an effort to spell out in more detail the provisions of the present law making the legislation applicable to carrier-controlled companies engaged in performing services in connection with railroad transportation. The specific services spelled out by this paragraph are all services which the Railroad Retirement Board and the Bureau of Internal Revenue have held to be covered by present law when performed by carrier-controlled companies, except that the present law omitted trucking services. Obviously freight forwarders ought to be included. They are a part of the transportation system of the country. The work they do in and around the railroads is interchangeable and indistinguishable as far as railroad services are concerned. Obviously a trucking company engaged in transportation as a part of the railroad system, ought to be covered, because there has been an effort made to make individual contracts in order to avoid the present law, instead of having a continuous service rendered by a railroad-owned or controlled trucking company.

Paragraph (6) of this section makes no change at all in the present law.

Paragraph (7) makes no change in the present law.

Paragraph (8) covers railroad-controlled hospital and recreational associations which have uniformly been held to be covered under existing law as railroad-controlled companies performing services in connection with railroad transportation.

Paragraph (9) makes no change at all in the present law.

Paragraph (10) places certain limitations upon the preceding paragraph in part to express limitations now in the law, and in part to avoid possibilities of too broad an interpretation of the preceding paragraphs.

So that all that this long section, which is denounced as a monstrosity, attempts to do is to rewrite and clarify the present law so that it cannot be subject to misinterpretation and misunderstanding, and to add two categories, railroad-owned and railroad-controlled trucking companies, and freight forwarders, which have been heretofore dealt with by Congress and taken under the act to regulate commerce.

Mr. LUCAS. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. LUCAS. Will my good friend the Senator from Kentucky explain to me how a subcommittee considered this bill for days, and then one of its prominent members comes in on the Senate floor and tells the Senate that he does not know what it means, that no member of the subcommittee could understand what it means, while now we hear the distinguished leader state that the bill is a measure which spells out the provisions of the present law, and clarifies them, and presents them in understandable terms? I must say that I am in doubt as to what course to follow when I hear my distinguished leader on the one hand say that, and my distinguished friend, the Senator from North Carolina say that he does not know what it means.

Mr. BARKLEY. I am afraid that the Senator from North Carolina did himself a great injustice when he said he did not understand this legislation. The Senator from North Carolina is one of the ablest lawyers and best legislators ever to sit in the Congress of the United States. I served with him years ago in the House of Representatives, and I have enjoyed his service in the Senate. I think he does his intellect a grave injustice when he says that he does not understand the bill.

Mr. HOEY. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. HOEY. I appreciate the Senator's compliments; but if this section is clear why is it necessary for the committee to write a page or two to explain how it ought to be construed?

Mr. BARKLEY. Because a great deal of dust has been thrown into the eyes of many persons with respect to the meaning of this section, and the committee felt that it was its duty to try to clarify it.

Mr. HOEY. Did not the committee write this explanation immediately before the bill was reported from the committee, and before any dust had been thrown?

Mr. BARKLEY. No. A great deal of dust had been thrown in the other branch of Congress, and a great deal of dust had been thrown over here. The

committee could not write the explanation until it was ready to report the bill.

Mr. MURDOCK. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. MURDOCK. Taking the argument of the distinguished Senator from North Carolina, if the language of the bill itself is ambiguous and is not clear, and he does not understand it, if it has been clarified in the report, as I understand the law, if the courts or the Commission should find ambiguity in the bill itself they would have the right to look at the history of the legislation and the report in order to clarify it. I do not think that is a proper way to legislate; but if the language is really as bad as the Senator from North Carolina says it is, then certainly the court would have a right to refer to the report to clarify it.

Mr. BARKLEY. I think that is undoubtedly true as a matter of legislative interpretation.

Mr. HOEY. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. HOEY. The distinguished Senator from Utah misapprehended my statement if he thought I said that the whole bill was ambiguous. I said that it was clear from a reading of the bill that ice manufacturers, warehousemen, and truckers were covered, but that there was a great deal of ambiguity in the section, and that it lacked clearness. I do not think there is any doubt about the fact that the classes to which reference has been made are covered, because they are named. If the bill is not intended to cover warehousemen why does it refer to storage, and goods in transit? If it is not intended to cover those engaged in furnishing ice, why does it make reference to servicing refrigerator cars? I stated that in that respect the bill was clear beyond question. I emphasized the fact that the report of the committee would be helpful only in case of ambiguity. There are many ambiguities in this particular section; but it is clear that the various classes which have been mentioned are covered.

Mr. BARKLEY. Mr. President, if the amendment offered by the Senator from North Carolina should be adopted it would nullify the effort which the committee has made in collaboration with the Railroad Retirement Board. The bill was not written under a tree by some individual. It was studied long and carefully. In writing it the committee consulted with the Railroad Retirement Board, and considered the fact that for 9 years the Board has been compelled, by reason of the ambiguity in the present law, to make interpretations in individual cases as to whether or not certain persons were covered. Acting upon that information and that experience of the Railroad Retirement Board, and in cooperation with the Railroad Retirement Board, this effort to clarify the coverage in the existing law was written into the bill, plus two additional categories.

Mr. CORDON. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. CORDON. Is it not a fact that if this amendment were adopted and the section were stricken, by virtue of the provisions of the present law there would be greater ambiguity facing the administrative agency than possibly could exist if the amendment were defeated and section 1 were to remain in the bill?

Mr. BARKLEY. Absolutely, because the ambiguities and individual interpretations which have been necessary under the law as it has been on the statute books for the past 9 months would be multiplied and perpetuated. So if the Senator's amendment were adopted and section 1 were eliminated, the ambiguity of the law as it now exists would be perpetuated. Also, there would be eliminated the coverage of the two categories which everyone admits ought to be covered. One category includes freight forwarders, who are an integral part of the transportation system of our country, and have been so recognized by the Congress. The other category includes workers on railroad-owned or controlled trucks engaged in interstate commerce.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. MAGNUSON. Earlier in the evening I asked the distinguished Senator from Colorado [Mr. JOHNSON] a question. Ordinarily when we speak of freight forwarders we are speaking in terms of railroads; but there are many freight forwarders who forward by other means of transportation. In the future freight will be forwarded probably to a greater extent by other means than railroads; and freight forwarders would be permanently placed under the terms of the Railroad Retirement Act. Is not that correct?

Mr. BARKLEY. I do not so interpret the bill. I shall be glad to yield to the Senator from Colorado in this connection. I do not believe that every company which gathers and forwards freight by a means wholly disconnected from railroads would necessarily be covered by the statute.

Mr. MAGNUSON. Let me ask a hypothetical question——

Mr. BARKLEY. The freight forwarders referred to are the freight forwarders covered by the act to regulate commerce which Congress enacted several years ago.

Mr. MAGNUSON. Suppose that half of the business were forwarded by air or by truck.

Mr. BARKLEY. The Senator from Colorado has called my attention to subsection 11, on page 6, which is what is called the segregation clause. It reads as follows:

(11) Segregation: Any person who is an employer as defined in this subsection shall be an employer with respect to all activities carried on by it, except that (i) any person who is an employer by reason of paragraph (9) shall be an employer only in the capacity described in that paragraph; (ii) if the Board finds that a person is principally engaged in activities other than employer activities and that its employer activities are conducted as an operation or operations separate and distinct from the operations in which it is principally engaged, such person shall be an employer only with respect to such employer operation or operations; and (iii) if the Board finds that a person who is an employer solely by reason of paragraph (2) or (4) of this subsection, is principally engaged in activities other than employer activities but does not, pursuant to clause (ii) find that the employer activities of such person are conducted as an operation or operations separate and distinct from the operations in which it is principally engaged, such person shall be an employer only with respect to all work performed in its employ by individuals who regularly and substantially perform work on property structures or equipment devoted to transportation use.

Under that clause I believe that anyone who forwarded freight by air would not be covered.

Mr. MAGNUSON. Suppose the business were a combination of truck, railroad, and air transportation.

Mr. BARKLEY. If it were a combination, that part of it which would be covered by the Act to Regulate Commerce would be included.

Mr. CORDON. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. CORDON. I invite attention to the fact that carriers by air are expressly exempted from the act, as are those by water, even though they are railroad-owned.

Mr. BARKLEY. That is true.

Mr. MAGNUSON. My point was that a freight forwarder might forward freight by several other means of transportation, although at the present time I presume most of them forward by rail. My question was this: Under the proposed legislation, if a freight forwarder forwarded, say, 70 percent of its business by rail, another 10 percent by air, and 20 percent by truck, would such a freight forwarder come under the terms of the bill? The answer is that it would. Suppose that half the freight were forwarded by rail and half by air. The freight forwarder would come under the terms of the Railroad Retirement Act. So other forms of transportation would be brought under the terms of the act.

Mr. WHEELER. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. WHEELER. After all, the business of a freight forwarder is done largely by clerical help.

Mr. MAGNUSON. Yes.

Mr. WHEELER. Practically all the workers belong to the railroad brotherhoods.

Mr. BARKLEY. The railroad clerks' organization.

Mr. WHEELER. Yes. Moreover, as I pointed out today, the freight forwarders themselves have begged the Congress to place them under the regulation of the Interstate Commerce Commission. So far as the freight forwarders are concerned, they have no complaint. However, this bill would not take them all in. It would include only those owned or controlled by the railroads. They ought to be covered because they are a part of the railroad transportation system.

Mr. MAGNUSON. If they are owned or controlled by the railroads——

Mr. WHEELER. If they are owned or controlled by the railroads they would come under the terms of the act, as would a bus company or truck company which was owned or controlled by a railroad. So far as the freight forwarders are concerned all the bill does, and all

anyone contends it does, is to take in about 10,000 employees who are not now under the terms of the act. Let us be frank. There is nothing to the bugaboo about the great number of persons who would be taken in. The bill was drawn up in collaboration with the Railroad Retirement Board itself. The Board went over every provision of it. The bill was drawn up with the idea of clarifying many of the ambiguities now in the law. The idea that every ice company and every other company is to be taken in is perfectly preposterous, as will be seen from a study of the language of the bill and the interpretation placed upon it. I am perfectly willing to concede that if I had been drafting that provision I would have clarified it a little further. But to say that everyone is to be taken in is pure, unadulterated poppycock. No lawyer who has studied the decisions of the Interstate Commerce Commission and the decisions of the Supreme Court would contend that the bill would include ice companies and all the other companies which have been mentioned. The bill simply does not include them. I know that word has gone out from the National Association of Manufacturers and other organizations for the purpose of defeating the bill.

If Senators wish to defeat the bill, let them defeat it. But they should not predicate their action on the ground that the bill will take in ice companies and other companies because that simply is not the fact under the interpretations which have been made.

In the hearings I did say that I felt it would have been better if certain matters had been specifically clarified in the bill because of the fear in the minds of some people. I also said that because the Interstate Commerce Commission has defined what is meant by "transportation" and has limited the definition in the decision to which I called attention we should bear in mind that sometimes the Interstate Commerce Commission and other commissions change their minds.

But that language was used because when the bill was drafted it was felt that the Interstate Commerce Commission had time and time again passed upon a limitation of the meaning of section 3 (1) of the Interstate Commerce Act. That is the reason that provision was included; namely, to take care of certain matters, but to limit the provision to the companies which are engaged in railroad transportation, and to eliminate those that are not. The matter probably could have been handled in a better way. I think probably it could have been.

But when it is claimed that various other companies are included, to my mind that is merely an attempt to draw a red herring across the trail.

Mr. MAGNUSON. Mr. President, I am seeking information.

Mr. WHEELER. I understand.

Mr. MAGNUSON. No National Association of Manufacturers ever talked to me about this. I am seeking information, because the bill goes much further than the present Railroad Retirement Act goes.

Mr. WHEELER. Yes; it does. It takes in approximately 10,000 additional employees.

Not only is it the testimony of the railroad brotherhoods and their lawyers, but it is my recollection that it was also the testimony of the members of the board—at least, that is the interpretation which they themselves have placed upon it.

Mr. MAGNUSON. I sincerely believe that if this bill did not extend further coverage, as it does, regardless of whether the interpretation is right or wrong, the bill would be passed by the Senate by a unanimous vote.

But the bill goes further than that. If the bill had been before the Senate on May 1, I am sure the Senator from Montana and the Senator from Kentucky would have agreed to accept amendments. The legislative procedure provided for is a complicated one.

Mr. WHEELER. That is correct.

Mr. MAGNUSON. So the friends of railway labor and the friends of some other groups who have some doubts and fears about this matter are placed in an embarrassing position.

Mr. WHEELER. Yes. But everyone knows that as a practical matter if we adopt amendments to the bill, we shall kill the bill. If Senators wish to kill the bill, that is the way to kill it.

Mr. MAGNUSON. I may say that the legislative procedure is that if the bill is amended and subsequently goes back to the House, then unanimous consent will be required in order to have the House concur in the amendments of the Senate or in order to have the House disagree to the amendments of the Senate and request a conference with the Senate on the matters in disagreement. We assume that objection would be made to either proposal.

Mr. WHEELER. That is correct.

Mr. MAGNUSON. Then the bill would lie on the Speaker's desk. It could be taken from the Speaker's desk only by a petition or by having the Rules Committee grant a rule.

Mr. WHEELER. That is correct.

Mr. MAGNUSON. If the bill is passed by the Senate with amendments and if a concurrent resolution is adopted, as suggested by the Senator from Kentucky, that will go to the House of Representatives and will be in the Rules Committee.

So the friends of the measure on both sides are in the following dilemma: Either the amended bill will be in the Rules Committee, under its jurisdiction, or the concurrent resolution will be in that committee. The Rules Committee will have to act on one or the other.

Objection has been made on the ground that the amended bill would "cover the whole water front," and that many persons would object to that, whereas the concurrent resolution will be limited.

So that is the situation confronting us.

Mr. WHEELER. Yes. Assuming that the concurrent resolution could not be adopted at the present time, in view of the sentiments of the leaders and everyone else, everyone knows that if it were not adopted at this particular time, it would be adopted at the next session of Congress. There can be no question about that.

Mr. MAGNUSON. I think the Senator might pick up some votes for the bill if the concurrent resolution were acted upon first.

Mr. BARKLEY. Of course, that is a parliamentary impossibility.

Mr. MAGNUSON. I understand that.

Mr. BARKLEY. I wish to say in conclusion, in reference to the pending amendment, that the Board has been administering this law for 9 years. The Board has felt for some time that the coverage clause needs clarification. We are dealing now with the increase in the tax.

As I have said, the Board has administered this law for 9 years, and during that time the Board has discovered certain defects in the coverage. The Board has been required to make individual interpretations.

As a result of that experience the Board, in collaboration with the authors of the bill, including the Senator from Montana, who in 1944, in conjunction with the Senator from New York [Mr. WAGNER], introduced a bill which did not secure passage in either House, although hearings were held on it, the Board, the committee, and others interested in such legislation have felt that there should be a new statement of the law so as to clarify it, so that it would be spelled out. That is all that section 1 tries to do and that is all it does, except to include the two categories of freight forwarders and railroad-owned or railroad-controlled trucks.

Mr. DONNELL. Mr. President, will the Senator yield for an inquiry?

Mr. BARKLEY. I yield.

Mr. DONNELL. We have not been able to hear the Senator very distinctly thus far, over at this side of the Chamber; but I should like to ask this question: From time to time during the debate, some mention has been made of a concurrent resolution to be submitted to the Senate in the event the bill is passed.

Mr. BARKLEY. Yes.

Mr. DONNELL. Would it be proper to inquire of the Senator from Kentucky, so that we might know in advance, what the contents of the concurrent resolution will be?

Mr. BARKLEY. Yes; I have it prepared for submission, and I shall have it printed, so that every Senator may know what it will entail.

Mr. DONNELL. May we learn that in advance, so that if we pass the bill we shall know?

Mr. BARKLEY. Oh, yes. It will be printed tonight, and it will be available tomorrow morning to every Senator.

Mr. DONNELL. I should like to make a further statement with respect to the concurrent resolution. In the first place, I should like to ask the Senator, without having him read the concurrent resolution, unless he prefers to do so, what the general nature of the proposed concurrent resolution is.

Mr. BARKLEY. I intend to refer to it after discussing the amendment now before the Senate, and I shall do so be-

fore I take my seat. I should prefer to wait until I get to it. It is very simple, and it will not take long to discuss.

Mr. DONNELL. Very well. When the Senator gets to it, I should like to ask one or two questions.

Mr. BARKLEY. Certainly.

Mr. CORDON. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. CORDON. I would not interrupt at this point except for the fact that the Senator from Missouri has been calling attention to the point that the present Board has been faced with the necessity of determining which of the employees of the various employers connected with transportation might be subject to the Railroad Retirement Act. I note on page 409 of the Senate committee hearings a statement by the Board that—

> As of June 30, 1944, the Board has formulated about 5,600 rules and practices affecting 764 different employers.

In an attempt to set up some kind of policy and basis upon which it might administer the present law. The Board takes the position that section 1 does, in fact, carry into legislative effect its own practices, which it has been compelled to adopt by reason of the construction and interpretation of the present law.

Mr. BARKLEY. Yes; I thank the Senator for that reference. It confirms what I have said about what has been the experience of the Board in the 9 years in which it has been administering this law.

Mr. President, without in any way casting any reflection on the good faith of the Senator from North Carolina, which I would not attempt to intimate in any way whatever, under any circumstances, let me say that the amendment will not help in any way in the administration of the law. So I hope the amendment will be rejected, because, as I said earlier in the day, under the present circumstances the adoption of any amendment whatever will result in the failure to enact any legislation at all.

Mr. KNOWLAND. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. KNOWLAND. The Senator's reference to the amendment offered by the Senator from North Carolina will apply, as I understand the situation, to any amendment which might be offered on the floor of the Senate. Is that correct?

Mr. BARKLEY. That is correct.

This morning I said I was preparing a concurrent resolution, and I have now prepared it. Much of it deals with changes in the dates stated in the bill, simply because the bill was introduced early in 1945, and it provided dates which were appropriate for 1945. So the concurrent resolution deals in part with changing the dates which are stated in the bill.

Mr. DONNELL. Mr. President, will the Senator yield for an inquiry at this point?

Mr. BARKLEY. I yield.

Mr. DONNELL. Will not the Senator be kind enough to let us have the body of the concurrent resolution read so that we will know what it is?

Mr. BARKLEY. If the Senator will be patient enough for me to get to the reading of the concurrent resolution, that is what I propose to do.

Mr. DONNELL. Very well.

Mr. BARKLEY. I wish to say that the first part of the concurrent resolution deals with a change in dates. The bill was introduced in 1945 and those dates are not appropriate because this is 1946. The substance of the concurrent resolution deals with three things. If Senators will examine the bill on pages 5 and 6, under subsection 10, beginning near the top of page 5, they will see that the subsection deals with exclusions from the operations of the bill. On page 5 there are excluded four categories. On page 6, in the second line, the exclusions end with the words "motive power." I propose to strike out the period and insert a semicolon.

Mr. DONNELL. On what page and in what line?

Mr. BARKLEY. On page 6, in the second line, after the words "motive power." I propose to strike out the period, insert a semicolon, and the following:

> Or (v) other than a carrier subject to part I of the Interstate Commerce Act, by reason of its being engaged in manufacturing, harvesting, storing, distributing, selling, or delivering refrigeration or ice to or into equipment used for refrigeration purposes in connection with the transportation of passengers or property—

That language would certainly exclude from the operations of the act all ice companies or refrigeration activities in connection with railroad systems—

> or (vi) engaged in the warehouse business if such person is not owned or controlled by a carrier subject to part I of the Interstate Commerce Act; or (vii) engaged in the transportation of property by motor vehicle if such person is not owned or controlled by a carrier subject to part I of the Interstate Commerce Act.

Therefore, in this concurrent resolution all ice companies, all refrigeration companies, and all refrigeration activities not owned by a railroad company itself, would be excluded. All warehouse activities not owned by a railroad company itself would be excluded. All trucking, all hauling by motor vehicles not owned or controlled by carriers, would be excluded. So, Mr. President, it seems to me that that covers the entire situation. I realize that after the bill is passed in its present form it will go to the President for his signature. If the concurrent resolution were not agreed to the bill would be left in its present form. But later the law could be changed by an amendment, and I have no doubt that the overwhelming sentiment of both Houses would be to declare some clarification of the coverage provision of the bill if, in the meantime, it had been enacted into law. But if the concurrent resolution is adopted by both Houses, following the adoption of the pending bill by the Senate, it will become immediately a part of the bill, and will be in the bill when it is transmitted to the President for his signature. So that seems to be a logical move by which we can do what we all want to do, without endangering the enactment of the bill into law.

Mr. President, I present the concurrent resolution and——

Mr. TAFT, Mr. DONNELL, and other Senators objected.

The PRESIDING OFFICER. Objection is heard.

Mr. BARKLEY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BARKLEY. Is it in order for me to move that I be permitted to present the concurrent resolution at this time?

The PRESIDING OFFICER. Only by unanimous consent may the Senator present the concurrent resolution.

Mr. BARKLEY. Very well. I am glad to know that the Senator from Ohio and other Senators object to the clarification of this bill by the method which I have proposed.

Mr. TAFT, Mr. DONNELL, and other Senators addressed the Chair.

Mr. BARKLEY. I shall seek some other method.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. BARKLEY. No; I decline to yield to the Senator.

Mr. DONNELL. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield to the Senator from Missouri.

Mr. DONNELL. I appreciate the Senator from Kentucky yielding to me, but in view of the fact that he has refused to yield to the Senator from Ohio, I will not make any extensive remarks but will merely ask the Senator from Kentucky if he has completed his argument.

Mr. BARKLEY. I have completed my argument on the amendment.

Mr. DONNELL. Then I wish to ask a few questions.

First, I think it is proper to object to the concurrent resolution because, as I see it, the concurrent resolution would be void even if adopted. In other words, concurrent resolutions, as a general proposition, and as I understand the situation, are offered for the purpose of correcting minor clerical details of one kind or another. But the concurrent resolution which the Senator from Kentucky has sought to present, and which he has described, obviously goes far beyond the purpose which I have in mind for concurrent resolutions, and undertakes, in effect, to amend the bill which we are asked to pass. In other words, the concurrent resolution, if passed by both Houses of Congress, would not be signed by the President, but would undertake to amend a bill to be passed by both Houses of Congress and signed by the President of the United States.

Mr. BARKLEY. Mr. President, if the Senator needs some clarification on that subject, I will read him the first part of the concurrent resolution. It reads as follows:

> *Resolved by the Senate (the House of Representatives concurring)*, That the Clerk of the House of Representatives in the enrollment of the bill (H. R. 1362) to amend the railroad retirement acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes; is authorized and directed to make the following changes in the bill.

Mr. DONNELL. Mr. President, the language which the Senator has read confirms exactly what I have already said. If we pass this bill in the form in which it is now before the Senate, and the enrolling clerks of the two Houses are authorized to change the bill, I undertake to say that what the Senator is trying to do by a concurrent resolution, not to be signed by the President of the United States, is to enact legislation, and to amend the bill which we are asked to pass.

Mr. BARKLEY. Mr. President, allow me to say——

Mr. DONNELL. Mr. President, I wish to complete the remainder of what I was about to say.

Mr. BARKLEY. Mr. President, the Senator is so mistaken in the first part of his statement that it seems to me unnecessary for him to complete what he was about to say.

Mr. DONNELL. Mr. President, there may be some difference of opinion on that point.

Mr. BARKLEY. If this concurrent resolution is agreed to by both Houses and the Clerk of the House of Representatives is instructed to make these correctional changes, the changes will be in the bill when the President receives it just as though they had been made by an amendment on the floor of the Senate.

Mr. DONNELL. The fact still remains, Mr. President, that the bill will have been passed in the language in which we pass it. Then we will have adopted a concurrent resolution, not a joint resolution, which would go to the President, to amend the bill which, in the first instance, was passed. By adopting the concurrent resolution we will have adopted a measure which will simply direct the enrolling clerks of the two Houses to change what we ourselves have passed. That would be a clear effort to amend the bill without first having it enacted into law.

Mr. President, in the case of F. H. E. Oil Co. against Commissioner of Internal Revenue in the United States Circuit Court of Appeals, Fifth Circuit, the court, in speaking on August 21, 1945——

Mr. BARKLEY. Mr. President, I appreciate the Senator's desire to discuss the legal question, but I did not yield to him for that purpose. However, if it will not take the Senator too long I will yield to him.

Mr. DONNELL. I do not believe that it will take very long, Mr. President.

The court passed on a resolution which the Members of the Senate will well remember was adopted by this body last year. It was House Concurrent Resolution No. 50, which was agreed to by the Senate on July 21, 1945. I read only a few sentences from the opinion of the court which may be found in 150 Federal, second series, at page 858:

> Resolution No. 50 adopted by the House of Representatives June 22, and agreed to by the Senate July 21, 1945, is urged as requiring a reconsideration. The resolution is not an act of Congress approved by the President or passed over his veto. It does not make law, or change the law made by a previous Congress and President. It does not alter the statutes as they existed when the taxes in controversy accrued. As an expression of opinion on a point of law it would of course be entitled to most respectful consideration by the courts, which under the Constitution exercise the judicial power, that is, the power to decide cases.

Mr. President, I will trespass only a minute longer on the Senator's time.

If we adopt the proposed plan of passing House bill 1362 we will then have passed a bill in the language of the bill which I now hold in my hand. When signed by the President it would become law, but in the interim if we adopt the concurrent resolution to which the Senator from Kentucky has referred, and it is then sent to the other House of Congress, the resolution will never go to the President for his signature. Thus, if we undertake in that manner to amend the law which we pass tonight, we will undertake to amend it through a document which will never receive the signature of the President of the United States. I believe that no attempt should be made to correct more than mere clerical errors. The adoption of the proposal which was submitted a few minutes ago by the Senator from Kentucky, and which is clearly invalid and void, would have one of two effects, namely, either the incorporation into the final bill of the concurrent resolution and thus make invalid by a species of spoliation the whole bill, or the adoption of the concurrent resolution would itself be void, and the bill would stand as passed tonight. So my objection to the concurrent resolution is based on law.

Mr. BARKLEY. Mr. President, I do not yield any further.

The PRESIDING OFFICER. The Senator from Kentucky has the floor.

Mr. BARKLEY. I wish to say, in regard to the expostulation of the Senator from Missouri——

Mr. DONNELL. Mr. President, I object to the word "expostulation." I have a right to express myself on the floor.

Mr. BARKLEY. The Senator is talking——

Mr. DONNELL. I object to the word "expostulation."

Mr. BARKLEY. Well, go on and object.

Mr. DONNELL. I am objecting now.

Mr. BARKLEY. I am not yielding any further to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. BARKLEY. If the Senator does not like the word "expostulation," which is a perfectly good English word, he has a right to object to it.

Mr. DONNELL. I object to any slighting language.

Mr. BARKLEY. The Senator is expostulating, and when anybody expostulates he is indulging in expostulation.

Mr. President, I wish to say that the Senator from Missouri entirely misconceives the object of the concurrent resolution. I am not so inexperienced as to think that Congress by concurrent resolution can enact a law that is a law that would require the signature of the President of the United States. Frequently we pass concurrent resolutions which have to be adopted by both Houses, directing the Clerk of the House and the Secretary of the Senate, in the enrollment of a bill, to make certain corrections in the bill, and those corrections are embodied in the bill. If the President approves it they are just as much a part of it as if they had been originally written into it.

In this case, if the bill has passed both Houses, and the concurrent resolution should not pass the two Houses, and the President signed the bill, the concurrent resolution would be dead, and it would not be part of the bill signed by the President. That is perfectly simple, and there is no argument about it.

Mr. WHITE and Mr. MURDOCK addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Kentucky yield, and, if so, to whom?

Mr. BARKLEY. I am not going to yield until I read this concurrent resolution into the RECORD. Inasmuch as objection is made to its presentation, I shall read it:

Resolved by the Senate (the House of Representatives concurring), That the Clerk of the House of Representatives in the enrollment of the bill (H. R. 1362) to amend the railroad retirement acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code, and for other purposes, is authorized and directed to make the following changes in the bill:

On page 10, line 17, change "1946" to "1947"; and in line 19, change "1945" to "1946."

On page 12, line 2, change "1945" to "1946."

On page 12, line 25, strike out through line 3 on page 13, and insert in lieu thereof the following:

"1. With respect to compensation paid after June 30, 1946, and prior to January 1, 1949, the rate shall be 5¾ percent."

On page 13, strike out lines 11 through 13, and insert in lieu thereof the following:

"1. With respect to compensation paid after June 30, 1946, and prior to January 1, 1949, the rate shall be 11½ percent."

On page 14, line 2, change "1946" to "1947."

On page 15, lines 2 and 4, change "1946" to "1947"; and in lines 3 and 10, change "1945" to "1946."

On page 15, strike out lines 13 through 15 and insert in lieu thereof the following:

"The transfer of certain sections from subchapter B of chapter 9 of the Internal Revenue Code to title II of the Railroad Retirement Act of 1937 and the repeal of certain other sections of such subchapter, as provided in this section, shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause, before such transfer and repeal, but all such acts, rights, and liabilities under such subchapter shall continue, and may be enforced in the same manner, as if such transfer and repeal had not been made."

On page 15, line 21, change "date of" to "date if."

On page 16, line 1, change "1946" to "1947"; in line 3, "1945" to "1946"; in lines 11 and 14, "1944" to "1945"; and in line 22, "nine" to "ten."

On page 23, line 16, change "1946" to "1947"; and in line 18, "1945" to "1946."

On page 26, line 15, change "1946" to "1947."

On page 28, line 22, change "1946" to "1947."

On page 29, line 6, change "1946" to "1947."

On page 32, line 23, change "1946" to "1947."

On page 33, line 17, change "1946" to "1947."

On page 34, in lines 7, 10, and 16, change "Social Security Board" to "Federal Security Administrator"; and in line 23, strike out "either board" and substitute therefor "the Board or the Federal Security Administrator."

On page 35, in line 2, strike out "board which" and substitute therefor "Board or the Federal Security Administrator, whichever"; and in line 25, change "1946" to "1947."

On page 38, line 11, change "1947" to "1948."

On page 51, line 3, after "Sec. 318." insert "(a)."

On page 51, between lines 23 and 24, insert the following:

"(b) Subsection (h) of section 8 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"'(h) All provisions of law, including penalties, applicable with respect to any tax imposed by section 1600 or 2700 of the Internal Revenue Code, and the provisions of section 3661 of such code, insofar as applicable and not inconsistent with the provisions of this act, shall be applicable with respect to the contributions required by this act: *Provided*, That all authority and functions conferred by or pursuant to such provisions upon any officer or employee of the United States, except the authority to institute and prosecute, and the function of instituting and prosecuting, criminal proceedings, shall, with respect to such contributions, be vested in and exercised by the Board or such officers and employees of the Board as it may designate therefor.'"

On page 57, lines 7, 10, 11, 16 and 20, change "1946" to "1947"; in line 15, strike out "sections" and substitute therefor the following: "Section 306 shall become effective on July 1, 1946, and sections"; in line 16, strike out "306"; and in lines 18 and 19, strike out "July 1, 1945" and insert in lieu therof "on the date of enactment of this act."

On page 58, lines 11 and 19, change "1946" to "1947"; and in line 20, "1947" to "1948."

On page 59, lines 2, 4, and 20, change "1946" to "1947."

On page 60, line 15, change "1945" to "1946"; and "1946" to "1947."

On page 60, after line 20, insert the following new section:

"SEC. 411. Section 1426 (b) (9) of the Internal Revenue Code and section 209 (b) (9) of the Social Security Act, as amended, are amended to read as follows:

"'(9) Service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Retirement Act of 1937.'"

On page 6, line 2, after "power", insert a semicolon and the following: "or (v) other than a carrier subject to part 1 of the Interstate Commerce Act, by reason of its being engaged in manufacturing, harvesting, storing, distributing, selling, or delivering refrigeration or ice to or into equipment used for refrigeration purposes in connection with the transportation of passengers or property; or (vi) engaged in the warehouse business if such person is not owned or controlled by a carrier subject to part 1 of the Interstate Commerce Act; or (vii) engaged in the transportation of property by motor vehicle if such person is not owned or controlled by a carrier subject to part 1 of the Interstate Commerce Act."

Mr. President, that is the end of the concurrent resolution.

I yield to the Senator from Maine.

Mr. WHITE. Mr. President, first may I compliment the Senator on his reading of the concurrent resolution?

Mr. BARKLEY. I thank the Senator. I am sorry I had to do it.

Mr. WHITE. Then may I call attention to the fact that yesterday we sat for more than 12 hours——

Mr. BARKLEY. I am just getting ready to move a recess.

Mr. WHITE. We have already been in session today more than 10 hours.

Mr. BARKLEY. Yes.

Mr. WHITE. I hope that it will suit the Senator to take a recess now.

Mr. BARKLEY. If I had not been compelled to read this concurrent resolution, we would have been on our way home now.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. TAFT. In presenting this curious method of legislation, which I never heard of before, does the Senator claim that a concurrent resolution of this character can be passed by a majority of the Senate, or does it require unanimous consent?

Mr. BARKLEY. I think it can be passed by a majority of both Houses. It is an instruction to the Clerk of the House, where the bill originated, that in the enrollment of the bill these changes shall be made. We have done it frequently, not so extensively, perhaps.

Mr. TAFT. I never heard of it being done except by unanimous consent. Certainly I should object to this method of legislation. It seems to me to set a very strange precedent.

Mr. BARKLEY. We have done it by majority vote, during the time I have been in the Senate. Frequently it is done by unanimous consent. No one ever objected before that I ever heard of, but any Senator has a right to object to anything.

Mr. REVERCOMB. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. REVERCOMB. I send to the desk an amendment and ask that it be printed and lie on the table.

The PRESIDING OFFICER. Without objection, the amendment will be received and printed and lie on the table.

Mr. REVERCOMB. Mr. President, I send to the desk a second amendment to be printed and lie on the table.

The PRESIDING OFFICER. Without objection, the amendment will be received and printed and lie on the table.

Mr. MURDOCK. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. MURDOCK. I wanted to call the Senator's attention to the fact that when we had under consideration the Export-Import Bank bill, the Senator from Maryland [Mr. TYDINGS] called the attention of the Senate to the fact that the Philippine Islands should be included in the bill. They were not included. A concurrent resolution was submitted and adopted by the Senate and sent to the House. I do not remember whether it was agreed to by the House. But I call the attention of the Senator from Missouri, if the Senator from Kentucky will indulge me, to the fact that, as he will remember, I objected very strenuously, and argued, or expostulated, whichever is the right term, to the effect that the Congress could not by concurrent resolution amend a law nor could it, as was attempted by Concurrent Resolution 50, amend or modify a decision of the court. But here we have a concurrent resolution being used for a purpose which in my opinion is a very appropriate and proper purpose, and I think that I have studied the concurrent resolution and its functions about as thoroughly as any Senator I know of. I know that I have expostulated on the floor of the Senate about it more than almost any other Senator has. Now all we do here, as I see it, is to instruct the enrolling clerk of the House to do what both Houses of the Congress want to have done. It will be placed in the bill before it ever goes to the President, so we do not, as the Senator from Missouri has endeavored to point out, attempt to legislate by concurrent resolution.

Mr. BARKLEY. I appreciate the reference of the Senator from Utah to the situation which existed when the Senator from Maryland submitted the concurrent resolution instructing the enrolling clerk to include in the bill the Philippine Islands, which had not been included in either House. I do not recall whether it was done, but I think it was. And when the bill went to the President it carried in it the Philippine Islands just as though it had been in the bill when it was introduced.

Mr. LUCAS. Mr. President, I wonder whether the Senator sees any difference in what is now being attempted to do by employment of a concurrent resolution, and what was done in the case the Senator from Utah speaks of?

Mr. BARKLEY. There is no difference in principle, of course.

Mr. DONNELL. With respect to the matter of the Philippine Islands, does the Senator recall whether it was obviously the intention that the Philippine Islands should be included?

Mr. BARKLEY. It had not been thought of.

Mr. DONNELL. It had not been thought of?

Mr. BARKLEY. It had not been thought of by either House, and the Senator from Maryland called attention to it after the bill had passed the Senate, and it was agreed that it ought to have been included, and was included by concurrent resolution, and by direction to the enrolling clerk to include it in the bill.

Mr. DONNELL. And was it not on the theory that it was an obvious error ever to have left it out; or was that the theory?

Mr. BARKLEY. I think the inclusion of the Philippine Islands was in the nature of an afterthought, and it was thought wise to include them, and it was done by concurrent resolution.

The object of this concurrent resolution is to clarify, so far as these dates are concerned, what is an obvious clerical mistake, because the bill was introduced early in 1945, and carried dates which were then appropriate, but when the bill was passed by the House all amendments were rejected, so it carried these original dates. Obviously, they ought to be corrected.

Mr. DONNELL. Will the Senator be kind enough to state whether he thinks correction is necessary with respect to

other portions of the bill which the Senator mentioned, provisions which go beyond the matter of mere correction of an oversight or the mere inclusion of an afterthought or the mere correction of an inadvertent omission?

Mr. BARKLEY. No, I do not think that these corrections are necessary so far as the law itself is concerned, but in view of the fact that the scarecrow has been erected in the watermelon patch which would shoo some people away, it seems obvious that the corrections might well be made in order to assure them that the law is not intended to cover them. That is all it is intended to do.

Mr. DONNELL. If it is contemplated to submit a concurrent resolution which would require the assent of the other House of Congress, why cannot the same identical material be offered to the bill itself and included in the regular order, in the regular way, rather than to have the Senate pass a bill and then rely on the possibility of the other House of Congress agreeing to something that many of us would like to have in the bill?

Mr. BARKLEY. I have explained that so often that I am sure the Senator from Missouri understands it. It can be offered in the regular way. Every one of these amendments or suggestions contained in the concurrent resolution, can be offered as amendments to the bill and the Senate can adopt them. There is no doubt about that if a majority of the Senate see fit to do so. But in doing so we render it impossible to complete the legislation at this session, in my judgment; and in this manner, by concurrent resolution, we escape that danger.

Mr. DONNELL. Of course if the Senator please, if we adopt the plan which the Senator proposes we will pass a statute and be bound by it and take our chances as to whether the House of Representatives shall agree to what many of us would like to have in the bill.

Mr. BARKLEY. We are not bound by it unless it becomes a part of the statute, and it would not become a part of the statute unless both Houses agreed to it, and in the enrollment of the bill it would be included in the bill before it ever left the Congress to go to the President of the United States.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. TAFT. The Senator stated that the correction of the dates is obviously a correction of a clerical mistake. How can we correct a clerical mistake before a mistake is made? If we pass a bill there is no clerical mistake involved in what we pass.

Mr. BARKLEY. I would expect that sort of an argument to be made by a pettyfogging lawyer before a justice of the peace, but I would not expect it from the great Senator from Ohio.

Mr. TAFT. When the Senator says that we must correct a clerical error before the error is made, it seems perfectly obvious that that is talking nonsense.

Mr. BARKLEY. It is not proposed to adopt this concurrent resolution until we pass the bill.

Mr. TAFT. Before we arrange to make the mistake.

Mr. DONNELL. Then it is proposed to correct the mistake which we shall make subsequently.

Mr. FERGUSON. Mr. President——

Mr. BARKLEY. I yield to the Senator from Michigan and then I am not going to yield to any other Senator.

Mr. FERGUSON. I merely want to ask a question in relation to the concurrent resolution. Do I correctly understand that if we pass the bill as it is, and agree to the concurrent resolution, the House will not have to concur in the bill itself, because they have already passed it? But if the House should fail to agree to the concurrent resolution will the bill go to the President just as it is without the concurrent resolution?

Mr. BARKLEY. If the bill is passed by the Senate in the form in which it has come to it from the House, and in the form in which it is presented here now, and no concurrent resolution making these corrections is agreed to by both Houses, the bill would go to the President in exactly the form in which it is now.

Mr. FERGUSON. Yes, but if the House agrees to the concurrent resolution, then it would become part of the bill, and the bill would go to the President with the corrections that are proposed in the concurrent resolution?

Mr. BARKLEY. Absolutely, and they would become a part of the bill, just as if they had been included in the bill originally without any concurrent resolution.

Mr. FERGUSON. I thank the Senator.

Mr. BARKLEY. Mr. President, we have already disposed of the Executive Calendar. It is obvious that we cannot conclude the bill this evening.

AMENDMENT TO RAILROAD RETIREMENT ACTS, ETC.

The Senate resumed consideration of the bill (H. R. 1362) to amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes.

Mr. DONNELL. Mr. President, last evening in the course of the discussion relative to the proposed concurrent resolution to be presented subsequent to the approval by this body of House bill 1362, the Senator from Utah [Mr. MURDOCK] had the following to say, among other things, as is reported at page 10013 of the CONGRESSIONAL RECORD:

I wanted to call the Senator's attention to the fact that when we had under consideration the Export-Import Bank bill, the Senator from Maryland [Mr. TYDINGS] called the attention of the Senate to the fact that the Philippine Islands should be included in the bill. They were not included. A concurrent resolution was submitted and adopted by the Senate and sent to the House. I do not remember whether it was agreed to by the House. But I call the attention of the Senator from Missouri, if the Senator from Kentucky will indulge me, to the fact that as he will remember, I objected very strenuously, and argued, or expostulated, whichever is the right term, to the effect that the Congress could not by concurrent resolution amend a law nor could it, as was attempted by Concurrent Resolution 50, amend or modify a decision of the court.

Then there is a further observation by the Senator from Utah.

Then we find that the following remark was made by the distinguished majority leader the Senator from Kentucky [Mr. BARKLEY], as shown on page 10013:

Mr. BARKLEY. I appreciate the reference of the Senator from Utah to the situation which existed when the Senator from Maryland submitted the concurrent resolution instructing the enrolling clerk to include in the bill the Philippine Islands, which had not been included in either House. I do not recall whether it was done, but I think it was. And when the bill went to the President it carried in it the Philippine Islands just as though it had been in the bill when it was introduced.

Mr. LUCAS. Mr. President, I wonder whether the Senator sees any difference in what is now being attempted to do by employment of a concurrent resolution, and what was done in the case the Senator from Utah speaks of?

Mr. BARKLEY. There is no difference in principle, of course.

Mr. President, I submit it is obvious that last evening the Senators who made statements in favor of the concurrent resolution idea, as illustrated by the action taken by this body in connection with the Export-Import Bank bill, were treating that action as a precedent; and the Senator from Kentucky appreciated, and expressed his appreciation of, the reference of the Senator from Utah to the situation which existed when the Senator from Maryland [Mr. TYDINGS] submitted the concurrent resolution instructing the enrolling clerk to include in the bill a provision including the Philippine Islands. Further, the majority leader, in response to the question of the Senator from Illinois as to whether there was a difference or whether the Senator saw any difference, I should say, between what is now being attempted to be done by the employment of a concurrent resolution in the case of the Railroad Retirement Act and what was done in the case mentioned by the Senator from Utah, the majority leader instantly responded, "There is no difference in principle, of course."

Mr. President, I think it of importance, in view of the reliance thus placed last evening both by the Senator from Utah and by the majority leader, who read the proposed concurrent resolution and argued as to its advisability and propriety, that we recur for a moment to just what did transpire with reference to the concurrent resolution to which the Senator from Maryland gave his adherence back in July 1945.

For that purpose, I call attention first to certain portion of the RECORD of July 20, 1945, beginning at page 7835, where it will be observed that the senior Senator from Ohio [Mr. TAFT] called attention to the fact that—

The question occurred to me that the pending bill as drafted does not permit loans to the Philippine Islands, and I think the sponsors of the bill might wish to consider an amendment to make such loans available, although there will be other legislation, I understand, to assist the Philippine Islands.

A little later in the colloquy the Senator from Maryland had this to say:

Mr. TYDINGS. I think the Senator's position is an accurate one with reference to the Philippines. It certainly is doubtful whether they would be within the purview of the act. I have submitted to the Senator in charge of the bill an amendment which I have asked him to favor, which would remove any doubt about the ability of the Filipinos to take advantage of the operations of the Export-Import Bank. I agree with the Senator that at the present time it is not clear whether or not they could come in under it. They certainly ought to have as much right as any other nation to come in under it.

After that the distinguished Senator from Michigan [Mr. VANDENBERG] said:

They have a primary right. If we have any obligation abroad, it starts in the Philippines.

Mr. President, I shall not read the remaining portion of the colloquy which was participated in by several Senators, including the distinguished Senator from Utah who spoke last evening.

I now call attention to page 7847 of the CONGRESSIONAL RECORD for the same date, July 20, 1945. Here is what the Senator from Maryland had to say:

A while ago the Senate passed the Export-Import Bank bill.

Mr. FERGUSON. Mr. President, will the Senator yield?

Mr. DONNELL. I yield.

Mr. FERGUSON. Does that indicate that the concurrent-resolution idea of the Senator from Maryland for making a correction came after the bill was passed, or before?

Mr. DONNELL. I may say to the Senator that I am not able at the moment to answer the question. I shall have to search the RECORD further, and I shall do that.

Mr. FERGUSON. Does the Senator believe that it make any difference whether the discovery was made before or after.

Mr. DONNELL. What discovery?

Mr. FERGUSON. The discovery concerning the necessity of correcting the bill. In other words, if a discovery is made of something which should be corrected before the bill is passed, it must be done in the regular way, by amendment; but if a discovery is made of a clerical mistake or something of that nature after the bill has been passed, the correction might be made by a concurrent resolution. I have in mind an instance of an enrolled bill being amended by a concurrent resolution. On August 5, 1909, a message was received by the House from the Senate transmitting Senate Concurrent Resolution 8, authorizing the Committee on Enrolled Bills of the two Houses to amend the House bill 1348, the tariff bill, which had passed both Houses and been enrolled. That was an example of a bill having been passed by both Houses and enrolled. Immediately upon the receipt of the concurrent resolution in the House, on motion of Mr. Sereno E. Payne, of New York, by unanimous consent the concurrent resolution was taken from the Speaker's table and agreed to. In the course of the debate on the concurrent resolution Mr. John J. Fitzgerald, of New York, said:

Mr. Speaker, an examination of the precedents disclose that there has not been a similar incident in the history of the country in which bills were amended in the identical way proposed here. Clerical errors and corrections have been made after bills have reached the enrolling clerks, but no substantial change or radical correction has been authorized except where the discovery was after the bill had passed both Houses, and then only to make the bill conform to the proposals of the conference committees. If it were not for the very comprehensive language of Judge Harlan in *Field* v. *Clark* (143 U. S.), I doubt very seriously whether it could be held that the boot-and-shoe amendment as proposed in the concurrent resolution had passed both Houses of Congress.

Mr. DONNELL. Mr. President, will the Senator be kind enough to indicate the CONGRESSIONAL RECORD references?

Mr. FERGUSON. Yes. I am reading from page 5088 of the CONGRESSIONAL

RECORD of the Sixty-first Congress, first session. The language there would indicate that it is possible to make an amendment. I have sent for One Hundred and Forty-third United States, and I wish to examine the opinion which is referred to in the CONGRESSIONAL RECORD.

Mr. DONNELL. I may say that I have that volume in my office, and I have sent for it. As soon as it arrives, both the Senator and I may use it.

Mr. FERGUSON. The question which I wish to ask the Senator is this: Does it make any difference whether we know of these mistakes and these proposed amendments before we pass the bill, or, knowing of the mistakes and failing to correct them by amendments, can we then wait until the bill gets into the hands of the enrolling clerk, that is, in the Committee on Enrolled Bills of the two Houses, and then amend by a concurrent resolution?

Mr. DONNELL. I think there is a great difference between the two situations. I invite the attention of the Senator to that very significant language of Mr. Fitzgerald, from which the Senator quoted a few minutes ago during the course of the debate, as appearing on page 5089 of the CONGRESSIONAL RECORD, as follows:

> Clerical errors and corrections have been made after bills have reached the enrolling clerks, but no substantial change or radical correction has been authorized except where the discovery was after the bill had passed both Houses, and then only to make the bill conform to the proposals of the conference committees.

I may say to the Senator that, in my opinion, if we pass House bill 1362, and deliberately undertake to say that after passing it we shall then take the position that there were certain errors in the bill, and attempt to cure those errors by amendments through the medium of a concurrent resolution, it would represent a very decided difference from a situation in which, after the passage of the bill we, for the first time, discover some clerical errors involving punctuation or figures, or the like. To my mind, for us to pass House bill 1362 and deliberately put into it certain provisions which we know we will attempt 15 minutes later to correct by a concurrent resolution, and undertake to amend, change, and define on the theory that there is something which needs clarification in the bill which has been passed, is to present a situation which differs entirely from that in which, having discovered after the bill had been passed that there had been an inadvertent clerical error of omission or commission, we undertake to make a correction by adopting a concurrent resolution.

I may say to the Senator that I have now the case of *Field* v. *Clark*, (143 U. S. 649). It is a very celebrated case.

Mr. FERGUSON. I thank the Senator.

It is not clear that we cannot accomplish our purpose by this method, that is, by a concurrent resolution. Until a bill is signed by the Speaker of the House and the President of the Senate and sent to the President it is in the hands of the Congress. Both Houses may, by a majority vote of the respective bodies, change their rules and may pass laws by a majority vote. This being true, they may change a law by amendments made in the regular way, and also by concurrent resolution change a law before it is signed by the President of the Senate and Speaker of the House to be sent to the President.

Let us analyze the situation from this point of view: The Senate passes a certain bill. Until it is enrolled and reaches the President it would appear to me that, by a majority vote, we could add an amendment. Does it make any differene whether we do that while the bill is before the Senate, whether we do it before it leaves the Senate, or while it is in the hands of the Committee on Enrolled Bills for the purpose of enrolling it and sending it to the President? If both Houses see fit to pass by a majority vote half of a bill and place it in the hands of the enrolling clerk, and see fit to pass the other half of the bill and send it there, will not the Supreme Court say that those two matters were passed by a majority vote in each House, and that when it reached the President it was signed, and therefore the requirements for the making of law in this Republic were complied with?

Mr. DONNELL. I may say to the Senator, first, that it would appear to me that what he is talking about is obviously an amendment to the existing bill.

Mr. FERGUSON. I believe that we would have to consider it as such.

Mr. DONNELL. Yes. In the Senator's reference to the passage of such an amendment by a majority vote, I may say that under rule 15 of the Senate, when a bill or a joint resolution shall have been ordered to be read the third time, it is not in order to propose amendments unless by unanimous consent. So, Mr. President, I take it that if this concurrent resolution is to be considered as an amendment, it cannot even be proposed in the Senate unless by unanimous consent.

I may say further to the Senator that, in my judgment, in passing H. R. 1362 we would be passing a measure which would require the signature of the President, in order to make it law, unless it laid on his desk the requisite length of time and became law without his signature. The concurrent resolution, by which it is proposed to amend the bill, will not be submitted to the President for his signature. In other words, we shall have passed a bill requiring the approval of both Houses of Congress and of the President, and at the same time shall have undertaken to amend it by adopting a concurrent resolution which will never be signed by the President at all.

It is true that he would sign the bill (H. R. 1362) which would incorporate the contents directed by a concurrent resolution to be placed therein by the enrolling clerk, but the document itself, the concurrent resolution, cannot create law. I think that is too well settled to require other precedent than the one which I read from last night in One Hundred and Fifty Federal, second series, at page 857, F. H. E. Oil Co. against Commissioner of Internal Revenue, where, referring to Resolution No. 50, with which the Senator from Michigan is familiar, because, as I recall, like the Senator from Utah and the present speaker, he protested against Resolution No. 50, the United States Circuit Court of Appeals for the Fifth Circuit said:

> The resolution is not an act of Congress approved by the President or passed over his veto. It does not make law or change the law made by a previous Congress and President. It does not alter the statutes as they existed when the taxes in controversy accrued.

I submit that here is an attempt, if this concurrent resolution plan is adopted, to take an instrument—that is, a bill requiring the approval of both Houses of Congress and the President—and amend it by an instrument which itself will not receive the signature of the President and never will be submitted to him. Under the decision of the court and on well-established principles of law, it seems to me, it does not make law or constitute law.

Mr. FERGUSON. Mr. President, will the Senator yield?

Mr. DONNELL. I yield to the Senator from Michigan.

Mr. FERGUSON. I have just had a moment to look at the opinion in the case of Field against Clark, which is found in One Hundred and Forty-third United States, page 649. The syllabus which seems to be borne out by the opinion, says:

> The signing by the Speaker of the House of Representatives and by the President of the Senate, in open session, of an enrolled bill is an official attestation by the two Houses of such bill as one that has passed Congress; and when the bill thus attested receives the approval of the President and is deposited in the Department of State according to law, its authentication as a bill that has passed Congress is complete and unimpeachable.

Mr. DONNELL. Mr. President, may I ask the Senator, if he has had time in his examination of the case of Field against Clark to observe whether or not it involved a situation such as we have here, where a bill, duly passed by both Houses of Congress, was amended by a concurrent resolution adopted by one House?

Mr. FERGUSON. I think it did, but I should like to read a little further from the syllabus.

Mr. CORDON. Mr. President, will the Senator yield?

Mr. DONNELL. I yield to the Senator from Oregon.

Mr. CORDON. Is it not a fact that in that case what was attempted to be done was by concurrent resolution to change the legal effect of a measure which not only had been passed by both Houses but which had been signed by the President?

Mr. DONNELL. I may say to the Senator that I have not read the case of Field against Clark, but I am familiar with it as a very well known authority, and it is cited in Cannon's Precedents, volume 7, page 151, in an excerpt from the remarks of Mr. Fitzgerald in the House of Representatives on August 5, 1909. It will be recalled that the Senator from Michigan read from the remarks of Mr. Fitzgerald the words which I now quote:

> If it were not for the very comprehensive language of Judge Harlan in *Field* v. *Clark*, (143 U. S.) I doubt very seriously whether

it could be held that the boot and shoe amendment as proposed in this concurrent resolution had passed both Houses of Congress.

I may say that I should like a little further time during the course of the day to examine the case of Field against Clark, which I have not thus far examined, having noted its reference to this particular matter only last evening.

Mr. CORDON. Mr. President, will the Senator from Missouri yield?

Mr. DONNELL. I yield to the Senator from Oregon.

Mr. CORDON. I should like to ask the distinguished Senator from Missouri to give me an opinion as to whether or not if the pending measure were passed and thereafter a concurrent resolution were adopted by the Senate by unanimous consent, as is required for amendment of a law, and if a similar proceeding or whatever proceeding meets with the rules of the House were had, that would represent an appropriate legal procedure for amendment of the pending legislation?

Mr. DONNELL. I do not think that it would represent an appropriate method of amendment. I have not had sufficient time to study the case of Field against Clark to answer the question, but it may be that if the two Houses were to agree upon a concurrent resolution and the concurrent resolution were to be inserted it might be that no collateral attack could be made upon the validity of the entire act. I am not prepared, however, at this moment to concede, without further study, whether that is or is not a fact.

Mr. FERGUSON. Mr. President, I think that is exactly what this case holds, because it says in the syllabus which is borne out by the opinion:

It is not competent to show from the journals of either House of Congress, that an act so authenticated, approved and deposited, did not pass in the precise form in which it was signed by the presiding officer of the two Houses and approved by the President.

Then it goes on to another matter and says:

Congress cannot, under the Constitution, delegate its legislative power to the President.

It seems to hold that once the measure is signed in that form by the Speaker and by the President of the Senate and it goes in that way to the President of the United States, if he puts his signature on it, one cannot go back of that and say it was not amended in a proper way.

Mr. DONNELL. Mr. President, in the first place, as I have said, I wish to ask the indulgence of the Senate until some time later in the discussion to comment further upon the case of Field against Clark. I observe, however, that on pages 668 and 669 appears this language:

The contention of the appellants is, that this enrolled act, in the custody of the Secretary of State, and appearing upon its face, to have become a law in the mode prescribed by the Constitution, is to be deemed an absolute nullity, in all its parts, because—such is the allegation—it is shown by the CONGRESSIONAL RECORD of proceedings, reports of committees of each House, reports of committees of conference, and other papers printed by authority of Congress, and having reference to House bill 9416, that a section of the bill, as it finally passed, was not in the bill authenticated by the signatures of the presiding officers of the respective Houses of Congress, and approved by the President. The section alleged to have been omitted was as follows.

So, Mr. President, from a very hasty glance at the opinion of Mr. Justice Harlan I do not thus far understand it to be a case in which there was inserted something in the bill which was passed after the bill itself was passed, but rather that the contention was made that a section of the bill as it finally passed was not in the bill authenticated by the signatures of the presiding officers. It may make a very vast deal of difference as to the applicability of this particular decision.

Mr. CORDON. Mr. President, will the Senator yield on that point?

Mr. DONNELL. I yield.

Mr. CORDON. Did the Senator read there also, "the bill authenticated by the signatures of the presiding officers of the respective Houses of Congress and approved by the President"?

Mr. DONNELL. I did; that is correct.

Mr. CORDON. In other words, that represents an attempt to amend existing legislation, which has been fully enacted, whereas we have here an attempt to amend legislation which is still in process of making, and before signed, of course.

Mr. DONNELL. I shall undertake to have something further to say upon the case of Field against Clark after further study of it during the day.

Mr. President, this was not what I started out to develop. What I was undertaking to develop was with respect to the matter that was discussed last evening, of the applicability of the action taken in the case of the Export-Import Bank bill as a precedent for the case before us at this time.

I called attention to the fact a few minutes ago—and I shall take the liberty of restating it for a moment, because I assume some Senators are here now who were not present then—that on July 25, 1945, the Senator from Ohio [Mr. TAFT] suggested a question that had occurred to him, "that the pending bill as drafted does not permit loans to the Philippine Islands," whereupon the Senator from Maryland [Mr. TYDINGS] said:

It certainly is doubtful whether they would be within the purview of the act.

The Senator from Michigan [Mr. VANDENBERG] said:

They—

Meaning the Philippines—

have a primary right. If we have any obligation abroad, it starts in the Philippines.

Mr. President, I was going to develop further what happened on that day. A question was asked of me a few minutes ago as to whether the Export-Import Bank Act, which was then under discussion, was passed before or after the Senator from Maryland made his suggestion as to the inclusion of the contents of a concurrent resolution. Since the question was asked I have learned, from page 7841 of the CONGRESSIONAL RECORD of July 20, 1945, that between the time the Senator from Ohio [Mr. TAFT] raised the question on that same day, and the time of what transpired when the Senator from Maryland participated, which I shall mention in a moment, "The bill (H. R. 3771)"—as appears at page 7841—"was ordered to a third reading, read the third time, and passed."

Mr. President, continuing further with the history of this particular matter, and as to its applicability as a precedent, I called the attention of the Senate a little while ago to the comments made last evening by the distinguished majority leader, in which, after the Senator from Utah [Mr. MURDOCK] called to my attention, or possibly to the attention of the Senator from Kentucky and myself, the facts relating to the Tydings concurrent resolution in connection with the Export-Import Bank bill, the Senator from Kentucky [Mr. BARKLEY] immediately said:

I appreciate the reference of the Senator from Utah to the situation which existed when the Senator from Maryland submitted the concurrent resolution instructing the enrolling clerk to include in the bill the Philippine Islands, which had not been included in either House.

He then said:

I do not recall whether it was done, but I think it was.

I digress to state that the information I received only a few minutes ago is to the effect that the House did not include the contents of the concurrent resolution submitted by the Senator from Maryland [Mr. TYDINGS], and I have before me a copy of Public Law 173, being H. R. 3771, in which it appears, on page 1, that words included in the concurrent resolution of the Senator from Maryland were not in the bill as it was finally approved.

The senior Senator from Kentucky obviously last evening undertook to use—and I know he intended to do it in the greatest sincerity—the concurrent resolution of the senior Senator from Maryland as to the Philippines as a precedent for our proposed action in this case.

The Senator from Illinois [Mr. LUCAS] inquired of the majority leader as to whether he, the Senator from Kentucky, "sees any difference in what is now being attempted to do by employment of a concurrent resolution, and what was done in the case the Senator from Utah speaks of," namely, the Tydings incident relative to the Philippines. Whereupon the Senator from Kentucky [Mr. BARKLEY] said:

There is no difference in principle, of course.

So, Mr. President, I submit that we are now confronted with a situation in which the Tydings matter of July 20, 1945, is being submitted to us as a precedent.

What are the facts, as they further progressed? After there was called to the attention of the Senator from Maryland the fact that the loans would not be permitted to be made to the Philippine Islands, and after he stated, "It certainly is doubtful whether they would be within the purview of the act," this occurred, as appears at page 7847 of the RECORD:

Mr. TYDINGS. A while ago the Senate passed the Export-Import Bank bill. While the bill

was pending before the Senate it was brought out that perhaps the Philippine Islands would not be entitled to participate with other foreign nations in receiving the benefit of the bill. It was suggested that an amendment to the bill including the Philippine Islands be adopted. Because the adoption of such an amendment would have taken the bill to conference and would thus perhaps delay or kill the whole legislation, the Senator from Maryland did not offer the amendment, but on this subject he would like to offer a concurrent resolution and call for its immediate consideration. I believe it would bring on no debate. It would correct the situation referred to, so that when the bill is finally enacted the desired result relative to the Philippine Islands may be obtained.

In response to which the distinguished majority leader made the statement:

Mr. President, it is likely that the Senate will be in sesison practically all afternoon. The measure for which I am about to move consideration by the Senate has been on the calendar for some time, and farmers and farm groups in the United States are interested in having action taken on it. I think we should proceed to its consideration now.

So, Mr. President, it was not until later in the day that the Tydings matter again came up.

This is what transpired, and I think it is of particular interest, in view of the fact that we are now confronted with this Tydings incident as a precedent justifying the action requested at the present time. I read from page 7851 of the RECORD:

Mr. TYDINGS. I ask the Senator's pardon for interrupting his address, but the Export-Import Bank bill passed by the Senate earlier today may be in the process of enrollment, and if the concurrent resolution which I hold in my hand is not quickly acted on it would be of no value, even if Congress were to adopt it. As was brought out by the Senator from Ohio and the Senator from Michigan in discussing the bill earlier today, the Philippine Islands were left out of the scope of the Export-Import Bank. The bill has gone to the House and I am afraid, unless action is taken immediately, it will be enrolled before the correction I propose is made.

Mr. REVERCOMB. Does the Senator wish to proceed with the concurrent resolution he speaks of?

Mr. TYDINGS. I should like to ask unanimous consent to have a correction—

It will be observed that he treats this as a correction—

I should like to ask unanimous consent to have a correction made in the Export-Import Bank bill, simply to have the Philippine Islands included in the scope of the bill which was passed earlier today. I do not think any Senator is opposed to it. If the proposal should result in debate I will withdraw it immediately.

Mr. REVERCOMB. I am glad to yield to the Senator for the purpose he has in mind, with the understanding that the present procedure may be transposed, so as not to appear in the midst of the discussion which has been taking place.

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

This is what the majority leader then said:

Mr. President, I wish to make a statement. It is a little unusual to instruct the enrolling clerks of the two Houses by way of correction to put something in a bill which was not in the bill as it passed either House and was not intended to be in the bill.

We frequently instruct the enrolling clerks to put something in a bill that was left out by oversight. That is not the case in this matter. No effort was made to get this provision into the bill in the House or the Senate, and it is not by way of correction, because the bill as it is now, in process of or ready for enrollment, is not incorrect. There is no error committed in the enrollment.

I am not going to object, but—

Mr. President, I call this to the especial attention of the Senate:

But I want it distinctly understood that it is an unusual thing to amend a bill by way of correcting the enrollment when neither House considered the item or acted upon it.

And may I ask Senators to listen intently to the next sentence from the majority leader, the Senator from Kentucky?

With the understanding that it establishes no precedent, Mr. President, in that regard I shall not object.

I pause to say, Mr. President, that the majority leader last evening, and the distinguished Senator from Utah [Mr. MURDOCK] were clearly treating this action taken back in 1945 as a precedent.

Now let us see what was said by other Senators immediately following the majority leader's statement that—

With the understanding that it establishes no precedent, Mr. President, in that regard I shall not object.

The distinguished leader of the minority [Mr. WHITE] stated:

I simply want to echo what the Senator from Kentucky has said. I think it does establish a precedent, and, I think, an unhappy one, but I am not going to object.

And then, Mr. President, may I read what the Senator from Maryland said?

Mr. President, I want to reecho what both Senators have said, and I hope what is proposed to be done will not establish a precedent. I hope the concurrent resolution will be adopted.

And then a few lines below that we find:

There being no objection, the concurrent resolution was considered and agreed to.

I say Mr. President, we have here an illustration of a course of procedure which the majority leader himself indicated is unusual, or, to quote him exactly:

It is a little unusual to instruct the enrolling clerks of the two Houses by way of correction to put something in a bill which was not in the bill as it passed either House and was not intended to be in the bill.

And distinctly stating, Mr. President:

With the understanding that it establishes no precedent, Mr. President, in that regard I shall not object.

Then, the minority leader, stating that he was echoing what the majority leader said, said that it did establish a precedent and, he thought an unhappy one, whereupon the Senator from Maryland reechoed the statement and caused it to be reverberated on down through the corridors of the Senate, when he said:

I want to reecho what both Senators have said, and I hope what is proposed to be done will not establish a precedent.

Mr. President, I submit that this type of procedure recognized both by the majority leader and the minority leader and the proponents of the concurrent resolution on July 20, 1945, is an unwholesome type of procedure, and should not be encouraged, and I think those Senators were very wise in making distinctly the reservation or suggestion that the action should not constitute a precedent; but I believe, Mr. President, that the soundness of judgment of the minority leader in saying that he thought it did establish a precedent is borne out by the fact that here upon the floor last night, notwithstanding this utterance made by the majority leader a year ago, we now find that this particular procedure, this particular incident on July 20, 1945, is taken as a precedent.

Mr. President, that is all I have to say at the moment on this proposition, but I shall address myself doubtless later during the day to further cases, including the case of Field against Clark.

Mr. MORSE obtained the floor.

Mr. FERGUSON. Mr. President, will the Senator yield?

Mr. MORSE. I yield.

Mr. FERGUSON. At this point in the RECORD I think I should read some of the language from the case of Field against Clerk which we discussed earlier, as to whether or not the courts will go back of the congressional acts and look into the Journal and ascertain whether or not the law has been properly passed. I read from One Hundred and Forty-third United States Reports, page 671, as follows:

In regard to certain matters, the Constitution expressly requires that they shall be entered on the Journal. To what extent the validity of legislative action may be affected by the failure to have those matters entered on the Journal, we need not inquire. No such question is presented for determination. But it is clear that, in respect to the particular mode in which, or with what fullness, shall be kept the proceedings of either House relating to matters not expressly required to be entered on the Journals; whether bills, orders, resolutions, reports, and amendments shall be entered at large on the Journal, or only referred to and designated by their titles or by numbers; these and like matters were left to the discretion of the respective Houses of Congress. Nor does any clause of that instrument, either expressly or by necessary implication, prescribe the mode in which the fact of the original passage of a bill by the House of Representatives and the Senate shall be authenticated, or preclude Congress from adopting any mode to that end which its wisdom suggests. Although the Constitution does not expressly require bills that have passed Congress to be attested by the signatures of the presiding officers of the two Houses, usage, the orderly conduct of legislative proceedings and the rules under which the two bodies have acted since the organization of the Government, require that mode of authentication.

The signing by the Speaker of the House of Representatives, and by the President of the Senate, in open session, of an enrolled bill, is an official attestation by the two Houses of such bill as one that has passed Congress. It is a declaration by the two Houses, through their presiding officers, to the President, that a bill thus attested, has received in the due form the sanction of the legislative branch of the Government, and that it is delivered to him in obedience to the constitutional requirement that all bills which pass Congress shall be presented to him. And when a bill, thus attested, re-

ceives his approval, and is deposited in the public Archives, its authentication as a bill that has passed Congress should be deemed complete and unimpeachable. As the President has no authority to approve a bill not passed by Congress, an enrolled act in the custody of the Secretary of State, and having the official attestations of the Speaker of the House of Representatives, of the President of the Senate, and of the President of the United States, carries on its face, a solemn assurance by the legislative and executive departments of the Government, charged, respectively, with the duty of enacting and executing the laws, that it was passed by Congress. The respect due to coequal and independent departments requires the judicial department to act upon that assurance, and to accept, as having passed Congress, all bills authenticated in the manner stated, leaving the courts to determine, when the question properly arises, whether the act, so authenticated, is in conformity with the Constitution.

Then the opinion cites what happens in England under the law, and it says, quoting Mr. Justice Sawyer:

If the enrollment of the statute is in existence, the enrollment itself is the record, which is conclusive as to what the statute is, and cannot be impeached, destroyed, or weakened by the journals of Parliament or any other less authentic or less satisfactory memorials; and that there has been no departure from the principles of the common law in this respect in the United States, except in instances where a departure has been grounded on, or taken in pursuance of, some express constitutional or statutory provision requiring some relaxation of the rule, in order that full effect might be given to such provisions; and in such instances the rule has been relaxed by judges with great caution and hesitation, and the departure has never been extended beyond an inspection of the journals of both branches of the legislature.

In other words, Mr. President, unless the legislature or a constitutional provision requires that the court look behind the act itself and the authentication of the act by the respective officers, no court can go behind it, and the law is as it is written.

The court sums up the situation in this language:

We are of the opinion, for the reasons stated, that it is not competent for the appellant to show from the journals of either House, from the reports of the committee, or from other documents printed by authority of Congress, that the enrolled bill designated H. R. 9416 as finally passed contained a section that does not appear in the enrolled act in the custody of the State Department.

This case goes even further than what is now proposed, as I read the language of the decision. State cases are also cited. With few exceptions they all follow the rule of the United States Supreme Court in Field against Clark.

As I see it, the only question presented here is, Do we wish to establish a new method of legislating? I believe it would be well for Congress to hesitate, to think twice as to whether or not we can afford to legislate in this manner, whether or not we can afford to have the enrolling clerk, the President of the Senate, and the Speaker of the House of Representatives certify as to the passage of a law, which is in effect the regular way of doing business, and send it to the President, knowing full well that when we do that, no court is competent to go behind our act. If we establish this precedent, I think we can look forward to similar cases in the future. I think we have the constitutional power to do it. We can pass a part of the bill today and a part tomorrow, and if a majority passes upon those parts and we put them together before they are attested and signed by the President, no court can go behind our action. But I say again that we should think twice—and probably more times than that—before we undertake to pass legislation in that manner. We have the constitutional authority to do it. The question is, Should we do it?

Mr. DONNELL. Mr. President, will the Senator from Oregon yield to me so that I may ask the Senator from Michigan a question?

Mr. MORSE. I yield.

Mr. DONNELL. Should we pass House bill 1362, as we now find it, it would become law if signed by the President in that form, would it not?

Mr. FERGUSON. I should say so.

Mr. DONNELL. Therefore, in order that we may enact the further provisions set forth in the concurrent resolution, it would be necessary, in order to be valid, that the concurrent resolution be first approved by both Houses. Is not that correct?

Mr. FERGUSON. That is correct.

Mr. DONNELL. So if we pass House bill 1362 in its present form, those of us in this body who may think that the provisions contained in the concurrent resolution should have been incorporated in House bill 1362 would be running the risk of whether or not the House of Representatives would join and pass the concurrent resolution.

Mr. FERGUSON. I think that is correct. I think the question goes further than that. Senators who vote for the original bill must do so with the understanding which the able Senator from Missouri now states, that if the concurrent resolution is not adopted by both the House and Senate, it will never become a part of this legislation.

Mr. DONNELL. So if we pass House bill 1362 in its present form, it becomes law when signed by the President in that form, unless the House of Representatives shall join with the Senate in the enactment of the concurrent resolution.

Mr. FERGUSON. I should say that that states the situation exactly correctly.

Mr. DONNELL. Therefore Members of the Senate who deem it important that House bill 1362 have within it the contents of the concurrent resolution would not have those contents incorporated in it if the House of Representatives should not join in the concurrent resolution.

Mr. FERGUSON. I think that is an absolutely correct statement of the law.

Mr. DONNELL. And although the Senate of the United States did approve the concurrent resolution which was submitted by the Senator from Maryland [Mr. TYDINGS], assuming that my statement of a few minutes ago was correct, that the House of Representatives did not adopt the concurrent resolution, the contents of that resolution did not become a part of the Export-Import Bank act.

Mr. FERGUSON. I think that is correct.

Mr. DONNELL. I should like to ask a further question: Does the Senator from Michigan know of any legal impediment against the incorporation into House bill 1362, by the ordinary processes of amendment before the passage of the bill, of the contents of the concurrent resolution?

Mr. FERGUSON. In answer to that question, I will say that I know of no legal impediment. It has been stated by the able majority leader that there is a parliamentary impediment. The parliamentary situation is such that it is not desired to refer the bill to a committee in the House. If it were so referred, the chances would be great that it would never become law. So there is no legal impediment. There is a parliamentary or time impediment.

Mr. DONNELL. Therefore, if we pass House bill 1362, Members of the Senate who deem it advisable and important to have the provisions set forth in the concurrent resolution incorporated in House bill 1362 would not have what they consider important to be incorporated therein if the House of Representatives should fail to concur in the concurrent resolution.

Mr. FERGUSON. I believe that is correct.

Mr. DONNELL. I thank the Senator.

AMENDMENT TO RAILROAD RETIREMENT ACTS, ETC.

The Senate resumed consideration of the bill (H. R. 1362) to amend the railroad retirement acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code, and for other purposes.

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

The PRESIDING OFFICER. The Clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Aiken	Hayden	Overton
Andrews	Hill	Pepper
Austin	Hoey	Radcliffe
Ball	Huffman	Reed
Barkley	Johnson, Colo.	Revercomb
Bilbo	Johnston, S. C.	Russell
Brewster	Kilgore	Shipstead
Brooks	Knowland	Smith
Buck	La Follette	Stanfill
Burch	Langer	Stewart
Bushfield	Lucas	Swift
Capper	McCarran	Taft
Carville	McClellan	Taylor
Connally	McFarland	Thomas, Okla.
Cordon	McKellar	Thomas, Utah
Donnell	McMahon	Tobey
Downey	Magnuson	Tunnell
Eastland	Mead	Vandenberg
Ferguson	Millikin	Wagner
Fulbright	Mitchell	Walsh
George	Moore	Wheeler
Gerry	Morse	Wherry
Green	Murdock	White
Guffey	Murray	Wiley
Gurney	Myers	Willis
Hart	O'Daniel	Young
Hawkes	O'Mahoney	

The PRESIDING OFFICER (Mr. HOEY in the chair). Eighty Senators having answered to their names, a quorum is present.

Mr. TAFT. Mr. President, I wish to speak regarding the general character of the bill which is before the Senate. It is a bill to change and expand the so-called railroad retirement system, which is a special social-security system extending only to railroad employees, except as the coverage of this bill may extend it further.

We have a general social security system, which, of course, covers most other people in the United States, but at the time the railroad retirement system was set up it was set up as a special system for the railroad employees. That, however, is a Government system. The Government is responsible for paying the benefits under that system. It is not like many of the private pension systems which exist in the United States. It is a special Government system covering these particular employees, and not covering anyone else in the United States, while the general social security system covers other employees.

I think it is very doubtful whether there should be a special social-security system set up by the Government for certain special groups of employees, and it is the tremendous difference between the benefits and the treatment under the two systems which leads to the violence of the feeling regarding the question of coverage, whether an employee shall be under one system or the other. I do not particularly object, however, to there being a separate system for the railroad employees, nor do I object to that system being somewhat more liberal than the general system.

There is one thing which follows, however, if we have such a system. It must be actuarially sound. We have set up the social security system, and we recognize that under that system a great many of the benefits are going to have to be paid by the Government, with respect to which the tax levy today amounts to only 2 percent, outside of the unemployment-compensation tax. We realize that the Government is going to pay a very fair part of the total, on the theory that we might as well pay as we go when everyone in the United States is involved. There is not much point in anyone building up a so-called reserve of Government bonds when the group of beneficiaries and the group of taxpayers are just about the same people. However, when we have this kind of a system we must have an actuarially sound system, or the whole system will break down.

The House committee received this bill when it was introduced in the form in which we have it. It made an extensive study of the whole system. The study covered a period of more than 3 months. It employed special actuaries to make the necessary calculations, and then rewrote the bill and reported it.

Under the existing system there is a tax levy to pay the expenses of the system. The tax today is 3½ percent from the employer and 3½ percent from the employee, or a total of 7 percent. To that is added the special unemployment compensation fund tax, which is 3 percent, just as it is in various States. So there is now a total tax of 10 percent levied on the wages of railroad employees. That is to go up slightly in 1949, under the present law.

The House committee found that to be actuarially sound the tax should be 4½ percent on the employer and 4½ percent on the employee, or nearly 2 percent more than is now being paid under that system. The new bill proposes an increased tax of 5¾ percent on the employee and 5¾ percent on the employer, or a total of 11½ percent. To that is added 3 percent for unemployment compensation. So the bill provides immediately for a tax of 14½ percent, 5¾ of which is to come from the employee, and 8¾ from the employer. That rate will be increased in 1949 to a total of 15 percent, and in 1952 to a total of 15½ percent. The House committee finds that that will be actuarially insufficient by at least 1½ percent. In the opinion of the House committee a total tax of 17 percent on the pay roll would be required to cover the benefits provided in the bill.

That does not cover so-called health insurance. If we had the Murray-Wagner-Dingell bill we should have in addition a tax of 3 or 4 percent. So this looks toward a total tax on wages, in the case of the railroads, of 20 percent.

It seems to me that the employees do not really understand what is being imposed upon them. I do not believe that they realize what the tax will amount to. When we see what doubt there is in our minds as to these pensions, and whether it is worth while to deduct 5 percent from the pay roll in order to pay a future pension, certainly any railroad employee who had a free choice might well doubt whether he wanted to pay as much as 5¾ percent and have the employer pay the additional amount. I doubt very much if the employees understand what is being done. It is our responsibility, because we are imposing that tax.

It is all very well to say that the railroad employees want a special fund. Perhaps they do. Yet I do not believe that, aside from the leaders, any of them realize the extent of the burden which is being imposed in order to bring about the result which they seek. Furthermore, I think they might well realize that in order to have a special system they must pay the whole cost of it whereas if they were under the social-security system, under our present theory the Government would pay a considerable part of the burden out of general taxes. Aside from the men at the top, I have not heard any railroad employee say that he was particularly interested in increasing the tax which is now levied in connection with the railroad unemployment fund. I have talked with conductors and brakemen who very seriously doubt whether this kind of an increase is desirable.

We must consider this question also from the standpoint of the railroads. It is all very well to say that the tax pays itself. It does so far as the Government is concerned, if it is actuarially sound. I think it is within 1½ percent of being actuarially sound. But this tax is really a tax imposed on the shippers of the country, because this burden, whether it is placed on the employer or the employee, is to a large extent reflected in increased costs to the railroad industry; and under the law the Interstate Commerce Commission must increase the rates charged by the railroads in order to compensate them for that additional expense. That means that we are imposing an indirect tax on the shippers of the United States and on all the industries of the United States, as well as the farmers, who cannot get as much for their wheat and corn because the cost of getting it to the central markets becomes greater by reason of the increase which we are imposing on the railroads through this tax on pay rolls. On the present basis, when we get through, the total tax will amount to 15½ percent. The present pay roll is approximately $4,000,000,000. So in one way or another we are taxing the railroad industry to the extent of more than $600,000,000 a year in order to raise the money necessary for this scale of benefits.

Mr. WHEELER. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

Mr. WHEELER. Of course what the Senator says is true, that half of the tax will come from the railroads, and, in turn, from the general public. That is true of social security. After all, it is not a tax on the farmer alone. It is a tax on every class of people who buy anything.

Mr. TAFT. I was only raising the question as to whether it is desirable

to have this particular scale of benefits, which represents a higher scale of benefits than social security, and a higher scale of benefits than the present railroad retirement. Is it right for us to set up that scale of benefits when we must tax the people of the country in order to pay for it? I am perfectly willing to say that there should be some such payment, but I think we have a duty beyond merely saying, "This is their affair. They are going to pay for it." We have the duty to examine into the question and determine whether the scale of benefits is reasonable so that we can properly tax the shippers of the United States in order to pay for it. That is the only point I make.

Mr. WHEELER. Of course, the shipper passes it on to the consumer. After all, it is the consuming public which pays the tax.

Mr. TAFT. That is correct. It is passed on to everyone else.

Mr. WHEELER. Some persons have the idea that when we place a tax upon the railroads we place a tax upon some wealthy manufacturer who is paying it. Of course, it must ultimately be paid by the consumer and the producer, regardless of who pays it in the first instance.

Mr. TAFT. The Senator is entirely correct. My point is simply that we have an obligation to do more than merely say, "This is their affair. They are paying for it; therefore, they can have any benefits they want." We have an obligation to the individual railroad employee, who is not being consulted about whether he wishes this additional tax imposed upon him; and also an obligation to the shipper, who in the end pays the other tax. We also have an obligation to the general population, to determine whether it is proper to levy such a tax in order to increase the benefits to a particular group of the population.

Mr. HAWKES. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

Mr. HAWKES. In order to emphasize the point which the Senator from Ohio is making, let us remember that the consumers, the group about which the Senator from Montana was speaking, who ultimately pay this bill, include among their ranks the great mass of workers who are under social security and who are receiving a different form of security, and a lesser amount than the railroad employees now receive. I believe that there is a fundamental question involved. Have we the right, considering the increase in rail rates and transportation charges which is necessarily involved, to raise the cost of everything to the great mass of workers who get one form of social security, in order to pay a different type of social security to a different group? I am in favor of doing the sound, fair thing, so far as we can, for the railroad workers; but I think we must always correlate the two groups and see that justice and equity is done as between them.

I thank the Senator.

Mr. TAFT. I agree with the Senator.

What the House committee did was to adopt the substitute bill giving to the railroad workers about one-half of what is provided in this bill. It also increased the tax to take care of what was actuarially necessary in order to get the money required to meet that system.

The House committee went further. Whereas the part of the tax which is levied on employer and employee in order to obtain the money for the annuity payments—the old-age pension part of the plan, so to speak—is apparently insufficient actuarially to meet the demands on it, under the present law or under the terms of the bill, the part which is levied for unemployment compensation, the 3 percent which is paid by the railroads, is far more than is necessary for the purpose of handling unemployment in the railroad industry. Like most public utility industries, the railroad industry affords fairly stable employment, and consequently the unemployment compensation fund reserve has been built up to more than $700,000,000. That is in lieu of State unemployment compensation. The 3-percent tax is like the State unemployment compensation tax. In view of the excess in this fund, the bill adds to the ordinary payment for unemployment-compensation payments for unemployment resulting from sickness and payments for unemployment resulting prom maternity.

That is an extension of unemployment compensation which has never been made, so far as I know, in any State of the Union. To a certain extent unemployment compensation is an invitation to idleness. Today we see that the GI payment of $20 a week is apparently very acceptable to many persons in lieu of work, so they are not looking very hard for work under those circumstances, and they draw the $20 a week as a matter of course. If in addition there is unemployment compensation for unemployment resulting from sickness, we shall find so many sick persons that the railroads will hardly be able to operate. It is inevitable. Many persons who may be sick are still able to work. But with the promise that if they stay at home for a certain length of time and the doctor says they are sick they will draw unemployment compensation, many of them will accept it.

I think that is utterly unsound, and I think it is also utterly unsound to pay it for maternity benefits. I do not believe there should be, in either case, any payments for unemployment compensation. If there is to be anything of the kind, it should be in connection with some kind of health insurance fund, either a voluntary or a compulsory health-insurance fund, if any State wishes to provide for one. But certainly it should not be done in connection with unemployment compensation.

The obviously sound thing to do, Mr. President, is to reduce the 3-percent tax, if a tax of that amount is not necessary for unemployment-compensation payments in connection with the railroads, and to use the difference to provide for some of the increase in the other tax which will be necessary. Obviously, that is what the House committee did. The House committee, when it got through, had a tax of 12½ percent, instead of 15½ percent, on the pay roll of the workers; and, in addition, it had an actuarily sound bill. It gave, in the way of increased benefits, only about one-half of the increased benefits provided by this bill, I believe. That is a very rough estimate, and I do not wish to state positively exactly how much it will be. But, roughly speaking, I estimate that it increases the annual benefits by approximately $37,500,000 a year, instead of $75,000,000 or $100,000,000, as under the existing bill.

The House committee recommended that to the House. The House voted on the amendments, and approved them in the Committee of the Whole. Then they got into a jam and voted on all the amendments en bloc. Why the rule is that way, I do not know. But that was done, and the House rejected all those amendments, all the corrective amendments, and all the amendments which now have been proposed to the Senate, by the Senator from Kentucky in the form of a concurrent resolution. Then the House recurred to the original bill, which then was passed. But all the work done by the House committee was thrown away.

Yesterday the Senator from Kentucky said that those who proposed the coverage amendment were really engaged in an attempt to kill the bill. I say that those who are insistent on having the bill pass without amendment are saying, "We want this or nothing." I say now that if the railroad employees and the proponents of this bill are willing to sit down with the House committee and work out a compromise by which they can get a better bill, and by which they can agree with the House committee to provide for more benefits, if they wish to have them, than were granted in the bill as proposed by the House committee, they will have to make some kind of compromise with the House committee; and I believe that if such a compromise is made, the bill can go back to the House and be passed by the House with the amendments, and without imposing upon the people of the United States who, in the end will have to pay this special form of security benefits, the total burden proposed by this bill, which seems to me to be entirely unreasonable.

This bill provides for a number of additional benefits. The benefit which I think is peculiarly desirable and which I think should be made is the one which extends the old age pension feature, the annuity feature, to survivors. The social security system has always paid something to the widows of the workers who die, but the railroad retirement system for some reason, has not done so. Of course, that should be done, and the provision for it should remain in the bill. The bill increases the disability payments. I have no objection to that. The bill reduces to 60 years the age limit as to women, if they have had 30 years service. As I understand the bill, it also gives benefits for total disability, under certain circumstances. In some respects perhaps, it may go a little far, because it may provide payments for disability which has no relation to railroad work. Nevertheless, in general I believe that the extension as to disability payments is a proper one to be made, and I believe it will have to be made, to the extent that

it does not now exist in the social-security law.

The minimum annuities are somewhat increased by the bill.

But in general, the important feature of it and, I think, the important feature to the railroad men, is the provision for the payment of survivor and death benefits in a more liberal way than is provided by the present law.

I have already referred to the extension of unemployment compensation payments to cases involving sickness and maternity, which I think is completely unjustifiable and should never have been made.

Let me say that our subcommittee went into this whole question in the hearings, and then submitted a report, which is very interesting and which says that the subcommittee does not propose to pass on the question. The report was submitted in March; and it says, in part:

> The questions of policy needing decision are of such great importance that the full committee will find, after study and deliberation, that it will of necessity have to make the decisions itself; and the subcommittee therefore felt that no useful purpose would be served by deciding such questions and reporting them in the form of a finished bill to the full committee. A comprehensive and important report has been pending before the Committee on Ways and Means.

The report from the subcommittee to the full committee then outlines the major changes, and states what the various questions are. The report covers approximately nine different problems, which the subcommittee says are controversial. But the report does not purport to pass on what the decision in those cases should be.

The full committee gave no consideration whatever to those controversial questions. There was no vote in the committee on those questions. There was no attempt to consider them. There was no attempt to weight the bill against the House bill or to consider whether any of the amendments of the House committee were proper ones to be made, even though they had been rejected en bloc by the House of Representatives.

So we have here a bill which, insofar as it has received any consideration by the House of Representatives, has been rejected or at least fundamentally changed; it has been changed in important respects. The House expressed the feeling that this tax should be at least 3 percent less than that provided by the current bill; that there should be that much less of a burden.

I can see no justification whatever for the position taken by the majority leader, namely, that the Senate is now foreclosed from considering fundamental amendments dealing with the whole matter of social security. Let me say that in the unemployment-compensation field the bill increases straight unemployment-compensation payments to $25 for 26 weeks. An attempt to do that under the social-security law was rejected by the Senate less than a year ago. The in-between effect of increasing unemployment-compensation payments to $25 a week for 26 weeks at the present time will, it seems to me, be a demand, and perhaps a proper demand, that all the GI payments be increased from $20 to $25 a week, and it is very doubtful whether that policy was a very wise one, even at the $20 rate.

Undoubtedly it will lead to an increase in the amount provided under the State laws. I myself think that in the end the $25 rate is coming. But I think this is an inappropriate time to increase the unemployment-compensation payments to $25 for a period of 26 weeks. I understand that when those payments are combined with the sickness-insurance payments, the total will mean that some persons may actually draw the $25 for nearly an entire year.

Mr. HAWKES. Mr. President, will the Senator yield?

Mr. TAFT. I yield to the Senator from New Jersey.

Mr. HAWKES. I thank the Senator from Ohio.

I wish to call attention to the fact that it is only a few months—I do not know how many; but, as I recall, not more than 4 or 5—since we took up in the Finance Committee the question of increasing unemployment compensation payments to $25 for 26 weeks, under an arrangement by means of which the Federal Government was to contribute, and it was hoped the States would raise their contributions. The Senator from Ohio remembers that, I am sure.

Mr. TAFT. Yes.

Mr. HAWKES. The Senate, after mature consideration, decided that that was an unwise thing to do at that time.

Later, when the bill came to the Senate, the majority leader again offered an amendment to include in the bill provision for payment of the $25 for 26 weeks. That amendment, offered by the majority leader just a few months ago, was defeated by a vote of 51 to 29, which shows what the sentiment was at that time; and I think nothing has happened since then to change it.

Mr. TAFT. I thank the Senator. I think I should point out that, if we put all benefits on the basis proposed in this bill, namely, a pay-roll tax of 15½ percent, we would come very close to imposing a total tax bill for social security on the people of the United States of approximately $15,000,000,000 a year, which is supposedly the tax covered by the Beveridge plan, if that were imposed throughout the entire country.

Mr. President, I think the tremendous size of this tax is evidence of why the coverage question has become so important. I may say that, in my opinion, the coverage provision is not ambiguous. There is no question of clearing up an ambiguity. It seems to me very clear that ice companies and warehouse companies, as well as others, are covered, and that there can be no question as to how a court would interpret the law.

Paragraph (2), on page 2 of the bill, reads:

> Any person, other than a carrier regulated under part I of the Interstate Commerce Act, which, pursuant to arrangements with a carrier or otherwise, performs, for hire, with respect to passengers or property transported, being transported or to be transported by a carrier, any service included within the term "transportation" as defined in section 1 (8) of the Interstate Commerce Act, whether or not such service is offered under railroad tariffs.

The term "transportation" as defined in the Interstate Commerce Act is as follows:

> The term "transportation" as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, expressed or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.

I do not see how clearer language could be written. I repeat:

> and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.

It was argued that the Interstate Commerce Act had never covered these various services, although they are defined as "transportation" in the act. But the Interstate Commerce Act does not give the Interstate Commerce Commission power over all transportation as so defined. It gives the Interstate Commerce Commission authority only over common carriers by railroad which are engaged in transportation. Of course, they have not extended their authority over the icing and refrigeration service of companies that are not common carriers. So that has nothing to do with the question. The bill deliberately states that any person, other than a carrier, is covered by it if the service which he performs is included within the term "transportation." I do not see how there could be any question about the fact that such companies as have been mentioned are included. There is no question of ambiguity in connection with the inclusion of those services.

Paragraph 4 of the bill is very vague and general. It reads:

> Any person engaged in rendering, pursuant to any arrangement for one or more carriers, any service, which (i) is of such a nature as to be susceptible of indefinitely continuous performance—

Which includes icing which must be ready at any time in the day, and in connection with warehousing, the railroads must be taken into consideration.

I continue reading:

> (ii) constitutes a part of or is necessary or incidental to the operation or maintenance of way, equipment, or structures devoted to transportation use—

Certainly icing is included in that language—

> or constitutes a clerical, sales, accounting, protective, or communications service necessary or incidental to the conduct of transportation carried on by a carrier—

And so forth. I cannot see why those terms are not sufficiently broad to include all persons who are afraid that they may be or may not be included. I do not see why every telegram which has been received regarding this subject was not justified on the basis of the language included in the bill.

Incidentally, it is said that these amendments are merely to clear up ambiguities. The Interstate Commerce Act

has been in effect for 8 years. Like any act which is subjected to continuous rulings and decisions of the courts, it has been ruled on so many times that we have come to a definition of who is in and who is out. There is no substantial dispute today as to that question, but if we pass this bill it will be 10 years before it will be determined through further decisions of the Railroad Retirement Board who is in and who is out. We add to the difficulties of classification if we include the words which are in the pending bill. Certainly we should return to the existing system. There is no reason why A should be under the Railroad Retirement Act and B should be under the Social Security Act. They are both covered by one or the other. As a matter of fact, I believe that the railroad unions want to be included. They are included. They have said themselves that they do not care to extend the coverage of the bill to their activities, and I do not see any reason why they should be.

There is another change which was rejected by the House committee, as it should have been rejected. I refer to the change which transfers to the railroad retirement system the collection of the tax of some 12 percent of the pay roll. It amounts to approximately $400,000,000 or $500,000,000 a year. It is now being collected by the Treasury of the United States. They are the tax-collecting agency. They should be. They should determine on a purely impartial basis whether the particular persons covered by the bill shall pay the tax or shall not pay it. That question should be determined by the Treasury. There should not be two separate tax-collecting agencies. We should not take away the power from the Treasury, hand it over to the Railroad Retirement Board, and give them authority to decide all these questions with reference to whom the tax applies or does not apply.

The original House bill refused to make that change and left the administration of the act in the Treasury, where it should remain. The effect of the change will be to give the Railroad Retirement Board a great deal more to say with reference to what is covered and what is not. If they are like any other agency of which I know, they will want to cover everything in the world, and include everything they can include so as to enlarge their authority. They will want to include all the people they can bring under their control so that they can collect taxes and build their organization up to greater strength, instead of allowing the authority and power to reside in the Treasury of the United States. So I feel that a transfer of the tax collecting authority from the Treasury to the Railroad Retirement Board should not be made. An amendment to do that is one which we should consider and pass upon.

Mr. President, it seems to me that the proposal of the distinguished majority leader is, in the first place, a complete mistake because it assumes that the only thing at issue is the question of coverage. It is an important issue, but it seems to me it is not nearly so important as are the other questions which I have discussed, namely unemployment compensation, the collection of taxes, and the size of the tax which is to be levied.

To say that we cannot adopt amendments is to suggest something new in legislative procedure. I never heard of enacting legislation by proposing that a concurrent resolution, which includes some 50 separate amendments, shall be adopted after the bill is passed, on the theory that we will be correcting clerical mistakes which we have not yet made, and which we are perfectly able to correct by amendments under the ordinary rules of the Senate. If we legislate in that way we will prostitute the whole process of the Senate. I think that clerical mistakes and minor errors have been corrected by adopting concurrent resolutions; but it never has been done without unanimous consent. I think that the Senator from Missouri read to the Senate Rule XV. It provides as follows:

> When a bill or resolution shall have been ordered to be read a third time, it shall not be in order to propose amendments, unless by unanimous consent—

And so forth. What the majority leader has proposed to do is amend this bill by adopting a concurrent resolution after the third reading of the bill has been ordered. If that can be done it seems to me that it can be done only under rule XV, or by unanimous consent. So far as I know it has never been done except by unanimous consent. Certainly, if the majority leader offers such a concurrent resolution I shall object to its consideration on the ground that it would be in violation of rule XV of the rules of the Senate. I do not know what the ruling of the Chair will be, but certainly it seems to me that the ruling of the Chair should be in accordance with the rule of the Senate. To offer a concurrent resolution such as the one which the majority leader has proposed, would be an attempt to amend the bill after the bill had reached the third reading. If any Senator is relying on that procedure, he cannot be certain that any such resolution can ever be passed through the Senate of the United States even if a majority is in favor of what seems to me to be a perfectly ridiculous procedure.

So, Mr. President, I urge very strongly, in the first place, that the Senate has a right to vote its sentiments, and should do so, not on any imaginary theory about what is going to happen to the bill. If the advocates of the bill are willing to take something less than is included in the bill, if they are willing to agree with the House Members, who are the only ones who really studied this matter, in reaching a compromise bill, I believe they can reach such a compromise, perhaps somewhat more liberal than that proposed by the House committee, but in any event giving more than half the additional demands which are made in the bill. I believe that can be done, if it is desired.

The position taken by the majority leader is that we must have this bill or nothing, that if we do not have this, we are to get nothing, so that we have to take this. I say there is a middle course.

The Social Security System requires revision much more than does the railroad retirement system. We heard this morning in the Finance Committee of a great many amendments proposed to that system, and the committee is considering them. It is far more important, and important to a far greater number of people in the United States, that that system be revised and brought up to date and made more liberal. The present railroad retirement system is more liberal than that system, except in the one respect of survivorship annuities. But that system should be brought up to date. We put off the revision of the social security system until next year.

If the pending bill should fail, certainly we could pass a proper bill next year. I think the present system should be made to do. I think we can work out a sound system, and I believe we can do it with a less expensive burden than is proposed in the bill before us.

But I do not think we should start out with this bill and set a precedent for something which, if applied to social security generally, would mean, in my opinion, taxes in excess of $17,000,000,000 a year on the people of the United States.

I think we should consider these questions, and I believe very strongly that in relation to coverage it is perfectly clear that unless we do what the Senator from North Carolina [Mr. HOEY] is proposing, we will include all kinds of services which are not included, which do not want to be included, which the railroad men say now they do not want included, yet which in my opinion are included, beyond the shadow of a doubt, in the present language of the bill.

Mr. JOHNSON of Colorado. Mr. President, will the Senator from Ohio yield?

Mr. TAFT. I yield.

Mr. JOHNSON of Colorado. I wish to get into the RECORD a statement with regard to the maximum unemployment payments which might be made under the pending bill and the maximum paid under the present law.

The Senator is correct in a way, but I do not think the whole story has been told. Twenty dollars is now the maximum, but that maximum is applicable only to men receiving $1,600 a year in salary. In other words, a person receiving from $150 to $199.99 gets under the present law and under the proposed law at daily benefit rate of $1.75. If he receives up to as high as $1,599.99, he gets $3.50 a day for a 5-day week, which would mean a total of $17.50 a week under the proposed law and under the existing law.

Mr. TAFT. I quite agree that when we say $20 or $25, it is not a flat figure. That is true in regard to State unemployment compensation acts, too. Usually we simply characterize the maximum figure as the figure that sets the scale, so to speak. I did not mean to say that everyone would get $25 for 26 weeks, of course, but that is the maximum which could be received.

Mr. JOHNSON of Colorado. That is the point I wanted to clarify. The Senator compared the proposed unemployment compensation with the veterans' unemployment compensation, and the latter, of course, is a flat compensation.

Mr. TAFT. The Senator is correct; of course, that is flat compensation. The straight compensation is not. That has

the variations to which the Senator calls attention in the bill.

Mr. JOHNSON of Colorado. The $25 maximum provided in the proposed law applies only to those who receive $250, or more than that.

One other point I wish to clarify, if the Senator will permit me, namely, the combination of unemployment-insurance provisions and sick benefits.

Only 91 employees out of over a million and a quarter employees would have received both types of unemployment benefits in the one benefit plan ending June 30, 1940.

Table 23 on page 80 of the hearings shows that in the benefit year ending June 30, 1940, 29,298 employees out of 1,284,000 exhausted their unemployment benefits. In terms of 1,000,000 eligibles, this is equivalent to 22,816, or 2.3 percent.

In order for this group to get also unemployment benefits for sickness for the remaining period in that benefit year, it would be necessary for all of them, 22,816 out of each million employees, to be ill for 6 months or longer in a 12-month period. But this is not so.

Table 54 on page 116 of the hearings indicates that 4 per 1,000 women and 3.9 per 1,000 men will have a disability in a year which lasts 6 months or more. Therefore, only 0.4 percent of any group of employees will be sick for more than 6 months or more in a year, and only that portion can draw the maximum sickness benefits. Assuming that persons who suffer from extended unemployment are not sick any more frequently than those who are not so employed, only 0.4 percent of the 29,298 employees who exhausted their unemployment benefits in the benefit year ending June 30, 1940, or 91 employees, would here have been sick for 6 months or more in the same benefit year.

Even if the rate of sickness among those who are unemployed for long periods is twice as high as for the average of the number drawing the benefits for lack of work for a full year, the number unemployed for 6 months and sick the other 6 would be 182 per 1,000,000 eligibles, or 0.0182 percent.

Making the same assumption as to the sickness rate for the succeeding fiscal years, 154 per 1,000,000 would draw both benefits for 6 months each in the fiscal year ending June 30, 1941; 64 per 1,000,000 in the next fiscal year; 12 per 1,000,000 in the next; and 2 per 1,000,000 eligibles in the fiscal year ending June 30, 1944.

Mr. President, I ask that a table and a statement concerning it be inserted in the RECORD at this point.

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

Column I, total compensation	*Column II, daily benefit rate*
$150 to $199.99	$1.75
$200 to $474.99	2.00
$475 to $749.99	2.25
$750 to $999.99	2.50
$1,000 to $1,299.99	3.00
$1,300 to $1,599.99	3.50
$1,600 to $1,999.99	4.00
$2,000 to $2,499.99	4.50
$2,500 and over	5.00

The amount of benefits payable for the first 14 days in each maternity period, and for the first 14 days in a maternity period after the birth of the child, shall be one and one-half times the amount otherwise payable under this subsection. Benefits shall not be paid for more than 84 days of sickness in a maternity period prior to the birth of the child. Qualification for and rate of benefits for days of sickness in a maternity period shall not be affected by the expiration of the benefit year in which the maternity period will have begun unless in such benefit year the employee will not have been a qualified employee.

The PRESIDING OFFICER (Mr. SWIFT in the chair). The question is on agreeing to the amendment of the Senator from North Carolina [Mr. HOEY], which will be stated.

The CHIEF CLERK. It is proposed to strike out all of section 1, and renumber the remaining sections of the bill; and on page 60, it is proposed to strike out lines 18 through 20.

Mr. HOEY. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Aiken	Hayden	Overton
Andrews	Hill	Pepper
Austin	Hoey	Radcliffe
Ball	Huffman	Reed
Barkley	Johnson, Colo.	Revercomb
Bilbo	Johnston, S. C.	Russell
Brewster	Kilgore	Shipstead
Brooks	Knowland	Smith
Buck	La Follette	Stanfill
Burch	Langer	Stewart
Bushfield	Lucas	Swift
Capper	McCarran	Taft
Carville	McClellan	Taylor
Connally	McFarland	Thomas, Okla.
Cordon	McKellar	Thomas, Utah
Donnell	McMahon	Tobey
Downey	Magnuson	Tunnell
Eastland	Mead	Vandenberg
Ferguson	Millikin	Wagner
Fulbright	Mitchell	Walsh
George	Moore	Wheeler
Gerry	Morse	Wherry
Green	Murdock	White
Guffey	Murray	Wiley
Gurney	Myers	Willis
Hart	O'Daniel	Young
Hawkes	O'Mahoney	

The PRESIDING OFFICER. Eighty Senators having answered to their names, a quorum is present.

The question is on agreeing to the amendment of the Senator from North Carolina [Mr. HOEY].

Mr. WHEELER. Mr. President, for the benefit of those who are worrying about the construction to be placed upon section 1, I will say that I pointed out yesterday how the Interstate Commerce Commission had repeatedly interpreted this particular section on transportation, and how it had limited its application. I sent a telegram to William J. Kennedy, chairman of the Railroad Retirement Board, 844 Rush Street, Chicago, Ill., as follows:

I direct your attention to the second paragraph of page 7 of the Senate Interstate Commerce Committee's report on H. R. 1362. If the Board or its counsel has had an opportunity to study this report with reference to the language of the bill, would appreciate knowing whether this paragraph is regarded as correctly stating the meaning and application of section 1 of the bill and whether this section, if enacted, would be administered accordingly.

The telegram was signed by me as chairman of the committee.

I received the following telegram this morning at 11 o'clock:

Our general counsel has studied the report of the Senate Interstate Commerce Committee on H. R. 1362, particularly the second paragraph beginning on page 7. He advises me that in his opinion this paragraph correctly states the meaning and application of section 1 of the bill. The administration of section 1, if enacted, would be in accord with this advice and the intent of Congress as expressed in the committee report.

WILLIAM J. KENNEDY,
Chairman, Railroad Retirement Board.

Mr. President, I now wish to call to the attention of the Senate the language used in the second paragraph on page 7 of the committee report, as follows:

Many representations have been made to the committee indicating that persons (other than carriers subject to part I of the Interstate Commerce Act) engaged in manufacturing, harvesting, storing, distributing, selling, or delivering refrigeration or ice to or into equipment used for refrigeration purposes in connection with the transportation of passengers or property are included in the term "employer," and that therefore their employees will be considered to be railroad employees. The committee would like to state categorically that there is no purpose or intent to include such persons as employers under the act and that it is the unanimous understanding of the committee that such persons are not so covered. The committee also unanimously understands that notwithstanding the provisions of subsections (2) and (4) of section 1, there is no purpose or intent to include warehouse or trucking companies, or individuals carrying on either of such businesses, within the term "employer," if they are not owned or controlled, directly or indirectly, by, or under common control with, a carrier subject to part I of the Interstate Commerce Act.

Mr. KNOWLAND. Mr. President, will the Senator yield at that point?

Mr. WHEELER. I yield.

Mr. KNOWLAND. The Senator has mentioned several different types of business which are not included. Would he also say that it was not the intent of the committee to include water carriers?

Mr. WHEELER. Oh, definitely. They are specifically excluded by the language of the bill.

Mr. President, I stated yesterday that my recollection was that in the hearings the Board itself had agreed with the interpretation contained in the language of the report of the committee. But to make sure about it, so that there could be no misunderstanding whatever with reference to it, I sent the telegram to the chairman of the Railroad Retirement Board to find out whether the Board placed on the section the same interpretation which the committee placed on it, and, secondly, whether in administering the act the Board would administer it in accordance with the views of the committee. In reply I received the telegram I have just read.

Mr. BALL. Mr. President, will the Senator yield?

Mr. WHEELER. I yield.

Mr. BALL. The interpretation which the Senator has read is very interesting, but if that is the correct interpretation, what is the purpose of having section 1 in the bill if it is not to broaden the act?

Mr. WHEELER. I made an explanation of that point previously. I have read the language several times on the floor of the Senate. I pointed out yesterday on two occasions that the interpretation which was placed on that language by the Interstate Commerce Commission itself in five or six different decisions, which interpretation has been adopted by the courts of the country, has limited that language. The Interstate Commerce Commission itself has held that, notwithstanding that language, it does not have authority to regulate any of the services which have been mentioned, which it would be bound to do if it adopted the broad general language written into the Transportation Act.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. WHEELER. I yield.

Mr. TAFT. I entirely dispute that construction. The act does not give the Commission power over all transportation as defined in the act. It gives it authority only to regulate common carriers by railroad engaged in transportation. But the new law, the railroad retirement law, gives authority over persons who are not carriers at all, but who engage in what is defined as transportation.

Mr. WHEELER. I am sorry to have to disagree with the able Senator. Notwithstanding his views, the Interstate Commerce Commission has in five different decisions, which I read on the floor yesterday, disputed the statement which he has just made. In several decisions the Interstate Commerce Commission stated that it would not regulate icing companies unless they were controlled or owned by the transportation company itself.

Mr. TAFT. That is what I say. That is what the act provides. The act provides that the Interstate Commerce Commission shall not regulate someone who is not a common carrier by railroad simply because he is engaged in transportation. But there is no such limitation in the new law.

Mr. WHEELER. The Senator entirely misconstrues the law. If the ice company is owned by a railroad, then the definition of transportation covers icing, and all the other services. If the law were construed as broadly as the Senator suggests, the Interstate Commerce Commission would have not only the right but the duty to regulate them.

Mr. TAFT. To regulate what?

Mr. WHEELER. To regulate the icing companies.

Mr. TAFT. No. The law merely authorizes the Interstate Commerce Commission to regulate common carriers by railroad engaged in icing. It does not authorize it to regulate everyone engaged in transportation.

Mr. WHEELER. If the railroad were engaged in icing, the Commission would have a right to regulate that activity.

Mr. TAFT. I agree entirely.

Mr. WHEELER. Let me find the language of the decisions to which I refer.

Mr. BALL. Mr. President, will the Senator yield?

Mr. BARKLEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield, and if so to whom?

Mr. WHEELER. I yield to the Senator from Kentucky.

Mr. BARKLEY. Recurring to the question asked by the Senator from Minnesota, as to why section 1 is in the bill——

Mr. BALL. It deals entirely with coverage. If the purpose is not to broaden the coverage, why is it in the bill?

Mr. BARKLEY. It has been explained over and over again that there are two categories included in section 1 which are not now covered; namely, freight forwarders and railroad-owned or controlled truck lines. Aside from that, all section 1 does is to clarify the present law so as to avoid the necessity of dealing with so many individual cases. Last night the Senator from Oregon pointed out that in the 9 years during which this section has been in operation the Retirement Board has been compelled to deal with more than 900 individual cases. In view of that fact, section 1 attempts to spell out in greater detail the present coverage and adds two classes, freight forwarders and railroad-owned truck lines and buses.

The Senator from Montana was about to read a telegram from the Retirement Board in that connection.

Mr. BALL. He read the telegram.

Mr. BARKLEY. The Senator from Minnesota interrupted him. I hope the Senator from Montana will read the telegram.

Mr. BALL. If the Retirement Board has decided in 900 cases what the present coverage is, it seems to me that it must be pretty well clarified by now. I do not see any reason for this section, except to reach out and cover more industries.

Mr. WHEELER. This is the language of the report:

> Many representations have been made to the committee indicating that persons (other than carriers subject to pt. 1 of the Interstate Commerce Act) engaged in manufacturing, harvesting, storing, distributing, selling, or delivering refrigeration or ice to or into equipment used for refrigeration purposes in connection with the transportation of passengers or property are included in the term "employer," and that therefore their employees will be considered to be railroad employees.

That is the question which confronts us.

> The committee would like to state categorically that there is no purpose or intent to include such persons as employers under the act and that it is the unanimous understanding of the committee that such persons are not so covered.

Mr. BALL. Mr. President, will the Senator yield?

Mr. WHEELER. I yield.

Mr. BALL. If it is the unanimous opinion of the committee that they are not covered by this section, why is it that a member of the committee is offering the pending amendment, which is being supported by several other members of the committee? I do not believe that the language in the report makes any sense, in view of the parliamentary situation at the present moment.

Mr. WHEELER. I cannot account for what is in the mind of an individual Senator. I am simply reading from the report.

Mr. BALL. It is apparent that the minority members of the committee were not consulted when that language was placed in the report because it is perfectly clear, from the fact that they are offering these amendments, that they do not agree with that interpretation.

Mr. WHEELER. I do not know what is in their minds. I did not draft the report myself because I did not happen to be here. I do not know what is in the mind of any individual Senator. I am reading from the report itself.

Mr. BALL. Does not the Senator think that it is a little inconsistent for the report to say that the committee is unanimously of the opinion that the coverage is not extended by the language of section 1, when a member of the committee has offered an amendment to strike out the section because he does not want the coverage extended?

Mr. WHEELER. What difference does it make——

Mr. BALL. The Senator is proposing that we rely upon the courts and the Board accepting the language of a report which obviously on its face has misrepresented the facts as they were before the committee.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. WHEELER. I yield.

Mr. BARKLEY. Regardless of whether the report is meticulously accurate in the use of the word "unanimous," the question is what the language means, and what interpretation the Board would place upon it.

Mr. WHEELER. Let us say that only a majority of the committee agreed. After all, when the courts look into such a question as this—when there is any doubt—they always look at what the committee said about it, and what was said in the debates.

Mr. BALL. Mr. President, will the Senator yield?

Mr. WHEELER. I yield.

Mr. BALL. I wonder if the Board will take into account the fact that yesterday on the floor of the Senate the Senator from New Jersey [Mr. HAWKES] stated that when he asked the members of the committee present at the meeting at which it was voted to report the bill, he could find only two members who had even read the bill.

Mr. BARKLEY. Mr. President, that sort of a statement was obviously inaccurate.

Mr. BALL. The Senator from New Jersey made that statement, and it was not challenged. There were members of the committee present. He stated that in the meeting he asked every member of the committee who was present, and he found only two who had even read the bill.

Mr. BARKLEY. This particular member of the committee was not present when the Senator from New Jersey made that statement. I do not know how many members of the committee read the report, but I do not recall that anyone asked in the committee how many members had read the bill.

Mr. HAWKES. Mr. President, will the Senator yield?

Mr. WHEELER. I yield.

Mr. HAWKES. I certainly did inquire at the meeting. I do not know whether the majority leader was present when I spoke about this matter yesterday.

Mr. BARKLEY. I was not present.

Mr. HAWKES. I told the facts as to how the bill was put through the committee. I wish to say very definitely that I asked every member if he had read the bill. I do not know that I said that any member had stated that he had done so. I think the Senator from Minnesota was inadvertently incorrect.

Mr. BARKLEY. I was present——

Mr. HAWKES. May I finish my statement?

Mr. BARKLEY. Of course.

Mr. HAWKES. I think I stated very definitely that the Senator from Colorado [Mr. JOHNSON] and the Senator from Montana [Mr. WHEELER] had undoubtedly read the bill and read the hearings; but as to other Senators who were present, if there are any of them who wish to challenge that statement, I should like to have them rise and challenge it.

Mr. BARKLEY. I will certainly challenge it. I would have challenged it yesterday if I had been present when the Senator made the statement. I have read the bill.

Mr. WHEELER. The Senator from New Jersey was not the only member of the subcommittee. The Senator from Minnesota [Mr. SHIPSTEAD] was a member of the subcommittee. The Senator knows that there were five members of the subcommittee who held hearings on the bill for a long period of time.

Mr. BARKLEY. And the hearings were held on the bill which is now before the Senate. The subcommittee held hearings on the Wheeler-Wagner-Crosser bill. It certainly would be an injustice to the members of the subcommittee to accuse them of not having read the bill during the whole time they were holding hearings on it. I was not a member of the subcommittee, but I have read the bill and the House report, as well as some of the hearings.

Mr. HAWKES. I do not wish to do an injustice to the majority leader. As I remember, this is the statement which I made: That no member of the committee stated that he thoroughly understood the bill except the chairman of the subcommittee, the Senator from Colorado [Mr. JOHNSON]. The Senator from Montana [Mr. WHEELER] was not present, and my recollection is that every member of the committee stated that he had had no time to study the subject, and had not read the hearings or the report of the subcommittee.

Mr. WHEELER. There is nothing unusual about that. That is a common occurrence, because if we were to read all the reports and all the hearings on every piece of legislation that came before the Senate we could never find time to pass any legislation. Let me say to the Senator from New Jersey, with all due deference, that he does not thoroughly understand the bill, notwithstanding the fact that he has read it and studied it. I think he is placing an entirely erroneous construction on this section.

Mr. HAWKES. I do not believe that any member of the subcommittee understands the bill, and that is the reason why I do not think we are ready to pass it.

Mr. WHEELER. The Senate may not be willing to pass it. I do not know whether it is or not. At least I wish to get the facts before the Senate. There may be some question as to whether or not a certain member of the committee entirely agreed with the report. However, the majority of the committee reported the bill, and the majority of the committee approved the report. But that is not the important thing. The important thing is that I sent a telegram to the Board itself, and I wish to read it again:

> I direct your attention to the second paragraph on page 7 of the Senate Interstate Commerce Committee's report on H. R. 1362. If the Board or its counsel has had an opportunity to study this report with reference to the language of the bill, would appreciate knowing whether this paragraph is regarded as correctly stating the meaning and application of section 1 of the bill and whether this section, if enacted, would be administered accordingly.

Let me read again the pertinent part of the committee report:

> Many representations have been made to the committee indicating that persons (other than carriers subject to pt. I of the Interstate Commerce Act) engaged in manufacturing, harvesting, storing, distributing, selling, or delivering refrigeration or ice to or into equipment used for refrigeration purposes in connection with the transportation of passengers or property are included in the term "employer," and that therefore their employees will be considered to be railroad employees. The committee would like to state categorically that there is no purpose or intent to include such persons as employers under the act and that it is the unanimous understanding of the committee that such persons are not so covered. The committee also unanimously understands that notwithstanding the provisions of subsections (2) and (4) of section 1, there is no purpose or intent to include warehouse or trucking companies, or individuals carrying on either of such businesses, within the term "employer," if they are not owned or controlled, directly or indirectly, by, or under common control with, a carrier subject to part I of the Interstate Commerce Act.

Now I read the answer which I received from the Board:

> Our general counsel has studied the report of the Senate Interstate Commerce Committee on H. R. 1362, particularly the second paragraph beginning on page 7.

Mr. President, that is the identical paragraph which I have just read—

> He advises me that in his opinion this paragraph correctly states the meaning and application of section 1 of the bill. The administration of this section 1, if enacted, would be in accord with this advice and the intent of Congress as expressed in the committee report.
>
> WILLIAM T. J. KENNEDY,
> *Chairman, Railroad Retirement Board.*

Let me say that so far as I recall every person who came before the committee, representing the railroad brotherhoods or their counsel or the men themselves, testified exactly to what is contained in this report. So we not only have the statements of the railroad brotherhoods themselves and their counsel, but we also have the committee's report; and, in addition, we have the statement of the Board which must control the administration of the act. All of them agree.

Under those circumstances, it seems entirely impossible that any court would say that any other interpretation could be placed upon the proposed act, inasmuch as the proponents of the bill themselves claim that it does not include anything else and the Senate committee states that it does not include anything else, and the Board itself has said that its counsel so construes it.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. WHEELER. I yield.

Mr. TAFT. Does not the Senator think, however, that a court might take into consideration the fact that the majority leader offered a concurrent resolution in the nature of an amendment, stating what the interpretation would be? And if that concurrent resolution were rejected, the effect of its rejection would be to indicate that a contrary opinion regarding the interpretation of the act was held; would it not?

Mr. WHEELER. No; I do not agree.

Mr. BARKLEY. Mr. President, will the Senator yield to me?

Mr. WHEELER. I yield.

Mr. BARKLEY. Does the Senator from Montana think that any court would be influenced by the fact that the Senator from Ohio objected to letting me present the concurrent resolution and have it read—following which I wished to have it printed, so that all Members of the Senate would be able to read it—and that the result was that I had to read it myself? I do not know whether a court would consider that; but if it did, that would tend to offset the fact that I offered it.

Mr. WHEELER. Of course, a lot of doubting Thomases were afraid that the concurrent resolution would have no valid effect.

Mr. TAFT. Mr. President, I am suggesting that if the concurrent resolution failed of adoption in either the House or the Senate, a court would say that the Congress refused to take the action requested, and therefore all the statements of intention in regard to the interpretation of the bill, as they have been read to us by the Senator, would be of no value.

Mr. WHEELER. I am sure the Senator from Ohio does not advance that statement seriously as an argument.

Mr. TAFT. Yes; I advance it seriously. It is exactly what a court would say. Not only do I advance it seriously, but it is true. If the Senate attempts to correct something, but fails to do so, a court would say, "The Senate failed to correct it."

Incidentally, the language used is so plain that it does not matter what interpretation might be offered in connection with it; because when the language is plain, a court will not even refer to an interpretation.

Mr. BARKLEY. Mr. President, if the Senator from Ohio were called upon to interpret an act, he certainly would give more weight to a committee report on it and to the attitude of the board which

was charged with administering it, than he would to an unsuccessful attempt on my part to clarify its meaning in such a way that the board would not have to look at the committee report or the statement by the counsel for the board.

Mr. HAWKES. Mr. President, will the Senator yield?

Mr. WHEELER. I yield.

Mr. HAWKES. I know the Senator from Montana and I know what his purpose is, and I do not question it in any way. He believes in this bill and he wishes it to be enacted into law.

But I desire to read again to the Senator his statement of what he thought at the time when the hearings were held, as shown at page 305 of the hearings of the subcommittee:

> Senator WHEELER. Well, wouldn't the thing to do be to write a definition in, not leave it to a changing definition? In other words, the Interstate Commerce Commission might at some future time change their definition of what was transportation and so forth; whereas, if you wrote definitely into the act a definition, then you would have something that would be stable.

I shall not read any more of that, because what I have read gives the essence of the view which the distinguished Senator from Montana had at the time when the hearings were held before the subcommittee.

Let me ask the Senator whether, as chairman of the Interstate Commerce Committee, he ever remembers calling a meeting of the committee to consider this bill in any way?

Mr. WHEELER. No; I do not. One reason why we did not call a meeting of the full committee was that the bill, being a revenue measure had to originate in the House of Representatives and had to pass the House of Representatives first.

Although I appointed a subcommittee to hold hearings on the bill, I did so in order that the subcommittee might study it, so that when the bill came from the House the subcommittee would be familiar with all its phases.

The Senator from New Jersey will recall that when the subcommittee reported to the full committee the members of the subcommittee were not able to agree among themselves. I said that they should get together and should agree, and should submit a report saying how the bill should be amended, if they thought it should be amended. The subcommittee never did that, but waited and waited until the bill came from the House.

When the bill came from the House I was absent in Montana, so I do not know what took place then.

Mr. HAWKES. I intend no criticism at all of the Senator.

Mr. WHEELER. I understand.

Mr. HAWKES. Because I know the Senator has been busy, and I know what he has been doing.

Mr. WHEELER. Well, I did not do it very successfully.

Mr. HAWKES. I regret that.

Mr. WHEELER. I thank the Senator.

Mr. HAWKES. But I say that the committee had the report of the subcommittee; and the chairman and the members of the committee knew that the subcommittee recognized that the situation was so complicated that they did not wish to take the responsibility of making a recommendation, even though for weeks they had studied the bill and had held hearings on it.

In the absence of the chairman of the committee, the majority leader called a meeting of the whole committee. The purpose of the meeting was to report the bill—not to study the bill, but to report it. If any member of the committee wishes to rise now and say that is not so I should like to have him do so.

Mr. BARKLEY. Mr. President, I say it is not so, for the reason that the subcommittee debated the bill for an hour and a half, although it was not taken up section by section.

Objection to reporting the bill was made at the time by the Senator from New Jersey and other Senators. The situation was explained to the committee, just as it has been explained here. The bill was discussed for about an hour and a half, and then the committee voted to report the bill without amendment.

Mr. HAWKES. I differ with the Senator from Kentucky when he says that the committee spent an hour and a half debating the bill. It seems to me that the committee discussed the substitute motion to lay the bill on the table.

Mr. BARKLEY. At any rate, we discussed it.

Mr. HAWKES. If that amounts to discussing the bill paragraph by paragraph——

Mr. BARKLEY. I did not say that was done.

Mr. HAWKES. If what occurred amounts to discussing the bill as a bill, then I am not capable of understanding the English language or of understanding what happens in a committee meeting.

Mr. President, the committee voted to report the bill, and from my point of view, did so without giving any consideration to the bill. If any member of the committee wishes to disagree with me on that point, I should like to have him stand up and deny it.

Mr. BARKLEY. Mr. President, I suppose it makes a good showing with the galleries for a Senator to attempt to take a poll of the Senate and to attempt to have Senators stand up and agree or disagree with him. But that is not a very fair way to proceed.

When the bill was before the committee, the Senator from Kansas [Mr. REED] offered a motion to have the committee postpone action on the bill for 2 days; but I held that that motion would not take precedence over the motion to report the bill. Subsequently, the committee did report the bill, and the committee is responsible for voting to report it.

Mr. REED. Mr. President——

Mr. HAWKES. Mr. President, I wish to reply to the Senator from Kentucky. I think what he has just said is entirely unacceptable to any Member of the Senate. He knows that I have never stood on this floor and made appeals to the galleries. He has done that many times, but I never have. No Member of the Senate will accuse me of having done that sort of thing.

Mr. BARKLEY. Mr. President, the Senator from New Jersey now is trying to take a poll of the committee. He is attempting to point out a reason for not acting on the bill. He has asked the Members of the Senate to rise and deny the accuracy of his statement as to what happened in the committee. I say that is an unfair way to deal with the committee or with the report from the committee, and it has nothing whatever to do with the merits of the proposed legislation.

Mr. HAWKES. I differ very materially with the view taken by the majority leader.

Mr. WHEELER. Mr. President, let me say that if an attempt is made to have Senators rise and be counted, one after another, in regard to what they believe was done or was not done in a committee hearing, that would create a very chaotic situation. We must take the words of the Senators who have had an opportunity to study the various bills. All of us know that it is impossible for every Senator to read every bill which comes before the Senate. In my judgment, such procedure only brings discredit upon the Senate itself, and I am sure the Senator from New Jersey does not want to do that. He knows, as I know, that an attempt is being made to break down the confidence of the people in the Congress of the United States. That is exactly the tactic which is being pursued in many quarters. It is exactly the tactic which was pursued by Mr. Hitler, Mr. Mussolini, and other persons who sought to tear down parliamentary government. Once parliamentary government is destroyed, no matter how bad it may be and how much it may be improved, there will be chaos and dictatorship. Members of the Senate, regardless of the party to which they belong, should be extremely careful about saying anything or doing anything which might besmirch the Congress of the United States.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. WHEELER. I yield.

Mr. BARKLEY. I think it should be stated, as it was stated to the committee, that after years of study and after months of delay in regard to this legislation, the House finally passed the bill on July 3. The Senator from Montana [Mr. WHEELER], the chairman of the committee, had asked me to call a meeting of the committee in the event the House passed the bill so that the committee might consider it and pass upon it. The committee was called together at the earliest possible date. It discussed the bill for an hour and a half, and discussed the parliamentary situation as well. There were members of the committee who felt that the bill should be reported to the Senate, and there were those who felt that it should not be reported. However, it was reported on July 15. No minority views were filed by a single member of the committee, and no member objected to the bill or to the report, or to the fact that the bill had been reported by the committee.

Mr. WHEELER. I thank the Senator. I am perfectly willing to admit that the Congress of the United States is not

perfect. Probably our courts are not perfect, and in all probability our executive departments are not perfect. But everything in this world is relative. All we need to do is to go to any other country on the face of the globe and compare its parliamentary government and executive and judicial branches with those of the United States of America. After doing so and returning to America, we may criticize the Congress of the United States as much as we may wish, or criticize the executive and juricial branches if we wish to; but we will have to admit that, with all its infirmities we still have the best form of government to be found anywhere in the world, and that we have abler Representatives and Senators in the Congress of the United States than are to be found in the parliament of any other country. I have been saying that for 24 years, or nearly a quarter of a century. I have seen Senators come and go in this body, but I still say that when we compare the Members of the Senate of the United States with the members of parliaments of the other countries of the world we will come to the conclusion that our elected Representatives and Senators stand far superior to all others.

Consequently, Mr. President, I feel keenly when someone tries to tear down our Government. I am sure that the Senator from New Jersey agrees with me in the statement I have made, and I am confident his suggestion was made inadvertently.

Mr. HAWKES. Mr. President, to what suggestion does the Senator have reference?

Mr. WHEELER. I have reference to the suggestion of the Senator from New Jersey that everybody should stand up.

Mr. HAWKES. No; I beg the Senator's pardon. I did not say that. I said that if there was present in the Chamber any member of the committee who disagreed with my statement, I wish he would stand up. I did not say everybody should stand up. That is perfectly absurd.

Mr. WHEELER. Very well. Perhaps I misunderstood the Senator. But if we say, in connection with every measure which comes to the floor of the Senate, "Anybody who has not read this bill, stand up," or "Any Senator who was present at the executive session of the committee who does not agree with my statement, stand up," the impression will be given to the country that the Members of the Senate are not conscientious in carrying out their duties. If members of the committee did not read or study the bill, it is their fault because the bill has been pending in the Congress for at least 2 years. If there be any Member of the Senate who did not read the bill, the fault is his because the bill has been available to him for a long time.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. WHEELER. I yield.

Mr. TAFT. Is it not true that the subcommittee held hearings and made a report, that it took no position but stated a number of controversial points? Since that time the committee never met for the purpose of considering the report. It was never called into session for that purpose, and it never discussed the report until last week when it was suddenly called together and reported the bill to the Senate. Is not that a correct statement?

Mr. WHEELER. I do not think it is entirely correct. The committee studied the bill and held hearings. I called the committee into session and the members could not agree. I suggested to them that they should make a report. I said that if they could not all agree, a majority report and minority views should be filed. But, neither was done. Finally, instead of making a report, they issued an analysis of the bill.

Mr. TAFT. It is called a report.

Mr. WHEELER. If the Senator will read it he will see that it is not a report.

Mr. TAFT. It states five or six major controversies involved in the bill.

Mr. WHEELER. It is an analysis of the bill. "A rose by any other name would smell as sweet." However, what I refer to is an analysis of the bill, and it includes a statement of the controversial points with reference to the bill. We did not call the committee together for the purpose of reporting the bill to the Senate because, as I have already said, that as a revenue bill the measure had to originate in the House of Representatives. It would have been idle and futile for the Interstate Commerce Committee to report the bill until after the House had acted. After the bill was acted upon by the House it was eventually referred to the Interstate Commerce Committee of the Senate where the controversial issues were taken up and considered. When the bill was messaged to the Senate I was absent and the majority leader later called the committee together. The majority of the members of the committee voted to report the bill.

Mr. HAWKES. Mr. President, will the Senator yield?

Mr. WHEELER. I yield.

Mr. HAWKES. I believe that nearly all Members of the Senate know that the vote in the Interstate Commerce Committee to report out the bill was 11 to 9, and that 3 proxies were used in making up the vote of 11 to report the bill. That fact shows that of the 16 or 17 Members who were present, the vote was evenly divided.

Mr. REED. The vote was 9 to 8.

Mr. HAWKES. No; it was not. Our group used the proxy of one member. The other group used three proxies, and the vote of the committee was evenly divided.

Mr. WHEELER. To what three members of the committee does the Senator refer? I was chairman, and I left my proxy. I was not present.

Mr. HAWKES. I am making no criticism.

Mr. WHEELER. No; but the Senator has given the impression that other Senators left their proxies. The Senator from Arizona [Mr. MCFARLAND] left his proxy, and so did the Senator from Minnesota [Mr. SHIPSTEAD]. The Senator from Minnesota was a member of the subcommittee which considered the bill. I introduced the bill and I think I know something about the matter. I left my proxy with the majority leader. The Senator from Arizona studied the bill, I am sure, and knew something about it. I cannot say whether any of the other Members present knew anything about the bill.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. WHEELER. I yield.

Mr. BARKLEY. I do not know that what I am about to say will add anything to the merits of the discussion, but the Senator from Montana [Mr. WHEELER] knew that if the House passed the bill it would subsequently come to the Senate. He specifically authorized me to vote his proxy, and he told me how to vote it. The Senator from Minnesota [Mr. SHIPSTEAD] did the same, and so did the Senator from Arizona [Mr. MCFARLAND]. They knew how they wanted to be voted. They instructed me specifically how they were to be voted, and they were voted according to their instructions.

Mr. HAWKES. Did they leave their instructions with the Senator from Kentucky before they went away?

Mr. BARKLEY. Yes; they left their instructions with the Senator from Kentucky before they went away.

Mr. HAWKES. How did they know what kind of a bill the committee would consider?

Mr. BARKLEY. They knew that if the bill passed the House as it was being considered there—I refer to the original Crosser bill—they desired to be voted in favor of the report.

Mr. HAWKES. I will not argue with the Senator whether the practice of voting proxies is a good or a bad practice. I think it is a bad practice.

Mr. WHEELER. What does the Senator mean by "bad practice"?

Mr. HAWKES. I think it is bad practice for members of the committee not present to be voted by proxy in connection with important matters.

Mr. BARKLEY. It depends on which side they vote.

Mr. WHEELER. Yes. I have been a member of all the Senate committees, and there is no committee of the Senate of which I know which is not confronted with the necessity at times, in developing quorums, of using proxies. If that practice had not been followed during the past few years there would have been no quorums many times in some of the committees, and the custom of using proxies has been followed since time immemorial. It is a fine thing to have members of the committee present, and I should like always to have them present. But when the Senate of the United States is confronted with a legislative situation such as the one which has prevailed during the past few years, it is physically impossible for Members of the Senate to attend all important meetings of committees because there are frequently four or five separate meetings being held at the same time.

Mr. HAWKES. Mr. President, I should like to ask the Senator from Montana a question, because I am sure he does not want to leave the intimation in the RECORD that I am in any way trying to bring the Senate or the Congress into disrepute in the United States.

Mr. WHEELER. I yield.

Mr. HAWKES. Does the Senator think that I am helping to build the Congress up by trying to have rules

adopted which the common people, the ordinary man, believe are fair and sound, or does he think it is better to let them run along as they are, and let the feeling he has referred to, which is growing in the country, continue to grow?

Mr. WHEELER. I am stating that what the Senator suggested is a physical impossibility. If we required an absolute quorum at every meeting, and the committees could not vote proxies, the Senate would be tied up, and much essential legislation could not be enacted.

Mr. KNOWLAND. Mr. President, will the Senator yield?

Mr. WHEELER. I yield.

Mr. KNOWLAND. I might say, in passing, that if the Senate, as I hope it will today, shall vote to adopt the conference report on the La Follette bill providing for the organization of the Congress, perhaps we will be able to eliminate some of these difficulties.

Mr. WHEELER. I hope we may be.

Mr. DONNELL. Mr. President, will the Senator yield?

Mr. WHEELER. I yield.

Mr. DONNELL. Does the Senator think that under the existing rules of the Senate there is any provision for a quorum to be created other than by the actual physical presence of the persons who are required by the rules to constitute a quorum?

Mr. WHEELER. There was a quorum present. Proxies were not necessary to develop a quorum in connection with this particular measure. There was a quorum of the Members present. But let me say that I heard the question asked the other day as to whether there was anything in the Constitution regarding the counting of proxies. No; there is nothing in the Constitution about it.

Mr. DONNELL. I said, "the rules of the Senate."

Mr. WHEELER. The invariable rule of the Senate has been from the beginning down to the present moment that committees themselves make their own rules; and that practice has been followed. A definite rule may not be found in the rule book, but that has been the custom of the Senate of the United States.

Mr. DONNELL. May I respectfully place in the RECORD paragraph 3 of rule XXV, which I am sure is familiar to the Senator:

QUORUM OF COMMITTEES

3. That the several standing committees of the Senate having a membership of more than three Senators are hereby respectively authorized to fix, each for itself, the number of its members who shall constitute a quorum thereof for the transaction of such business as may be considered by said committee; but in no case shall a committee, acting under authority of this resolution, fix as a quorum thereof any number less than one-third of its entire membership, nor shall any report be made to the Senate that is not authorized by the concurrence of more than one-half of a majority of such entire membership.

Mr. WHEELER. What has that to do with the question before the Senate?

Mr. DONNELL. I understood the Senator to say that, regardless of whether there was a quorum present at the time the pending bill was voted upon, it has been the practice of the Senate to create a quorum by the use of proxies. I ask the Senator if there is anything in the rules of the Senate which, in the case of the committee having six as its requirement for a quorum, would authorize the chairman, acting with five proxies in his pocket, to assemble by himself in a room and constitute a quorum?

Mr. WHEELER. Committees hold hearings day after day when they do not have quorums actually present; but that is entirely beside the point, because there was a quorum present on this occasion, and it has not anything to do with the pending legislation. I do not want to enter into a discussion with the Senator from Missouri of the theory of constitutional government at this particular time, when we are discussing something that is before us for decision. What the Senator is arguing is pure dictum.

Mr. DONNELL. What the Senator said a little while ago, as I understood him, was that the Senate follows the practice of creating a quorum by the use of proxies. I was asking the Senator whether or not there is anything in the rules of the Senate which authorizes the creation of a quorum by the use of proxies.

Mr. WHEELER. I said that if it was necessary to have a quorum present every time a committee met the committees could not have hearings, because they could not get quorums present.

Mr. DONNELL. I do not wish to prolong the question, but I again ask the Senator if there is a rule of the Senate which authorizes the use of proxies in developing a quorum.

Mr. WHEELER. No.

Reverting to the subject under consideration, as I said a while ago, not only has the Interstate Commerce Commission in five different cases, to which I called attention, put an interpretation upon the provisions of the bill, but a committee of the Interstate Commerce Commission has interpreted it, the legal department of the Board which is going to pass upon it has interpreted it, and said how it would be guided by it. No one appearing before the committee opposing or advocating the bill has done anything else but accord with the report of the committee. Under those circumstances, for anyone to say that any court would interpret it otherwise seems to me to be without foundation.

Mr. REED obtained the floor.

Mr. BARKLEY. Mr. President, may I express the hope, before the Senator begins, that we may promptly get a vote on the pending amendment? We have been debating the bill since about this time yesterday, but we have not voted on a single amendment yet. I think the fate of the legislation will depend on whether any amendments are adopted, and I hope we may get a vote on the pending amendment without further delay.

Mr. REED. Mr. President, I share the desire of the majority leader to have a vote on the pending amendment. I am a member of the committee. I have used no time in my own right, and I am going to take the next 10 minutes to clear up some misunderstandings.

As a member of the committee, I was present. I am sure the Senator from Kentucky did not mean to misrepresent when he said that a motion was made to delay the bill for 2 days so that the full committee could study it and have a recommendation of the subcommittee as to whether amendments should be adopted. Such a motion was never made.

Mr. BARKLEY. Mr. President——

Mr. REED. If the Senator from Kentucky, who has used much time, will let me go forward——

Mr. BARKLEY. The Senator did make the suggestion. I thought the motion was made. If he says it was not, I was mistaken; but the committee did not adopt the suggestion, whether it was in the form of a motion or otherwise.

Mr. REED. The Senator from Colorado rather unexpectedly, before the committee had fully discussed the matter, offered a motion to report the bill. That came more quickly than some of us thought it should have come. I offered a substitute for the motion, so as to hold the bill from the Friday when we were meeting over to the next Tuesday, as I recall. Then someone suggested that we might get it done by Monday—or it might have been the other way around.

The Senator from Kentucky, who was presiding in the absence of the chairman of the committee, the Senator from Montana [Mr. WHEELER], refused to put my motion as a substitute for the motion of the Senator from Colorado, so it never was voted upon. The Senator from Kentucky put the motion of the Senator from Colorado, and it was adopted by a vote of 11 to 9, including three proxies.

Mr. President, I desire to correct one more thing. In this report there is a statement to which so much reference has been made, in the second full paragraph on page 7——

Mr. BARKLEY. Will the Senator yield for one correction? The Senator says I refused to put the motion. I held the motion out of order.

Mr. REED. The Senator refused. He said that the motion of the Senator from Colorado had priority over the motion of the Senator from Kansas. In the Senate, when one offers a substitute——

Mr. HAWKES. Mr. President, will the Senator yield a moment?

Mr. REED. I yield.

Mr. HAWKES. May I ask the Senator from Kentucky if the substitute was in order, or does he still hold that it was out of order?

Mr. BARKLEY. If I had not thought it was out of order, I would not have held it to be out of order.

Mr. HAWKES. I am not asking what the Senator thought then.

Mr. BARKLEY. I held it out of order because I regarded it as not being in order, and not a prior motion to the motion to report the bill, which the Senator from Colorado had made.

Mr. HAWKES. I might say to the Senator from Kentucky that I have asked the best parliamentarians around the Senate and the House, and they all agree it was not out of order.

Mr. BARKLEY. I do not give a continental how many the Senator asked. I held it was out of order, and I still maintain it was not a prior motion to the mo-

tion to report the bill. No one appealed from the decision of the chair at the time, and I have not heard it questioned until now.

Mr. REED. Mr. President, if I may proceed, there has been a great deal of discussion, in which I have participated to a very slight extent, though I am a member of the committee and am cognizant of some of the facts. There is one thing to which I as a member of the committee take exception. In the second paragraph on page 7 of the report occurs this statement:

> The committee would like to state categorically that there is no purpose or intent to include such persons as employers under the act.

If the statement had stopped there it might have been accepted as reasonably correct. In other words, what we were doing in the committee was to talk about whether or not certain people should come under the bill, and the opinion was unanimous that they should not. Then the discussion went to the point of the intent, and what the committee thought should be done. The committee was unanimous that these persons should not be included. If the last statement had been left out of this sentence, I would not have objected to it so much but the committee proceeded:

> And that it is the unanimous understanding of the committee that such persons are not so covered.

There is no basis of fact for that statement, because a majority of the committee were of the mind that they should not be covered, and there was some opinion that there was no intention to cover them. In the committee that day the majority leader, who was presiding, asked the legislative counsel, who was present, whether or not we could take care of that situation in the report, and what I have read and other parts of the report represent an effort on the part of the person writing the report to take care of that situation. But it is only fair to say that in the committee meeting that day, the legislative counsel strongly intimated that it did not make much difference in what kind of language the report was couched, for the court might find that the language of the act was so plain that the court would take the language as written in the act, and not the language placed in the report by the committee. Of course if there were some ambiguity or obscurity, that would be different.

Mr. President, I desire to refer to what the Senator from Montana stated again today. I wish he would not continue to make the statement. The Interstate Commerce Act gives to the Interstate Commerce Commission one complete duty, and that is to regulate common carriers by railroad, and, so far as railroad transportation is concerned, the Interstate Commerce Commission has no jurisdiction to regulate anything but a carrier. In connection with the carriage of goods there are some incidental services performed, and the Interstate Commerce Commission has held over and over again that it has no power to regulate the agencies performing those services, such as warehousemen, those engaged in icing, and those engaged in refrigerating. The Commission has repeatedly held, indeed, has universally held, that it has no power to regulate any one but the carrier itself, and that it has no power to regulate warehousemen and others in the same category. There is no dispute on that point, and there is nothing in the Interstate Commerce Act which would give the Commission that power.

Mr. WHEELER. Mr. President——

Mr. REED. May I be permitted to proceed for a moment, and then I shall be happy to yield to the Senator from Montana.

The first time I ever saw in any bill language that would bring all these people under regulation and control, was the language on page 2 of House bill 1362. I dislike to take even this much time of the Senate, but there is a wrong impression left by what has been stated. The Interstate Commerce Act is clear. It gives the Commission power to regulate carriers, and nothing else, but in connection with transportation, incidental services are rendered. The Commission can regulate transportation by carriers. It cannot and never has even undertaken to regulate the people rendering incidental services.

In paragraph 3 of section 1 there appears this language:

> The term "transportation" as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported.

In the bill before us there is this language:

> (2) Any person, other than a carrier regulated under part I of the Interstate Commerce Act, which, pursuant to arrangements with a carrier or otherwise, performs, for hire, with respect to passengers or property transported, being transported, or to be transported by a carrier, any service included within the term "transportation" as defined in section 1 (3) of the Interstate Commerce Act, whether or not such service is offered under railroad tariffs.

Mr. President, under that language, which is clear, unambiguous, and refers to a provision of the Interstate Commerce Act, there is no question in the world that persons engaged in icing service, those engaged in trucking, and warehousemen will be brought within the provisions of this bill if it is enacted into law, and there is nothing the Interstate Commerce Commission has ever said, there is no report it has ever made, there is no case it has ever decided which allows room for a different understanding.

Mr. President, I agree with my good friend the Senator from Montana that the freedom, liberties, and rights of the people of the world are better preserved by a legislature or a parliament, by whatever name it may be called, than by any other means. No people in the world ever lost their liberty through a parliamentary body. Oppression, tyranny, and dictatorship have come from the executive branch of government; but, Mr. President, if there was ever anything that would tend to bring the Senate of the United States into disrepute, it is this instant proceeding. The whole thing is so fantastic in its violation of all sound parliamentary and legislative rules and practices that if this proceeding does not cause the people of the country to lose faith I do not know what will.

AMENDMENT TO RAILROAD RETIREMENT ACTS, ETC.

The Senate resumed consideration of the bill (H. R. 1362) to amend the railroad retirement acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes.

Mr. GEORGE. Mr. President, yesterday I sent to the desk and had printed a series of amendments which I announced I would propose to the bill if it were amended in any particular.

It is not my purpose to detain the Senate for any great length of time, but I am about to discuss some technical matters in connection with the bill. I earnestly invite the attention of the Senate to the amendments.

As I have said, yesterday I sent forward and had printed, to lie on the table, a series of amendments to the Railroad Retirement Act, which I stated I would offer if any amendments were adopted to the measure. I now wish to make this statement about the amendments. In view of the adoption of the amendment offered by the distinguished junior Senator from North Carolina [Mr. HOEY], it will be necessary for me to revise somewhat the amendments which I am offering to the bill. His amendment, as I understand, struck from the bill all of section 1. The series of amendments which I have prepared begins with certain amendments to section 1. I think it is entirely proper for me to make the statement which I am about to make. It will not be lengthy, but it will deal with what I regard as an important feature of this proposed legislation.

Mr. President, all the amendments which I am proposing would remove two seriously objectionable features now appearing in the bill.

The first objectionable feature of the bill is that it would transfer from the Bureau of Internal Revenue to the Railroad Retirement Board the collection of the taxes imposed in support of the railroad-retirement system.

It has been the national policy to have only one tax collecting agency in the Federal Government. The Treasury Department has pointed out that unnecessary duplication of facilities and functions, as well as a possibility of conflict in administrative policies and interpretations under the same or corresponding provisions of law, result when another agency is permitted to function, even in a limited field, in the tax-collecting activities of the Government.

Also, on the taxpayer's side, unwarranted annoyance and harassment would result from the auditing of the taxpayer's records by two different Federal tax-collecting agencies. For convenience and ease of compliance with the Federal taxing statutes, the taxpayer should not be forced to deal with more than one Federal agency in tax matters.

This principle was violated in 1938 when the Railroad Unemployment Insurance Act was passed, giving the function of collecting the contributions in support of that act to the Railroad Retirement Board. This was then done over the objections of the Treasury. It constitutes the sole exception to the general policy that all taxes should be collected by the tax collecting agency of the Federal Government, the Bureau of Internal Revenue. It should not be permitted to be used as a precedent for the further dispersal of the tax-collection functions. Since that act of 1938, the collection of the income tax through withholding on wages has been instituted; thereunder the Bureau of Internal Revenue is charged with the responsibility of collecting the income tax on wages from employers, including the carrier employers covered by this bill. There are possibilities for an integration and simplification of the administration of the various pay-roll taxes and the income tax collected at the source, which would redound to the advantage of the employer-taxpayer as well as the Government. However, it is clear that these potentialities for simplifying the administration and collection of these taxes cannot be achieved under a division of the responsibility for the collection of taxes with respect to the railroad industry.

Accordingly, the proposed amendments would continue the present tax collection functions under the Railroad Retirement Act in the hands of the Bureau of Internal Revenue. If the bill should be enacted without an amendment in this respect, it would constitute a dangerous precedent for the parceling out of the tax collection functions of the Federal Government to the various agencies which are concerned with the administration expending of the proceeds. For example, the Social Security Board could then expect to administer all the social-security taxes, and collect them for its purpose.

Mr. President, I have stated the first serious objection to this bill and, to my mind, the reasons for it are perfectly evident.

Mr. SMITH. Mr. President, will the Senator yield for a question?

Mr. GEORGE. I yield for a question, but I do not wish to break the continuity of what I am attempting to say.

Mr. SMITH. It is my understanding that social-security taxes are collected through the Bureau of Internal Revenue.

Mr. GEORGE. Yes. There is one exception to that, namely, under the present Railroad Retirement Act, but the tax now collected is insignificant in comparison with the tax which it is proposed to collect under the pending bill.

Mr. SMITH. I thank the Senator.

Mr. GEORGE. The Senator is entirely correct.

The second major objection to the bill is that it would make certain determinations of the Railroad Retirement Board with respect to the coverage of the Railroad Retirement and Unemployment Insurance Acts binding upon the Bureau of Internal Revenue with respect to the social-security taxes which are administered by the Bureau.

The social-security taxes are not applicable to employment covered by the railroad-retirement system. The bill contains provisions to the effect that the determinations of the Railroad Retirement Board as to whether a person is liable for taxes or is entitled to the refund of taxes under the Railroad Retirement or Unemployment Insurance Acts would be final and binding upon all parties, subject only to limited judicial review in the circuit courts of appeal. The result would be that such determinations of coverage would be binding upon the Bureau of Internal Revenue with respect to its administration of the social-security taxes. Thereunder, the rulings of the Bureau of Internal Revenue in this area would lose their certainty and would be subjected to improper delays, and the collection of the social-security taxes would be impaired. Accordingly the proposed amendments to the bill would strike out the provision of the bill which would impose this degree of finality upon the Bureau of Internal Revenue, insofar as the taxes administered by the Bureau are concerned. The amendments would not disturb the finality of the Retirement Board's judgment, insofar as its judgment may be exercised under the amendments which I am now offering.

In addition, the effective dates of the bill are entirely improper and should be revised. The bill now contains amendments which would increase the rates of tax under the Railroad Retirement Act from 3½ percent to 5¾ percent each upon the employer and employee retroactively to July 1, 1945. Similarly, the increase in the tax from 7 percent to 11½ percent upon employee representatives would be imposed retroactively to July 1, 1945. That, of course, results from the fact that the bill was introduced some 2 years ago in the House of Representatives, but, nevertheless, these provisions remain in the bill.

The bill would also transfer to the Railroad Retirement Board the tax collecting functions under the Railroad Retirement Act retroactively back to January 1, 1946. Even assuming that such retroactive legislation violates no constitutional prohibition, the administrative difficulties cannot be exaggerated. The employee's tax is to be deducted from his wages when he is paid; if the increase in rate is imposed retroactively, the employer will not have deducted a sufficient amount of tax. The employer is nevertheless required to pay the full amount of tax. If the employee is still working for him, the employer may be permitted to deduct in a lump sum the amount of the retroactive increases; if the employee is no longer with him, the employer will have to bear the full burden of the increases in both the employer's and employee's taxes.

The proposed amendments now offered would revise the effective dates, so that the bill would become effective for tax purposes on January 1, 1947.

I presume those amendments inserting proper dates in the bill will certainly not

be opposed inasmuch as one amendment of that nature has already been agreed to in connection with the pending bill.

This would give the administrative agencies, as well as the taxpayers, a sufficient opportunity to prepare for the substantial changes which the bill makes in the present law.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. GEORGE. I yield.

Mr. BARKLEY. The Senator has referred to the changes in dates due to the fact that the bill was introduced early in 1945. In the proposed concurrent resolution, which I read last night, I included all those changes in dates, and since the Senate has stricken out section 1 of the bill, the part of that proposal which included the coverages is no longer appropriate. The Senator from Colorado had intended to offer the same suggestion with respect to the dates, and I am wondering if they are the same dates covered in the amendment of the Senator from Georgia.

Mr. GEORGE. I have not compared them, but I presumed, in view of the adoption of one amendment to the bill, that there would be no objection to the insertion of the proper dates.

Mr. BARKLEY. The suggestion I made included all dates necessary, and if the Senator's amendment does not include all of them, it might be well to make a comparison to see that they do.

Mr. GEORGE. The amendments which I have I am sure will cover all the necessary dates, because they have been rather carefully checked by the Treasury.

Mr. JOHNSON of Colorado. They do correspond with the dates the Senator from Kentucky offered last night in the concurrent resolution.

Mr. BARKLEY. Very well; so that it would be unnecessary to offer them now.

Mr. GEORGE. Mr. President, that would leave only the two features in the bill to which I first referred.

There can be no more dangerous principle established than the principle which the pending bill seeks finally and firmly to establish in our law, to wit, that the beneficiary of a tax is to be the tax collector and the distributor of the tax. It should not be necessary even to repeat the assertion that it is class legislation, it is a special privilege given to one class of people in the United States, though they happen to be people whom I very greatly admire and with whom I have always been in close relationship. Nevertheless it is class legislation, without any reasonable excuse, and special privileges granted to a particular group.

When the Railroad Retirement Act was first passed there was some rhyme, although not sound logic, for vesting in the Retirement Board the power to collect and handle the taxes which were then imposed. There can be no reason now. We have the Social Security System, which has reached a fair degree of development. We have, however, a complete change in our income-tax system. We have collection at the source. The withholding principle is now rather firmly imbedded. I hope, in our tax laws. So the Treasury Department must withhold at the source the income tax on all wages paid by the railway systems to their employees. The work of collection must be done by the Bureau of Internal Revenue. At the same time the pending bill seeks to enact as a permanent provision of our law the wholly vicious principle of an additional revenue agent collecting a tax on the identical income, in the form of a pay-roll tax.

The Railway Retirement Act has in fact resulted in serious complications in our tax system. Pending before the Committee on Finance at this moment is a bill which would give to all Federal employees receiving retirement benefits a credit of $1,440, plus whatever other statutory exemptions they were entitled to take, before any income tax would be imposed. Why? Because in the Railroad Retirement Act there was granted a special privilege, there was recognized the vicious legislative practice of class legislation, and the railway retirement benefits which reach a maximum of $1,440 are not subject to income tax. In other words, that exemption goes into our law today. So that all Federal employees who come under our retirement system have sought by legislation, in the House of Representatives, a similar exemption for themselves.

By construction, the Social Security Board has exempted social security benefits, or survivor and old-age payments made under the act, but the exemption in that case does not reach the statutory exemption. But in the case of the railway retirement benefits $1,440 is the maximum.

Congress cannot in justice, and as a matter of fairness, permit railway employees to have $1,440 exempted from their income before the payment of a tax, and deny to the charwoman, or to the janitor, or to any man who works for the Government of the United States, the same privilege. Unless the amendments which I am offering are accepted, this bill will continue the vicious doctrine and principle which has led to this serious embarrassment, and which will lead to greater embarrassment as the days go by.

Not only that, Mr. President, but we speak of retaining the confidence of the American people in the parliamentary system which we have. We speak of retaining the confidence of the American people in the Congress of the United States. How can the confidence of the American people be retained in the Congress of the United States if by special legislation we give to one single class of our people the power to collect their own taxes, make their own distribution, and strip from the taxing committees of both Houses of Congress any jurisdiction over the important question of taxing our public utilities, common carriers, the railroads. That is what the bill would do.

Mr. BARKLEY. Mr. President, I am compelled to leave the Chamber. Will the Senator permit me to renew a request which I made a moment ago?

Mr. GEORGE. I am glad to yield.

Mr. BARKLEY. A moment ago I made a request for a limitation of debate on the bill and all amendments. The Senator from Missouri [Mr. DONNELL] objected. He has since advised me that, after considering the matter further, and consulting other Senators, he thinks the request was reasonable. Therefore I renew the request, that following the address of the Senator from Georgia, and during the further consideration of the bill, no Senator shall speak more than once nor longer than 15 minutes on the bill or any amendment thereto.

Mr. TAFT. Are we to understand it is 15 minutes on the bill and 15 minutes on each amendment?

Mr. BARKLEY. That is correct.

Mr. WHITE. Will the Senator at this time indicate how long he would like to have the Senate proceed this afternoon?

Mr. BARKLEY. I had hoped we might finish the consideration of the bill this afternoon and avoid a session tonight, and I think this limitation may help bring that about. I am still hoping that we may not be compelled to hold a night session.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kentucky? The Chair hears none, and it is so ordered.

Mr. GEORGE. Mr. President, I had about concluded all I desired to say upon the series of amendments designed to accomplish the two purposes which I first discussed briefly.

I was saying that the passage of the pending bill, giving to the Railroad Retirement Board the power to collect taxes from the common carriers, and giving to them the power over the tax funds when they are collected, as contemplated in the bill, will necessarily result in the loss of jurisdiction over the class of taxes covered by the legislation to the taxing committees of both the House and the Senate, and to a confusion similar to the confusion, and with the resulting embarrassment, which the taxing committees of the two Houses now encounter in undertaking to deal with demands for the exemption of all retirement benefits paid by the Federal Government, by the State Governments, by municipalities, and even annuities payable under policies or contracts purchased by the taxpayer himself with funds upon which he has already paid his full tax responsibility.

So I hope, Mr. President, that these amendments will be agreed to anyway, since the bill must go back to the House and have these questions considered.

Mr. BARKLEY. Mr. President, in view of the limitation on debate agreed upon, I hope we may finish the bill in the next hour or so and therefore avoid an evening session. I wish to say, however, for the information of Senators, regardless of the disposition of this bill it will be necessary for the Senate to be in session tomorrow; so Senators may adjust themselves accordingly.

Mr. VANDENBERG. Will the Senator indicate whether he contemplates a night session tomorrow night?

Mr. BARKLEY. I do not.

Mr. JOHNSON of Colorado. Mr. President, when the subcommittee was holding hearings on the pending bill we queried Mr. Murray W. Latimer, who at that time was chairman of the Railroad Retirement Board, on the point which has been discussed by the Senator from

Georgia. Mr. Latimer called our attention to what he had said on this subject in the House hearings on January 31, 1945, to be found on page 74 of part I of the Railroad Retirement hearings held by the House committee. Mr. Latimer let us know that that was his answer to the arguments which have been advanced today by the Senator from Georgia. This is what Mr. Latimer said:

The Railroad Retirement Board now collects all records of wage and service, collects the contributions under the Railroad Unemployment Insurance Act, compares the tax returns under subchapter B of chapter 9 of the Internal Revenue Code and its predecessor, the Carriers' Taxing Act (copies of all such returns being furnished the Board by the Bureau of Internal Revenue), with compensation returns, and attempts to reconcile any differences between the two sets of returns. On occasion this latter function has involved inspection of employer records. If the Board discovers any discrepancy between the compensation and tax returns which cannot be reconciled, the Bureau of Internal Revenue is notified in order that it may take appropriate action.

The Bureau of Internal Revenue makes coverage determinations in some cases, though most determinations are made by the Railroad Retirement Board, assesses penalties in appropriate cases, and receives and deposits checks in the Treasury.

Since the coverage provisions of the Railroad Retirement Act are identical to those of subchapter B of chapter 9 of the Internal Revenue Code, it can be expected that coverage determinations of the board and bureau will be uniform. Although I can recall no instance of ultimate disagreement in result between the board and the bureau, the achievement of that condition has frequently been long and tedious. At times the Board and the Bureau, while concurring in the result, has achieved such result by different paths. In at least one such case the difference of method has resulted in embarrassing consequences insofar as uniform coverage is concerned. In any event, substantially all of the research work required to formulate coverage determinations has been done by the staff of the Board.

When litigation is brought against the Bureau of Internal Revenue, the Railroad Retirement Board frequently assists in the preparation of briefs. But the fact that the procedure for and the scope of judicial review with respect to cases arising under subchapter B of chapter 9 of the Internal Revenue Code differs from the procedure and scope of judicial review with respect to cases arising under the Railroad Retirement Act has produced results which are not, in my judgment, calculated to produce the best results for a system of social insurance. Social insurance cases ought to be decided, it seems to me, on the basis of criteria appropriate to social insurance and not on the basis of criteria appropriate only to the field taxation. The two sets of criteria, while having much in common, are by no means identical. So long as taxes are collected by the Bureau of Internal Revenue it will probably be undesirable to lay down for such taxes conditions with respect to collection, payment, and controversies different from those with respect to most other taxes. It would, however, be entirely appropriate to transfer tax collection to the Railroad Retirement Board and provide for a uniform administrative procedure and judicial review with respect to all controversial matters within the jurisdiction of that Board.

There would be other possible advantages in transfer of the tax collection function to the Railroad Retirement Board. Employers could make a single return rather than the two returns now required. The agency which reconciles tax and compensation returns could more easily take effective action than if discrepancies have to be reported to a second agency for action. The Railroad Retirement Board could assume the function with little or no additional cost. The Board already receives contribution returns and a check from each employer with respect to contributions under the Railroad Unemployment Insurance Act. A single check for both contributions and taxes could easily be split down into its component parts on a predetermined ratio for deposit in three accounts as against the two in which the Board deposits contributions at the present time. Both the Bureau of Internal Revenue and the Board could effect savings in connection with legal expenses. I anticipate that should this provision in H. R. 1362 be adopted, a net saving in the expenses of the Federal Government, though, to be sure, not a large one, could be achieved.

It seems to me that that argument by Mr. Latimer is very convincing, and especially the fact that a saving would be made by one agency collecting the same taxes from the same groups, instead of having two agencies, each collecting taxes from two identical groups.

Mr. GEORGE. Mr. President, I offer the amendments to which I previously referred. The amendments are offered in conformity with the action taken by the Senate in agreeing to the amendment of the Senator from North Carolina [Mr. HOEY]. The amendments are technical in nature. They do not affect the merits of the bill in any particular whatsoever, except purely the administrative side of it. I ask that the amendments may be printed in the RECORD at this point without reading.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Georgia?

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

On page 8, strike out the lines 13 to 16, inclusive, and insert the following:

"SEC. 2. Section 1 (c) of the Railroad Retirement Act of 1937, section (e) of the Railroad Unemployment Insurance Act, and section 1532 (d) of the Internal Revenue Code are each amended as follows: After the word 'if' where it first appears therein insert '(1)' and for the phrase."

On page 9, lines 16 to 18, strike out the following: "by striking out the proviso in said section 1 (1) of the Railroad Unemployment Insurance Act and replacing the colon with a period."

Strike out section 4 of the bill beginning with page 11, line 10, down through page 15, line 15, and insert the following:

"SEC. 4. (a) Section 1500 of the Internal Revenue Code is amended to read as follows:

"'SEC. 1500. Rate of tax.

"'In addition to other taxes, there shall be levied, collected, and paid upon the income of every employee a tax equal to the following percentages of so much of the compensation, paid to such employee after December 31, 1946, for services rendered by him after such date, as is not in excess of $300 for any calendar month:

"'1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 5¼ percent;

"'2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 6 percent;

"'3. With respect to compensation paid after December 31, 1951, the rate shall be 6¼ percent.'

"(b) The second sentence of section 1501 (a) of the Internal Revenue Code is amended to read as follows: 'If an employee is paid compensation after December 31, 1946, by more than one employer for services rendered during any calendar month after 1946 and the aggregate of such compensation is in excess of $300, the tax to be deducted by each employer other than a subordinate unit of a national railway-labor-organization employer from the compensation paid by him to the employee with respect to such month shall be that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300, each subordinate unit of a national railway-labor-organization employer shall deduct such proportion of any additional tax as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month.'

"(c) Section 1510 of the Internal Revenue Code is amended to read as follows:

"'SEC. 1510. Rate of tax.

"'In addition to other taxes, there shall be levied, collected, and paid upon the income of each employee representative a tax equal to the following percentages of so much of the compensation, paid to such employee representative after December 31, 1946, for services rendered by him after such date, as is not in excess of $300 for any calendar month:

"'1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 11½ percent;

"'2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 12 percent;

"'3. With respect to compensation paid after December 31, 1951, the rate shall be 12½ percent.'

"(d) Section 1520 of the Internal Revenue Code is amended to read as follows:

"'SEC. 1520. Rate of tax.

"'In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of so much of the compensation, paid by such employer after December 31, 1946, for services rendered to him after December 31, 1936, as is, with respect to any employee for any calendar month, not in excess of $300: *Provided, however*, That if an employee is paid compensation after December 31, 1946, by more than one employer for services rendered during any calendar month after 1936, the tax imposed by this section shall apply to not more than $300 of the aggregate compensation paid to such employee by all such employers after December 31, 1946, for services rendered during such month, and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion

of any additional tax as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month:

"'1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 5¼ percent;

"'2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 6 percent;

"'3. With respect to compensation paid after December 31, 1951, the rate shall be 6¼ percent.'

"(e) Section 1532 (b) of the Internal Revenue Code is amended to read as follows:

"'(b) Employee: The term "employee" means any individual in the service of one or more employers for compensation: *Provided, however*, That the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if (i) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence will have been established to the satisfaction of the Railroad Retirement Board before July 1947; or (ii) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive; or (iii) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age 65 or until August 1945, or (B) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in clause (ii); or (iv) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within 10 years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights: *Provided*, That an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937, or if during the last pay-roll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such pay-roll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a).

"'The term "employee" includes an officer of an employer.

"'The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.'

"(f) Section 1532 (e) of the Internal Revenue Code is amended by adding at the end thereof the following new paragraph:

"'A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost.'

"(g) Subchapter B of chapter 9 of the Internal Revenue Code is amended by adding at the end thereof the following new section:

"'SEC. 1538. Title of subchapter:

"'This subchapter may be cited as the "Railroad Retirement Tax Act".'"

On page 16, line 1, strike out "1946" and insert "1947"; line 3, strike out "1945" and insert "1946"; line 11, strike out "1944" and insert "1945"; line 14, strike out "1944" and insert "1945"; and in line 22, strike out the word "nine" and insert the word "ten."

On page 23, strike out the sentence beginning in line 14, down through line 19, and insert the following: "In computing the monthly compensation, no part of any month's compensation in excess of $300 shall be recognized."

Strike out section 216 of the bill, beginning on page 41, line 24, down through page 42, line 3.

Strike out section 318 of the bill on page 51, lines 3 to 23, inclusive, and insert the following:

"SEC. 318. Section 8 (a) is amended by changing the word 'payable' to 'paid' wherever it appears; and by substituting for the portion of the subsection beginning with the words 'and each such employer' and continuing to the end of the subsection, the following: 'and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the contribution with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services during any calendar month after 1946 bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional contribution as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month."

On page 57, after line 16, insert the following:

"The amendments to section 1532 of the Internal Revenue Code made by sections 2 and 4 (e), and (f), shall be effective only with respect to services rendered after December 31, 1946. The amendments made by section 4 (a), (b), (c), and (d) shall take effect January 1, 1947. Sections 1500, 1510, and 1520 of the Internal Revenue Code as in effect on December 31, 1946, shall remain in full force and effect on and after January 1, 1947, with respect to any remuneration which constitutes compensation under the law as in effect on December 31, 1946, to which such sections as amended by this act are not applicable."

On page 39, lines 1 and 2, substitute for the words "multiplied by the number of months he will have been in service as an employee" the following: "for any calendar month in such year".

On page 45, lines 2 to 4, substitute for the parenthetical expression the following: "with respect to employment".

Mr. GEORGE. Mr. President, I ask unanimous consent that the amendments may be voted on en bloc.

The PRESIDING OFFICER. Is there objection? The Chair hears none.

The question is on agreeing to the amendments offered by the Senator from Georgia.

The amendments were agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. HAWKES. Mr. President, I offer an amendment and ask to have it stated.

The PRESIDING OFFICER. The amendment will be stated.

The LEGISLATIVE CLERK. On page 42, line 7, it is proposed to strike out all language through line 11, page 57, being sections 301 to 324, inclusive, and insert in lieu thereof the following:

SEC. 301. Subsection (a) of section 8 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"(a) Every employer shall pay a contribution, with respect to having employees in his service, equal to the percentages set forth below of so much of the compensation as is not in excess of $300 for any calendar month payable by him to any employee for services rendered to him after June 30, 1939: *Provided, however*, That if compensation is payable to an employee by more than one employer with respect to any such calendar month, the tax imposed by this section shall apply to not more than $300 of the aggregate compensation payable to said employee by all said employers with respect to such calendar month, and each such employer shall be liable for that proportion of the tax with respect to such compensation which the amount payable by him to the employee with respect to such calendar month bears to the aggregate compensation payable to such employee by all employers with respect to such calendar month:

"1. With respect to compensation earned prior to January 1, 1947, the rate shall be 3 percent.

"2. With respect to compensation earned after December 31, 1946, the rate shall be as follows:

If the balance to credit of the railroad unemployment insurance account as of the close of business on Sept. 30 of any year, as determined by the Secretary, is:	The rate with respect to compensation payable to employees for services rendered during the next succeeding calendar year shall be:
$350,000,000 or more.	1 percent.

$300,000,000 or more but less than $350,000,000.	1½ percent.
$250,000,000 or more but less than $300,000,000.	2 percent.
$200,000,000 or more but less than $250,000,000.	2½ percent.
Less than $200,000,000.	3 percent.

"On or before December 31, 1946, and on or before December 31 of each succeeding year, the Secretary of the Treasury shall determine and proclaim the balance to the credit of the account as of the close of business on September 30 of such year."

Mr. HAWKES. Mr. President, a great deal could be said with regard to this amendment, but my time is limited. No Member of the Senate is more interested than I in finding a solution to the problems confronting the railroad men. I have some very definite ideas in regard to the manner in which their retirement plan should be changed. I am thoroughly in accord with them and with practically all other sound-thinking people, that the retirement fund should be actuarially sound, and that we should make it sound.

I shall not deal with the figures which were so ably placed before the Senate earlier in the day by the Senator from Ohio [Mr. TAFT] as to the percentage which each group—the railroads and the employees—is contributing to the retirement fund.

In my opinion if we pass this bill without substantial amendments we shall be doing great injustice to the railroad employees and to all other workers in the United States who come under Social Security. I may add that we would also be doing an injustice to the railroad owners; but I leave them out of consideration for the moment.

We have no right to enact such far-reaching legislation as this without Senators thoroughly understanding what they are doing. I have no objections, in the main, to the improvements offered in the retirement portion of the bill. This morning we spent 3 hours in the Commiteee on Finance trying to find ways and means of leveling off payments to various classes of people in the Nation who have retirement funds, old-age benefits, or benefits for the blind under the social-security law.

I invite the attention of the Senate to the fact that the other day we voted between $3,000,000,000 and $5,000,000,000 for terminal leave pay for all the noncommissioned personnel of the armed forces, not on the basis of the merits of the case alone, but to correct an injustice. I am very serious when I say that in this over-all picture of social security we must be careful to see that we do not create further injustices, which will compel us to make further corrections, and further use up the funds of the free enterprise system or the production system of the United States. It is easy to scoff at the production system. I should like to leave one thought with Senators. It is simple, but too many persons forget it: The Government never had any money. The only money the Government has it gets from the use of the power of taxation. I remind the Senate that one of the greatest men ever to sit on the Supreme Court said to the people of the United States that the power to tax also carries with it the power to destroy, and when we destroy we do not accomplish any good for the people.

What were the working people of Europe promised? What were the people promised in Germany, France, and Italy? They were promised the millennium. It was thought that the impossible could be accomplished; and the people wound up as slaves of the state.

I have talked with a number of employees of the railroads. They very definitely wish to be sure that this plan is carried out in a sound manner.

The first part of my amendment would remove the section of the bill which deals with increasing the unemployment compensation fund, as well as the new coverages and benefits, such as compensation for sickness which is nonoccupational, compensation for injuries which have nothing to do with the work of the employee, maternity benefits, and various other benefits.

I think it is proper for me to ask the Senate, in voting on my amendment, to consider the fact that only a very few months ago the Senate Committee on Finance gave very careful thought to the question of temporarily, during the reconversion period, increasing unemployment compensation from $20 a week, or whatever it might have been in the States, so that the Federal Government would guarantee each person in any State, regardless of the State law, $25 for 26 weeks. After very careful consideration of that subject the Finance Committee refused to approve the proposal. The majority leader offered on the floor of the Senate an amendment to place in the bill the provision allowing $25 a week for 26 weeks, and after very considerable debate on this floor the Senate voted down that amendment by a vote of 51 to 29.

I shall not say much more about this particular subject, because I believe that what we have done is apparent. My amendment is perfectly clear. There is a difference of opinion on this particular subject among the best minds in the United States.

I wish to speak of the question of the sliding-scale part of the amendment relating to the unemployment-compensation fund. I invite the attention of the Senate to the fact that according to information which I have received from Mr. Latimer over the telephone, as of today the unemployment-compensation fund amounts to $790,000,000. During the past 5 years the demands upon the unemployment-compensation fund were $48,000,000, or less than $10,000,000 a year. At that rate the amount in the fund today would last for more than 80 years. We all know that we have been through an era of prosperity. We know that certain things may happen to the railroads which may cause them to release men, thus increasing the demand on the unemployment-compensation fund. I am advised that during the present year between $18,000,000 and $20,000,000 will be required for unemployment-compensation benefits to railroad employees, because of the coal strike, the temporary shut-down of the railroads, and other such interferences.

It would be very inconsistent to advocate making the retirement fund actuarily sound, but making the unemployment-compensation fund unsound. However, I submit to the Senate that the unemployment-compensation fund as it stands today would meet the demands for 5 or 6 years under the most difficult circumstances that can be imagined, namely, a 40-percent reduction in employment on the railroads, which is the maximum reduction possible under the law, because the railroads must keep their stations open and remain in operation. The maximum reduction in employment that is considered possible would be a 40-percent reduction. I am not suggesting that we should jeopardize this fund, because I believe that both the unemployment-compensation fund and the retirement fund represent sacred contracts. I believe that they should be dealt with intelligently and on the basis of certain knowledge.

In the House of Representatives an amendment was offered on behalf of the Committee on Interstate and Foreign Commerce which would carry the tax down to one-half of 1 percent. I have not done that, even though the fund would justify it. I have provided in my amendment that if the balance to the credit of the railroad unemployment insurance account as of the close of business on September 30 of any year, as determined by the Secretary, is $350,000,000 or more, the tax shall be reduced to 1 percent; if the fund is $300,000,000 or more, but less than $350,000,000, 1½ percent; if the fund is $250,000,000 or more, but less than $300,000,000, 2 percent; if the fund is $200,000,000 or more, but less than $250,000,000, 2½ percent; if it is less than $200,000,000, the 3-percent rate which has been in effect shall be restored.

At the present time the interest on the money in the fund, at 2 percent, is between $15,000,000 and $16,000,000 a year. The average expenditure from the unemployment compensation fund under the Railroad Retirement Act during the past 5 years was less than $10,000,000 a year. Even during the present year, with the prolonged coal strike which seriously interfered with employment on the railroads, and with the railroad shut-down and other interferences, the total demands upon the unemployment compensation fund will be between $18,000,000 and $20,000,000. Just think of the interest accumulation of $15,000,000 or $16,000,000 as against the demands on the fund, and the fact that there is $790,000,000 in the fund today. I do not believe anyone can successfully maintain that this fund is not now much larger than is necessary in order to guarantee the safety and solvency of the system.

I am definitely of the opinion that the procedure provided by the amendment is sound. I believe that if we adopt the amendment, the unemployment compensation fund will still be left in excellent,

sound condition; and I believe that the adoption of the amendment will help the railroads pay the increased amount which it will be necessary for them to pay in order to make the retirement fund actuarially sound.

I see that I have only 1 minute remaining. So in closing, I should like to state that the railroads have made application to the Interstate Commerce Commission for a 25-percent increase in rates. That matter has been debated on the floor of the Senate to a considerable extent, although no other Senator has heretofore mentioned that the increase in rates which has been applied for amounts to 25 percent. I am told that the Interstate Commerce Commission has granted a 6-percent increase, and has taken under advisement the request for the further increase. In the interest of the consumers who pay the bills and in the interest of the shippers, both of whom now must pay higher rates, we should handle this matter in such a way that no additional burden will be placed upon the consumers.

So, Mr. President, I hope the amendment will be adopted.

Mr. SMITH. Mr. President, will the Senator yield to me for a question?

The PRESIDING OFFICER (Mr. THOMAS of Utah in the chair). Does the Senator from New Jersey yield to his colleague?

Mr. HAWKES. I am glad to yield.

Mr. SMITH. I understand that the Senator's amendment strikes out the benefits provided in division III of the bill, which are the benefits which would be received by persons suffering from nonoccupational diseases or illnesses. I understand that the Senator's amendment does not relate to the survivorship benefits.

Mr. HAWKES. That is correct. I approve of the survivorship benefits. My amendment relates only to the illness and maternity benefits. Such benefits never have been paid thus far in respect to any phase or activity of American life. I am not saying that we should not do something about them some day; I am not discussing that matter now. I simply say that if at this time we take such steps for the benefit of one group, all other groups in the United States will wish to have similar treatment accorded to them.

Mr. SMITH. So, as I understand the Senator's amendment, it will not reduce the over-all amount of the payments to be made by the railroads into these funds; but in the case of what heretofore has been placed, in the form of a tax, into the unemployment compensation fund, and the amendment will transfer a part of that to the retirement fund, in order to build it up to the extent called for by the bill.

Mr. HAWKES. Yes.

Let me say that I read in the RECORD the colloquy which my colleague had yesterday with the distinguished Senator from Colorado [Mr. JOHNSON]. I noticed a little difference in viewpoint. In other words, I think the Senator from Colorado misunderstood the position of my colleague from New Jersey in regard to taking some of the money from the unemployment compensation fund and placing it in the retirement fund.

Mr. SMITH. I think I corrected that misunderstanding.

Mr. HAWKES. Yes; I think my colleague did.

I wish to say that if the railroads are permitted to pay smaller amounts into the unemployment compensation fund, in my opinion it will not be necessary for the railroads to obtain increases in rates in order to obtain funds with which to make increased contributions to the retirement fund, so as to place it on an actuarially sound basis.

Mr. SMITH. That is correct. I think that statement is in line with the suggestion I made last night, at which time the Senator from Colorado said that he agreed in principle, although he said he would like to see the matter handled in separate legislation.

Mr. HAWKES. That is my understanding, although of course the Senator from Colorado may speak for himself. I understand that he agrees in principle, but that he would like to see the matter handled in separate legislation.

Mr. DONNELL. Mr. President, will the Senator yield to me?

Mr. HAWKES. I yield.

Mr. DONNELL. As the Senator from New Jersey has indicated, I, too, understand that the amendment would strike out all of the proposed division III, section 3, beginning on page 42 and running to about half way down page 57.

The PRESIDING OFFICER. The time of the Senator from New Jersey [Mr. HAWKES] on the amendment has expired.

Mr. HAWKES. I am yielding for questions, and I shall take some of my time on the bill.

Mr. DONNELL. Mr. President, is it agreeable to the Senator from New Jersey to have me continue with my questions?

Mr. HAWKES. Yes; I am glad to have the Senator do so.

Mr. DONNELL. The Senator from New Jersey realizes, of course, as all other Senators do, that the bill is very long; and therefore I take the liberty of trespassing on the Senator's time long enough to ask whether he can tell us briefly whether any provisions, other than those as to nonoccupational disability, will be dealt with by his amendment. In other words, I understand that the amendment would remove nonoccupational disabilities from the list of the types of disabilities to which the benefits will apply.

Mr. HAWKES. Yes; I shall be glad to reply to the Senator. As I said a few moment ago, the provisions as to nonoccupational disabilities and illness and maternity benefits would be removed from the bill, by my amendment. My amendment also would strike from the bill the provision to increase the unemployment compensation benefit payments from $20 a week for 20 weeks to $25 a week for 26 weeks; and the provision would remain as it has been, namely $20 for 20 weeks.

Mr. DONNELL. That is the only other change, is it?

Mr. HAWKES. That is the first part of it. The only other change is as to the sliding scale of taxation.

Mr. DONNELL. I thank the Senator.

Mr. WHEELER. Mr. President, I should like to call attention to the fact that the Senator from New Jersey said that the members of the committee did not understand the bill because it is so complex. But now, for the first time, there is offered on the floor of the Senate an amendment relating to a most complicated subject, one which only experts could thoroughly understand. I submit that it is most unfair to offer from the floor an amendment of this kind, which is a fundamental amendment and propose its adoption. At any time the railroads themselves could have had their representatives propose such an amendment and could have had it studied by the committee. But it never has been before the committee for study, and, of course, the facts and figures bearing on it have not been before the committee for its consideration and study. The amendment is offered for the first time at a quarter of 6 in the afternoon, and it is offered from the floor of the Senate. It relates to a subject which should be very carefully considered and studied.

As I have said, the railroads themselves have never requested the Interstate Commerce Committee to consider such an amendment or to adopt such an amendment.

Mr. TAFT. Mr. President, will the Senator yield to me?

Mr. WHEELER. I yield.

Mr. TAFT. I should like to read from the report of the subcommittee:

> The railroads deny this premise and point to merit rating provisions in State laws as showing that overfinancing should be corrected through tax reduction. The railroads also argue that these provisions are essentially sickness and health insurance and that since no similar provisions are contained in the State unemployment compensation laws they should not be written into the Railroad Unemployment Act until and unless all business enterprises are required to undertake similar responsibilities.

So the railroads did present their objections before the Interstate Commerce Committee.

Mr. WHEELER. I beg the Senator's pardon. They never came before the committee and suggested such a revision of the bill as is now proposed by the amendment.

Mr. TAFT. The amendment is substantially the same as one submitted in the House.

Mr. WHEELER. But representatives of the railroads never came before the Senate Committee on Interstate Commerce and presented this matter at all.

Mr. TAFT. Yes; they did. It is shown in the hearings. It is referred to in the report of the subcommittee. They show the position which the railroads took. The Senator from Montana is wholly in error in his statement.

Mr. WHEELER. No; I am not. The railroads objected to the proposal to provide additional benefits for the railroad workers. I say that the matter covered by the amendment is a most technical

one, and that it needs very serious consideration. I certainly hope the amendment will be rejected.

It is argued that reductions are made under State laws because it is felt that if the railroads are permitted to reduce the number of their employees, they will try very hard to keep the employees who remain after the reduction. But the fact that one railroad has full employment does not affect the total situation materially, because all the railroads will be affected alike, and one railroad cannot maintain its employment and have it employment unaffected, at the same time other railroads are affected. In that respect, the railroad situation is entirely different from the situation of the ordinary industries.

Mr. TAFT. Mr. President, will the Senator further yield to me?

Mr. WHEELER. I yield.

Mr. TAFT. Let me read the statement made by the subcommittee regarding what the employees claim:

> The employees claim that it is the established national policy to devote 3 percent of pay roll to unemployment insurance and that unemployment benefits have been very conservatively framed to make certain that financing is adequate.

That is the position of the employees. They admit that the full amount of the tax is not needed for the existing purposes; and so they have requested additional benefits in the way of sickness and maternity benefits. Of course, such benefits are not provided for by any other system or for any other group of employees. But the railroad employees have requested the payment of the additional benefits, in order to take up the slack. That is the only justification for paying such additional benefits to them; namely, because the 3-percent contribution is more than is needed for the payment of the unemployment compensation benefits.

Mr. WHEELER. The employees pay their half of it.

Mr. TAFT. No; the Senator is mistaken about that, as I am sure he realizes. The 3 percent is paid entirely by the railroads.

Mr. WHEELER. Oh, yes; that is correct. Nevertheless, Mr. President, the employees have requested these additional benefits. The railroads are opposed to having such benefits granted, while the employees are asking for them.

When anyone says that the railroad brotherhoods are worried about the proposal and that the railroad employees say this and that in opposition to the proposal, let me say that the fact is that no railroad man in the United States is opposed to having this provision made. All of them are in favor of obtaining the increased benefits which are provided by the bill. Of course, if the Senate wishes to eliminate all these increased benefits and do away with the bill entirely, the only thing for the Senate to do is to vote down the bill.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. WHEELER. Allow me to say a word further. Senators may think that they can stop the granting of these benefits, but they will not be successful in their efforts. There will be more and more of such benefits as time goes on. The more enlightened industries realize that fact, whether they want it to take place or not. It must take place if we are to preserve our democratic form of government. We might just as well recognize the fact that if we turn back the wheels of progress, there is no telling what will happen in the United States of America.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. WHEELER. I yield.

Mr. TAFT. I merely wish to point out that there are many increased benefits still remaining in the bill. All the increased benefits relating to annuities and disabilities are still in the bill. The only thing objected to is the extension of unemployment compensation and sickness and maternity benefits. Those are subjects which are not the purpose of an unemployment compensation law, or a tax in that connection.

Mr. WHEELER. As I said a moment ago, Mr. President, these benefits which some of us seem to wish to prevent are coming along in the United States and neither the Senator from Ohio nor anyone else will be able to stop them. If the Senator wishes to eliminate them, why not suggest that the entire bill be defeated. That is what is being done. And let us not then say that something is being done for the railroad men, because such a contention is ridiculous.

Mr. HAWKES. Mr. President, will the Senator yield?

Mr. WHEELER. I yield.

Mr. HAWKES. I cannot talk unless the Senator yields to me because I have no time of my own remaining. Does the Senator believe that the weekly payments under unemployment compensation of more than a million persons in the United States, including payments for sickness and maternity benefits, which are not occupational in any way, can be increased without nearly all American society being upset because of what has been done for one segment of the population? Does not the Senator believe, as I do, that we would be doing a better job if we took the report of the House concerning the over-all social security question and tried to straighten out the problem on a fair relative basis as to each group involved?

Mr. WHEELER. The Senator complained earlier in the day that no consideration had been given to this bill by the committee. Now he offers an amendment which was not discussed by the committee and was not considered at all with reference to the matter of decreasing rates. Ever since bills on this subject came before the committee the railroads have had an opportunity to appear there and ask that a reduction be made, but they never came at any time. I do not know whether they appeared before the House committee; but, certainly, they did not come before the Senate committee and ask that the proposed reduction be made.

Mr. HAWKES. A similar amendment going further than my amendment would go was before the committee for months.

Mr. WHEELER. Yes. The Senator complained once before today that this bill did not receive any consideration by the Senate committee, and that no member of the committee had given it any thought.

Mr. HAWKES. I have not changed my mind whatever about that matter.

Mr. WHEELER. The Senator now offers an amendment which no member of the committee has had an opportunity to consider at any time. It was never discussed or proposed.

Mr. HAWKES. Then, in respect to the consideration which it has received, both the bill and the amendment are in the same category.

Mr. WHEELER. No; the Senator is entirely incorrect. Hearings were held on the bill, and the Senator was a member of the subcommittee, and so was I. I discussed the bill from time to time with the members of the subcommittee. But no hearings have ever been held on the Senator's amendment, and no arguments have been made. I have not heard anything from the railroad employees or from the opposition. What the Senator is proposing was suggested in the House with reference to a reduction. If the Senator wishes to proceed without giving the opposition an opportunity to be heard, of course that can be done, but it is not fair to come before the Senate with a one-sided amendment which represents the views, perhaps, of the railroads, when the railroads themselves never came before the committee and advocated the adoption of the amendment.

Mr. HAWKES. I may say to the Senator, if he will permit me to do so, that this amendment is not at all detrimental because the minute the fund gets down to $200,000,000 the percentage of tax increases.

Mr. WHEELER. That is the Senator's statement, but I am frank to say to him that I am not familiar with the facts or the figures in connection with the subject, and I submit that no one else is familiar with them.

Mr. HAWKES. I have been informed that even a more severe amendment was adopted by the Committee of the Whole of the House of Representatives.

Mr. WHEELER. I understand that, but it was subsequently eliminated. I am talking about the Senate Committee on Interstate Commerce. That committee never held any hearings on the amendment. The railroads did not appear and say anything in favor of it, and neither did the railroad brotherhoods. They had no opportunity to appear and testify with regard to the amendment.

Mr. AUSTIN. Mr. President, will the Senator yield?

Mr. WHEELER. I yield.

Mr. AUSTIN. I wish to rebut the statement of the Senator from Montana that the railroads did not oppose this bill. To be sure, they did not oppose what is reflected in the amendment. But all I need to do is to call the attention of the Senate to the record which shows how definitely the railroads did oppose this bill. I read from the statement of J. Carter Fort, vice president and gen-

eral counsel of the Association of American Railroads, as set forth on page 159 of the hearings:

> This bill would provide for total taxes in the railroad industry of 15½ percent of the pay roll for that purpose. Is there any reason to think that Congress is ready to set aside any such percent as that for general social security purposes, or that the people in this country are ready to do so? Certainly there has been no indication that they are. Congress refused, as late as last December, to raise the general social-security pay-roll tax of 1 percent on each employer and employee to 2 percent: and yet here you are asked to force upon the railroads a system which would require, according to these estimates, 15½ percent. And there is every reason to think that the estimates are much too low and that the cost would run way up above 15½ percent, perhaps up to 20 percent.
>
> I do not believe this Congress is ready to do that. The thinking of the peope isn't ready for that. Nothing could be more "premature" than the measure before you, to use the language which Mr. Miller used in his testimony. You are dealing with a profound subject, and you are asked to dispose of it in a few days and with respect to just a few people. Nothing can bring worse confusion in this country than such an approach to a problem of such magnitude.

I conclude with only one comment. The reference which has been made to this bill as being one which deals with general social-security purposes is perfectly justified, because we have departed from the original design of industrial protection of all, and gone into the remote field of providing benefits for those who are not at all connected directly with industry and for the family generally.

Mr. **WHEELER**. I wish to say that the Senator is entirely mistaken. I agree with him when he says that the railroads opposed this bill. What I said was that the amendment which has been offered with reference to the reduction of payments was never discussed by the committee at any time in the last 24 years during which I have been a member of the committee, nor since the bill was adopted originally.

AMENDMENT TO RAILROAD RETIREMENT ACTS, ETC.

The Senate resumed consideration of the bill (H. R. 1362) to amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes.

Mr. MURDOCK. Mr. President, not being a member of the committee which reported the pending bill, I feel a little presumptuous in speaking with reference to it, but I do have a few thoughts concerning the amendment to the bill which I wish to express.

UNEMPLOYMENT INSURANCE IMPROVEMENTS

When we first enacted unemployment insurance in this country, more than 10 years ago, it was decided that 3 percent of pay roll was about the right amount to devote to that purpose. We were still in the depression of the 1930's, billions were appropriated each year for relief and work relief, unemployment was heavy, and the prospects of continued industrial employment were gloomy. To keep within that limit of 3 percent of pay roll, the benefits under unemployment insurance were made picayune, and we embodied all sorts of restrictions, by way of qualifying conditions, disqualifications, waiting periods, and the like. But we made a start. Even with those niggardly benefits and all those restrictions on drawing any benefits, some people predicted that the system would fail because it could not be supported by a 3-percent-pay-roll tax.

When the Railroad Unemployment Insurance Act was enacted, the same payroll tax of 3 percent was levied as was imposed upon other industries covered by the various unemployment insurance laws. Since that time, experience has shown that we had been too pessimistic in our estimates of what this 3 percent could support. Benefits have been increased somewhat. Under the State laws the average unemployed person already draws about 20 percent more than the average unemployed person covered by the Railroad Act, and the State laws are continually being further liberalized. Benefits can now be considerably increased under the railroad system without any change in the tax rate. This bill which we are enacting does so in three ways.

It will remove the distinction between unemployment caused by there being no work for the individual to perform and unemployment caused by his inability to work, and so will pay benefits for unemployment caused by a worker's sickness as well as by his loss of a job for economic reasons.

Unemployment benefits are now paid under the Railroad Unemployment Insurance Act on a graduated scale, depending on previous earnings. The maximum is now $20 per week for full unemployment for an employee who earned more than $1,600 in a test base period. This is a lower maximum than is already provided in a great many States. The changes the bill makes in the rate of benefits do not affect those who earned less than $2,000 in the test period; benefits of employees who earned up to that amount would remain the same. But since the scale of benefits in the present law was enacted, rates of pay have advanced materially while the old scale remains geared to lower earnings. This bill increases the maximum rate of benefits of those who earned $2,000 or more in the base period. The maximum for those who earned at least $2,000 but less than $2,500 would be raised to $22.50 per week, and the maximum for complete unemployment of those who earned at least $2,500 would be raised to $25 per week. The rate of benefits for all others remains unchanged. The Social Security Board agrees that the maximum benefits under the unemployment-insurance laws should be raised to at least $25 per week.

Under the law as it now stands, the maximum duration of unemployment benefits is 100 compensable days. This comes to 20 weeks. The bill would extend the maximum to 130 compensable days, or 26 weeks. Only a small percentage of persons who become unemployed ever receive benefits for the maximum duration, and so this change helps only that small percentage who suffer the heaviest unemployment. A large number of States already have a maximum duration in excess of 20 weeks, and several have already provided a 26-week maximum duration. The Social Security Board has recommended to us that the maximum duration of benefits under the unemployment-insurance laws should be increased to at least 26 weeks. There can be no reason why the railroad system, so long as it can afford to be more liberal without any increase in the taxes, should have a shorter maximum duration than the more favorable State laws provide.

Our experience with unemployment insurance in the railroad field shows beyond any dispute that all these changes can be amply afforded without any increase in the tax rate. But the argument has been advanced that instead of trying to make the benefits less inadequate and trying to bring them up to something that would really approach unemployment insurance—that is, something that would really resemble insurance against unemployment—we should keep the old, inadequate benefits and return what is left to the railroads by reducing their unemployment insurance taxes. I should like to discuss that suggestion a little.

As I have already stated, when we started unemployment insurance we thought 3 percent of pay roll an appropriate amount to devote to unemployment insurance. Benefits were made so scanty and payment of them hedged with so many artificial limitations and restrictions, because under conditions as we could see them then we were afraid that that rate of tax would not support anything like substantial benefits. To encourage employers to try to stabilize their employment and reduce their turnover of employees, a plan of so-called merit rating was proposed and finally authorized in the Social Security Act for the State unemployment insurance laws. Under this scheme, taxes paid by an employer are credited to his account, and unemployment benefits paid to his employees are charged to his account. When the amount in his account reaches a certain percentage of his pay roll, his unemployment tax rate is reduced.

There was considerable controversy about this. Its opponents pointed out that the factors and circumstances that cause unemployment had very little to do with what the employer wanted to do or could do, and so had very little and probably nothing to do with the employer's merit. This has already been recognized at least in part, and the plan is no longer referred to as "merit rating" but is now called "experience rating." That the facts on which an employer's tax rate might increase or decrease have nothing to do with his ability or desire to stabilize employment, or his merit, is shown by the possibility that a very large turn-over and an artificially unstable labor force could also result in tax reduction. This is so because by employing men for a period just too short for them to qualify for unemployment benefits, and then replacing them with another group for a like period, the employer's record would also be very good on the books, for very little if any benefits would be paid on the basis of employment with him, and he would receive the benefit of so-called merit rating although his performance would be the opposite of the desired basis of merit rating.

It was suggested also that merit rating was but an opening for a general unemployment tax reduction below the accepted 3 percent and would be used to prevent the furnishing of more adequate benefits if experience should prove that the tax could support more adequate benefits. The proponents of such plan answered that merit rating provisions could never form the basis of a general unemployment tax reduction, for there would always be enough unemployment to assure that most employers would be paying the full 3 percent.

Finally, those opposed to merit rating pointed out that it raised and lowered taxes at the most inopportune times. When an employer would be employing all his men without lay-offs, and would be prosperous and making a lot of money, his tax rate would be reduced just when he could afford to pay the highest taxes to take care of future unemployment. On the other hand, when business would be bad, and the employer would be compelled to lay off his employees, when his profits would be shrinking or would have disappeared, then his taxes would increase, just when he could least afford an increase. I ask Senators if that is not exactly what is proposed under the amendment offered by the distinguished Senator from New Jersey? It was observed that under none of the other unemployment insurance systems anywhere in the world, some of them having been in operation many years, was experience rating recognized.

The fears and forecasts of those who criticized experience rating have now been realized, and the arguments of those who favored it have proven unsound. Prosperity and full employment, during and preceding the war, have produced large pay rolls through no merit of the employers. The simple force of economic factors far beyond the control

of any employer has resulted in his taxes being reduced in those States which have experience rating. Now, when his profits are far higher than they were during the early years of unemployment insurance of this country, he is subject to a lower tax rate for unemployment.

The PRESIDING OFFICER. The time of the Senator on the amendment has expired.

Mr. MURDOCK. I will take 15 minutes on the bill, Mr. President.

Should conditions deteriorate and profits dwindle, with unemployment on the increase and unemployment benefits paid in larger sums, his unemployment tax rate will increase just when he can least afford it, and when it will produce the least revenue. That is what the Hawkes amendment would provide.

Despite the argument of the proponents of experience rating that it could never form the basis of a general unemployment tax reduction, that is just what has happened. With full employment for the last few years, most employers in States embodying experience rating in their laws are paying less than the full rate. The most glaring example of the tendency of experience rating to encourage a circumvention of its ostensible justification and to furnish an excuse for unwarranted tax reduction, is the move of the employers in this instance. We refused to adopt experience rating when we enacted the Railroad Unemployment Insurance Act. Remember that benefits were set as low as they were to keep costs within the 3-percent tax rate, and numerous irrelevant restrictions and exclusions were embodied for the same purpose. Now we see large sums accumulating in the reserve and we see that a liberalization can be made without any danger of insolvency. Yet the employers resist all liberalization and argue and propose that instead of bringing the benefits up to what the tax can support, the tax be brought down to the level that will support the present artificially meager benefits. It could hardly be more apparent that we were right when we omitted experience rating from this law and when we rejected an earlier movement to interject it.

The fund is now highly solvent and it is undisputed that the present tax can support less niggardly benefits. It is our duty to see that the monies collected for unemployment be devoted to the benefit of those for whose protection we collected them. There can be no sound reason for our not doing so.

Mr. LANGER. Mr. President, will the Senator yield?

Mr. MURDOCK. I yield.

Mr. LANGER. I ask the distinguished Senator if it is not true that only a short time ago the Women's Bureau of the Department of Labor, when the matter of the last Federal pay bill came up, said that the women employees of the Federal Government who had been married a year should have at least 90 days of leave without pay.

Mr. MURDOCK. I am advised that that is correct.

Mr. LANGER. How many men and women are affected by this bill?

Mr. MURDOCK. I do not believe I can give the Senator the answer. I am sure the Senator from Colorado [Mr. JOHNSON] or the Senator from Montana [Mr. WHEELER] have those figures, but not being a member of the committee, and not having attended the hearings, I do not have the figures.

Mr. LANGER. Is it not one of the tactics of the opposition, of those who are opposed to unemployment insurance, whenever any measure of this nature is brought up on the floor of the Senate, to say "Well, that affects but a small group and is setting a precedent which other groups will have to follow." When the Civil Service Committee, under the chairmanship of the Senator from California [Mr. DOWNEY] recommended that pay be provided women employed by the Government in connection with maternity cases, that was exactly the argument which was used against the proposal.

Mr. MURDOCK. Yes; the same argument is used in all similar cases.

Mr. LANGER. Is it not true also that a great many other countries are far in advance of the United States when it comes to the matter of unemployment insurance, and that for some 20 or 25 years the United States has lagged in seeing to it that our laboring people receive the same kind of treatment that the laboring people of some foreign countries receive?

Mr. MURDOCK. I should say that we generally move in this country with the brakes on.

Mr. TAFT. Mr. President, let me say a word or two respecting the proposed change. The amendment provides for no reduction in benefits or reduction in rates. Applicable as of 1949, the highest rate under the law is 3¾ percent, the same percentage to be paid by employers and employees, or a total of 7½ percent each year, plus 3 percent for unemployment compensation, or 10½ percent.

In the part of the bill to which there is no objection we are raising the benefits and increasing the tax to 12½ percent, 6¼ percent from each group. If we add this 3 percent the tax would be 15½ percent instead of the present 10½-percent tax.

The effect of the Hawkes amendment would be to fix the rate at 13½ percent, instead of 15½ percent. As nearly as I can judge, even if this provision were removed, the amount of benefits for railroad workers would be increased by $75,000,000 a year. This is a progressive bill, without the particular provision to which reference has been made. Merely because the unemployment tax is not all needed for standard unemployment compensation, I see no reason why we should invent new benefits which do not exist under any unemployment compensation system today, and insist that the rate be 15½ percent on the pay roll, or nearly 5 percent more than under the existing law.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from New Jersey [Mr. HAWKES].

Mr. BARKLEY. Mr. President, may we have a vote on the amendment? I ask for the yeas and nays.

The yeas and nays were ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. BARKLEY. I withdraw the point of no quorum. I suppose Senators will come into the Chamber anyway.

Mr. TAFT. Mr. President, the Senator from North Carolina [Mr. HOEY] adopted a new technique. I ask unanimous consent that immediately following the quorum call there shall be a vote on the pending amendment.

The PRESIDING OFFICER. The request for the quorum call has been withdrawn.

Mr. BARKLEY. I have withdrawn the request for a quorum call.

Mr. WHITE. Mr. President, are we to have a quorum call or a vote on the amendment?

The PRESIDING OFFICER. The request for a quorum call is withdrawn.

The question is on agreeing to the amendment offered by the Senator from New Jersey [Mr. HAWKES]. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HAWKES. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HAWKES. I understood the Senator from Kentucky to suggest the absence of a quorum.

Mr. BARKLEY. I withdrew that suggestion.

Mr. LA FOLLETTE. Mr. President, I call for the regular order.

The legislative clerk resumed and concluded the calling of the roll.

Mr. REED (after having voted in the affirmative). I have a general pair with the senior Senator from New York [Mr. WAGNER]. I transfer that pair to the Senator from Iowa [Mr. WILSON], who, if present, would vote as I have voted, and allow my vote to stand.

Mr. THOMAS of Utah. I have a general pair with the Senator from New Hampshire [Mr. BRIDGES]. Not knowing how he would vote, I transfer that pair to the Senator from Idaho [Mr. GOSSETT]. I am not advised how the Senator from Idaho would vote on this question if present. Being at liberty to vote, I vote "nay."

Mr. HILL. I announce that the Senator from North Carolina [Mr. BAILEY] and the Senator from Idaho [Mr. GOSSETT] are absent because of illness.

The Senator from South Carolina [Mr. MAYBANK] is absent because of illness in his family.

The Senator from Florida [Mr. ANDREWS], the Senator from Mississippi [Mr. BILBO], the Senator from Georgia [Mr. GEORGE], the Senator from Arizona [Mr. HAYDEN], the Senator from Texas [Mr. O'DANIEL], the Senator from Wyoming [Mr. O'MAHONEY], the Senator from Tennessee [Mr. STEWART], and the Senator from New York [Mr. WAGNER] are necessarily absent.

The Senator from Missouri [Mr. BRIGGS], the Senator from New Mexico [Mr. CHAVEZ], and the Senators from Pennsylvania [Mr. GUFFEY and Mr. MYERS] are detained on public business.

The Senator from Virginia [Mr. BYRD] and the Senator from California [Mr. DOWNEY] are absent on official business.

The Senator from Louisiana [Mr. OVERTON] and the Senator from Georgia [Mr. RUSSELL] are detained on official business at Government departments.

The Senator from New Mexico [Mr. HATCH] is absent on official business, having been appointed a member of the President's Evaluation Commission in connection with the test of atomic bombs on naval vessels at Bikini.

The Senator from Louisiana [Mr. ELLENDER] and the Senator from Maryland [Mr. TYDINGS] are absent on official business, having been appointed to the commission on the part of the Senate to participate in the Philippine independence ceremonies.

If present and voting, the Senators from Pennsylvania [Mr. GUFFEY and Mr. MYERS], the Senator from Georgia [Mr. RUSSELL], and the Senator from New York [Mr. WAGNER] would vote "nay."

Mr. WHERRY. The Senator from New Hampshire [Mr. BRIDGES] is necessarily absent. He has a general pair with the Senator from Utah [Mr. THOMAS].

The Senator from Nebraska [Mr. BUTLER] is absent on official business, being a member of the commission appointed to attend the Philippine independence ceremonies.

The Senator from South Dakota [Mr. BUSHFIELD], the Senator from Indiana [Mr. CAPEHART], the Senator from Wyoming [Mr. ROBERTSON], and the Senator from New Hampshire [Mr. TOBEY] are absent by leave of the Senate.

The Senator from Iowa [Mr. HICKENLOOPER] is absent by leave of the Senate on official business as a member of the Special Committee on Atomic Energy.

The Senator from Massachusetts [Mr. SALTONSTALL] is absent on official business, having been appointed a member of the President's Evaluation Commission in connection with the test of atomic bombs on naval vessels at Bikini.

The Senator from Iowa [Mr. WILSON] is absent on official business. If present, he would vote "yea."

The Senator from Maine [Mr. BREWSTER] and the Senator from Delaware [Mr. BUCK] are necessarily absent.

The result was announced—yeas 22, nays 41, as follows:

YEAS—22

Austin	Hart	Swift
Ball	Hawkes	Taft
Brooks	Hoey	Wherry
Burch	Millikin	White
Capper	Moore	Wiley
Donnell	Reed	Willis
Gerry	Smith	
Gurney	Stanfill	

NAYS—41

Aiken	Knowland	Murray
Barkley	La Follette	Pepper
Carville	Langer	Radcliffe
Connally	Lucas	Revercomb
Cordon	McCarran	Shipstead
Eastland	McClellan	Taylor
Ferguson	McFarland	Thomas, Okla.
Fulbright	McKellar	Thomas, Utah
Green	McMahon	Tunnell
Hill	Magnuson	Vandenberg
Huffman	Mead	Walsh
Johnson, Colo.	Mitchell	Wheeler
Johnston, S. C.	Morse	Young
Kilgore	Murdock	

NOT VOTING—33

Andrews	Chavez	O'Daniel
Bailey	Downey	O'Mahoney
Bilbo	Ellender	Overton
Brewster	George	Robertson
Bridges	Gossett	Russell
Briggs	Guffey	Saltonstall
Buck	Hatch	Stewart
Bushfield	Hayden	Tobey
Butler	Hickenlooper	Tydings
Byrd	Maybank	Wagner
Capehart	Myers	Wilson

So Mr. HAWKES' amendment was rejected.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed, and the bill was read the third time.

Mr. JOHNSON of Colorado. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized and directed to make such clerical, technical, section-number and cross-reference changes in the Senate engrossed amendments to the bill as may be necessary.

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

The bill having been read the third time, the question is, Shall it pass?

Mr. LANGER. I ask for the yeas and nays.

The yeas and nays were ordered, and the legislative clerk called the roll.

Mr. THOMAS of Utah. I have a general pair with the Senator from New Hampshire [Mr. BRIDGES]. Not knowing how he would vote, I transfer that pair to the Senator from Idaho [Mr. GOSSETT]. I am not advised how the Senator from Idaho would vote on this question if present. Being at liberty to vote, I vote "yea."

Mr. HILL. I announce that the Senator from North Carolina [Mr. BAILEY] and the Senator from Idaho [Mr. GOSSETT] are absent because of illness.

The Senator from South Carolina [Mr. MAYBANK] is absent because of illness in his family.

The Senator from Florida [Mr. ANDREWS], the Senator from Georgia [Mr. GEORGE], the Senator from Arizona [Mr. HAYDEN], the Senator from Texas [Mr. O'DANIEL], the Senator from Wyoming [Mr. O'MAHONEY], and the Senator from New York [Mr. WAGNER] are necessarily absent.

The Senator from Missouri [Mr. BRIGGS] and the Senator from New Mexico [Mr. CHAVEZ] are detained on public business.

The Senator from Virginia [Mr. BYRD] and the Senator from California [Mr. DOWNEY] are absent on official business.

The Senator from Louisiana [Mr. OVERTON] and the Senator from Georgia [Mr. RUSSELL] are detained on official business at Government departments.

The Senator from New Mexico [Mr. HATCH] is absent on official business, having been appointed a member of the President's Evaluation Commission in connection with the test of atomic bombs on naval vessels at Bikini.

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If present and voting, the Senator from Florida [Mr. ANDREWS], the Senator from New Mexico [Mr. CHAVEZ], the Senators from Georgia [Mr. GEORGE and Mr. RUSSELL], the Senator from Arizona [Mr. HAYDEN], the Senator from South Carolina [Mr. MAYBANK], the Senator from Wyoming [Mr. O'MAHONEY], and the Senator from New York [Mr. WAGNER] would vote "yea."

Mr. WHERRY. The Senator from New Hampshire [Mr. BRIDGES] is necessarily absent. He has a general pair with the Senator from Utah [Mr. THOMAS].

The Senator from Nebraska [Mr. BUTLER] is absent on official business, being a member of the commission appointed to attend the Philippine independence ceremonies.

The Senator from South Dakota [Mr. BUSHFIELD], the Senator from Indiana [Mr. CAPEHART], the Senator from Wyoming [Mr. ROBERTSON], and the Senator from New Hampshire [Mr. TOBEY] are absent by leave of the Senate. If present the Senator from South Dakota [Mr. BUSHFIELD] would vote "nay," and the Senator from Wyoming [Mr. ROBERTSON] would vote "yea."

The Senator from Iowa [Mr. HICKENLOOPER] is absent by leave of the Senate on official business as a member of the Special Committee on Atomic Energy.

The Senator from Massachusetts [Mr. SALTONSTALL] is absent on official business, having been appointed a member of the President's Evaluation Commission in connection with the test of atomic bombs on naval vessels at Bikini.

The Senator from Iowa [Mr. WILSON] is absent on official business.

The Senator from Maine [Mr. BREWSTER] and the Senator from Delaware [Mr. BUCK] are necessarily absent.

Mr. MYERS. Mr. President, the senior Senator from Pennsylvania [Mr. GUFFEY] is absent on public business. If he were present he would vote "yea."

Mr. REED (after having voted in the negative). Making the same announcement as the one I made on the last vote with regard to my pair with the Senator from New York [Mr. WAGNER], I transfer that pair to the Senator from South Dakota [Mr. BUSHFIELD] and let my vote stand.

The result was announced—yeas 55, nays 11, as follows:

YEAS—55

Aiken	Kilgore	Radcliffe
Barkley	Knowland	Revercomb
Bilbo	La Follette	Shipstead
Brooks	Langer	Smith
Burch	Lucas	Stanfill
Carville	McCarran	Stewart
Connally	McClellan	Swift
Cordon	McFarland	Taylor
Donnell	McKellar	Thomas, Okla.
Eastland	McMahon	Thomas, Utah
Ferguson	Magnuson	Tunnell
Fulbright	Mead	Vandenberg
Gerry	Millikin	Walsh
Green	Mitchell	Wheeler
Hill	Morse	Wiley
Hoey	Murdock	Willis
Huffman	Murray	Young
Johnson, Colo.	Myers	
Johnston, S. C.	Pepper	

NAYS—11

Austin	Hart	Taft
Ball	Hawkes	Wherry
Capper	Moore	White
Gurney	Reed	

NOT VOTING—30

Andrews	Chavez	O'Daniel
Bailey	Downey	O'Mahoney
Brewster	Ellender	Overton
Bridges	George	Robertson
Briggs	Gossett	Russell
Buck	Guffey	Saltonstall
Bushfield	Hatch	Tobey
Butler	Hayden	Tydings
Byrd	Hickenlooper	Wagner
Capehart	Maybank	Wilson

So the bill (H. R. 1362) was passed.

The SPEAKER. Is there objection to the request of the gentleman from California?

Mr. COLE of Missouri, Mr. HOOK, Mr. WHITE, and Mr. HENDRICKS objected.

RAILROAD RETIREMENT BILL

Mr. CROSSER. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H. R. 1362) to amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

Mr. LEA. Mr. Speaker, I object.

Mr. CROSSER. Mr. Speaker, I move to suspend the rules and concur in the Senate amendments to the bill (H. R. 1362), entitled "An act to amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes."

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 1, strike out all after line 3 over to and including line 12, on page 8.

Strike out lines 13 to 16, inclusive, and insert:

"SEC. 1. Section 1 (c) of the Railroad Retirement Act of 1937, section 1 (e) of the Railroad Unemployment Insurance Act, and section 1532 (d) of the Internal Revenue Code are each amended as follows: After the word 'if' which it first appears therein insert '(1)' and for the phrase."

Page 8, line 22, strike out all after "operations", down to and including "employer," in line 25.

Page 9, line 12, strike out "3" and insert "2."

Page 9, line 16, strike out all after "'paid';" down to and including "period;" in line 18.

Page 11, strike out all after line 9 over to and including line 15, on page 15, and insert:

"'SEC. 3. (a) Section 1500 of the Internal Revenue Code is amended to read as follows:

"'"SEC. 1500. Rate of tax.

"'"In addition to other taxes, there shall be levied, collected, and paid upon the income of every employee a tax equal to the following percentages of so much of the compensation, paid to such employee after December 31, 1946, for services rendered by him after such date, as is not in excess of $300 for any calendar month:

"'"1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 5¾ percent;

"'"2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 6 percent.

"'"3. With respect to compensation paid after December 31, 1951, the rate shall be 6¼ percent."

"'(b) The second sentence of section 1501 (a) of the Internal Revenue Code is amended to read as follows: "If an employee is paid compensation after December 31, 1946, by more than one employer for services rendered during any calendar month after 1946 and the aggregate of such compensation is in excess of $300, the tax to be deducted by each employer other than a subordinate unit of a national railway-labor-organization employer from the compensation paid by him to the employee with respect to such month shall be that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300, each subordinate unit of a national railway-labor-organization employer shall deduct such proportion of any additional tax as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month."

"'(c) Section 1510 of the Internal Revenue Code is amended to read as follows:

"'"SEC. 1510. Rate of tax.

"'"In addition to other taxes, there shall be levied, collected, and paid upon the income of each employee representative a tax equal to the following percentages of so much of the compensation, paid to such employee representative after December 31, 1946, for services rendered by him after such date, as is not in excess of $300 for any calendar month:

"'"1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 11½ per centum;

"'"2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 12 per centum;

"'"3. With respect to compensation paid after December 31, 1951, the rate shall be 12½ per centum."

"'(d) Section 1520 of the Internal Revenue Code is amended to read as follows:

"'"SEC. 1520. Rate of tax.

"'"In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of so much of the compensation, paid by such employer after December 31, 1946, for services rendered to him after December 31, 1936, as is, with respect to any employee for any calendar month, not in excess of $300: *Provided, however*, That if an employee is paid compensation after December 31, 1946, by more than one employer for services rendered during any calendar month after 1936, the tax imposed by this section shall apply to not more than $300 of the aggregate compensation paid to such employee by all such employers after December 31, 1946, for services rendered during such month, and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional tax as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month:

"'"1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 5¾ percent;

"'"2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 6 percent;

"'"3. With respect to compensation paid after December 31, 1951, the rate shall be 6¼ percent."

"'(e) Section 1532 (b) of the Internal Revenue Code is amended to read as follows:

"'"(b) Employee: The term 'employee' means any individual in the service of one or more employers for compensation: *Provided, however*, That the term 'employee' shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if (i) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence will have been established to the satisfaction of the Railroad Retirement Board before July 1947; or (ii) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive; or (iii) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age 65 or until August 1945, or (B) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in clause (ii); or (iv) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within 1 year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within 10 years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights: *Provided*, That an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937, or if during the last pay-roll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such pay-roll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a).

"'"The term 'employee' includes an officer of an employer.

"'"The term 'employee' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple."

"'(f) Section 1532 (e) of the Internal Revenue Code is amended by adding at the end thereof the following new paragraph:

"'"A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, 'for

time lost' the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost."

"'(g) Subchapter B of Chapter 9 of the Internal Revenue Code is amended by adding at the end thereof the following new section:

"'"SEC. 1538. Title of subchapter.

"'"This subchapter may be cited as the 'Railroad Retirement Tax Act.'"'"

Page 15, line 21, strike out "of" and insert "if."

Page 16, line 1, strike out "1946" and insert "1947."

Page 16, line 3, strike out "1945" and insert "1946."

Page 16, line 11, strike out "1944" and insert "1945."

Page 16, line 14, strike out "1944" and insert "1945."

Page 16, line 22, strike out "nine" and insert "ten."

Page 17, line 23, strike out "Section 1 (m) is amended to read as follows:" and insert "A new subsection is added as follows."

Page 17, line 24, strike out "(m)" and insert "(o)."

Page 18, line 21, strike out "(o)" and insert "(p)."

Page 23, line 14, strick out all after "equitable." down to and including "recognized" in line 19, and insert "In computing the monthly compensation, no part of any month's compensation in excess of $300 shall be recognized."

Page 26, line 15, strike out "1946" and insert "1947."

Page 28, line 22, strike out "1946" and insert "1947."

Page 29, line 6, strike out "1946" and insert "1947."

Page 32, line 23, strike out "1946" and insert "1947."

Page 33, line 17, strike out "1946" and insert "1947."

Page 34, line 7, strike out "Social Security Board" and insert "Federal Security Administrator."

Page 34, line 23, strike out "either board" and insert "the Board or the Federal Security Administrator."

Page 35, line 2, strike out "board which" and insert "Board or the Federal Security Administrator, whichever."

Page 35, line 25, strike out "1946" and insert "1947."

Page 38, line 11, strike out "1947" and insert "1948."

Page 39, lines 1 and 2, strike out "multiplied by the number of months he will have been in service as an employee" and insert "for any calendar month in such year."

Page 41, strike out all after line 23 over to and including line 3, on page 42.

Page 45, line 2, strike out all after "compensation" down to and including "employment)" in line 4, and insert "with respect to employment."

Page 51, strike out lines 3 to 23, inclusive, and insert:

"'SEC. 318. (a) Section 8 (a) is amended by changing the word "payable" to "paid" wherever it appears; and by substituting for the portion of the subsection beginning with the words "and each such employer" and continuing to the end of the subsection, the following: "and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the contribution with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services during any calendar month after 1946 bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional contribution as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month."'"

Page 51, after line 2, insert:

"(b) Subsection (h) of section 8 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"'(h) All provisions of law, including penalties, applicable with respect to any tax imposed by section 1800 or 2700 of the Internal Revenue Code, and the provisions of section 3661 of such code, insofar as applicable and not inconsistent with the provisions of this act, shall be applicable with respect to the contributions required by this act: *Provided*, That all authority and functions conferred by or pursuant to such provisions upon any officer or employee of the United States, except the authority to institute and prosecute, and the function of instituting and prosecuting, criminal proceedings, shall, with respect to such contributions, be vested in and exercised by the Board or such officers and employees of the Board as it may designate therefor.'"

Page 57, line 7, strike out "1946" and insert "1947."

Page 57, line 10, strike out "1946" and insert "1947."

Page 57, line 11, strike out "1946" and insert "1947."

Page 57, line 15, strike out "sections" and insert "section 306 shall become effective on July 1, 1946, and sections."

Page 57, line 16, strike out "306."

Page 57, line 16, strike out "1946" and insert "1947."

Page —, after line —, insert the following:

"The amendments to section 1532 of the Internal Revenue Code made by sections 1, and 3 (e) and (f) shall be effective only with respect to services rendered after December 31, 1946. The amendments made by section 4 (a), (b), (c), and (d) shall take effect January 1, 1947. Sections 1500, 1510, and 1520 of the Internal Revenue Code as in effect on December 31, 1946, shall remain in full force and effect on and after January 1, 1947, with respect to any remuneration which constitutes compensation under the law as in effect on December 31, 1946, to which such sections as amended by this act are not applicable.'"

Page 57, lines 18 and 19, strike out "July 1, 1945," and insert "on the date of enactment of this act."

Page 57, line 20, strike out "1946" and insert "1947."

Page 58, line 11, strike out "1946" and insert "1947."

Page 58, line 19, strike out "1946" and insert "1947."

Page 58, line 20, strike out "1947" and insert "1948."

Page 59, line 2, strike out "1946" and insert "1947."

Page 59, line 4, strike out "1946" and insert "1947."

Page 59, line 20, strike out "1946" and insert "1947."

Page 60, line 15, strike out "1945" and insert "1946."

Page 60, line 15, strike out "1946" and insert "1947."

Page 60, strike out lines 18 to 20, inclusive. clusive.

The SPEAKER. The gentleman from Ohio moves to suspend the rules and agree to the Senate amendments to the bill H. R. 1362.

Is a second demanded?

Mr. LEA. Mr. Speaker, I demand a second.

Mr. CROSSER. Mr. Speaker, I ask unanimous consent that a second be considered as ordered.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

There was no objection.

CALL OF THE HOUSE

Mr. BUCK. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. The Chair will count. [After counting.] Two hundred and three Members are present; not a quorum.

Mr. McCORMACK. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 246]

Adams	Domengeaux	McKenzie
Allen, La.	Earthman	McMillan, S. C.
Almond	Eaton	Mahon
Anderson, Calif.	Ellsworth	Maloney
Andrews, N. Y.	Elsaesser	Mankin
Bailey	Elston	Mansfield, Mont.
Baldwin, Md.	Engel, Mich.	
Baldwin, N. Y.	Fellows	Mansfield, Tex.
Barrett, Pa.	Fogarty	Marcantonio
Barry	Folger	Mason
Bates, Ky.	Fuller	May
Bates, Mass.	Gallagher	Merrow
Beall	Gary	Miller, Calif.
Beckworth	Gathings	Morgan
Bender	Gifford	Murray, Tenn.
Bennet, N. Y.	Gillespie	Norton
Blackney	Gossett	O'Konski
Bland	Granahan	O'Neal
Boren	Grant, Ind.	O'Toole
Boykin	Green	Outland
Bradley, Mich.	Gwinn, N. Y.	Pace
Bradley, Pa.	Hall, Edwin Arthur	Patman
Brooks	Halleck	Patrick
Brumbaugh	Hare	Patterson
Bryson	Harness, Ind.	Peterson, Ga.
Buckley	Hart	Pfeifer
Buffett	Hartley	Philbin
Bunker	Hébert	Ploeser
Butler	Heffernan	Powell
Cannon, Fla.	Hess	Priest
Carlson	Hill	Quinn, N. Y.
Case, N. J.	Hoffman, Pa.	Rabin
Case, S. Dak.	Holifield	Randolph
Celler	Izac	Rayfiel
Clark	Jennings	Reece, Tenn.
Clements	Johnson, Calif.	Rees, Kans.
Clippinger	Johnson, Okla.	Rich
Cochran	Johnson, Tex.	Richards
Coffee	Judd	Rivers
Cole, Kans.	Kean	Robertson, Va.
Cole, N. Y.	Keefe	Robinson, Utah
Combs	Kefauver	Robsion, Ky.
Cooper	Keogh	Rockwell
Courtney	Kerr	Roe, N. Y.
Cravens	Kilburn	Rogers, N. Y.
Crawford	Kilday	Rooney
Cunningham	Kinzer	Russell
Curley	Klein	Ryter
Daughton, Va.	Landis	Shafer
Davis	Lane	Sharp
Dawson	Latham	Sheridan
Delaney, James J.	Lewis	Short
Delaney, John J.	Lud'ow	Slaughter
Dirksen	Lynch	Smith, Maine
Dolliver	McGehee	Somers, N. Y.
	McGlinchey	Sparkman
		Starkey

MESSAGE FROM THE SENATE

The message also announced that the Senate had passed, with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H. R. 1362. An act to amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code, and for other purposes.

RAILROAD RETIREMENT BILL

Mr. LEA. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H. R. 1362) to amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes, with Senate amendments thereto, disagree to the amendments of the Senate, and ask for a conference.

The SPEAKER. Is there objection to the request of the gentleman from California?

Mr. COLE of Missouri, Mr. HOOK, Mr. WHITE, and Mr. HENDRICKS objected.

RAILROAD RETIREMENT BILL

Mr. CROSSER. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H. R. 1362) to amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

Mr. LEA. Mr. Speaker, I object.

Mr. CROSSER. Mr. Speaker, I move to suspend the rules and concur in the Senate amendments to the bill (H. R. 1362), entitled "An act to amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes."

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 1, strike out all after line 3 over to and including line 12, on page 8.

Strike out lines 13 to 16, inclusive, and insert:

"SEC. 1. Section 1 (c) of the Railroad Retirement Act of 1937, section 1 (e) of the Railroad Unemployment Insurance Act, and section 1532 (d) of the Internal Revenue Code are each amended as follows: After the word 'if' which it first appears therein insert '(1)' and for the phrase."

Page 8, line 22, strike out all after "operations", down to and including "employer," in line 25.

Page 9, line 12, strike out "3" and insert "2."

Page 9, line 16, strike out all after "'paid';" down to and including "period;" in line 18.

Page 11, strike out all after line 9 over to and including line 15, on page 15, and insert:

"'SEC. 3. (a) Section 1500 of the Internal Revenue Code is amended to read as follows:

"'"SEC. 1500. Rate of tax.

"'"In addition to other taxes, there shall be levied, collected, and paid upon the income of every employee a tax equal to the following percentages of so much of the compensation, paid to such employee after December 31, 1946, for services rendered by him after such date, as is not in excess of $300 for any calendar month:

"'"1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 5¾ percent;

"'"2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 6 percent.

"'"3. With respect to compensation paid after December 31, 1951, the rate shall be 6¼ percent."

"'(b) The second sentence of section 1501 (a) of the Internal Revenue Code is amended to read as follows: "If an employee is paid compensation after December 31, 1946, by more than one employer for services rendered during any calendar month after 1946 and the aggregate of such compensation is in excess of $300, the tax to be deducted by each employer other than a subordinate unit of a national railway-labor-organization employer from the compensation paid by him to the employee with respect to such month shall be that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300, each subordinate unit of a national railway-labor-organization employer shall deduct such proportion of any additional tax as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month."

"'(c) Section 1510 of the Internal Revenue Code is amended to read as follows:

"'"SEC. 1510. Rate of tax.

"'"In addition to other taxes, there shall be levied, collected, and paid upon the income of each employee representative a tax equal to the following percentages of so much of the compensation, paid to such employee representative after December 31, 1946, for services rendered by him after such date, as is not in excess of $300 for any calendar month:

"'"1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 11½ per centum;

"'"2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 12 per centum;

"'"3. With respect to compensation paid after December 31, 1951, the rate shall be 12½ per centum."

"'(d) Section 1520 of the Internal Revenue Code is amended to read as follows:

"'"SEC. 1520. Rate of tax.

"'"In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of so much of the compensation, paid by such employer after December 31, 1946, for services rendered to him after December 31, 1936, as is, with respect to any employee for any calendar month, not in excess of $300: *Provided, however*, That if an employee is paid compensation after December 31, 1946, by more than one employer for services rendered during any calendar month after 1936, the tax imposed by this section shall apply to not more than $300 of the aggregate compensation paid to such employee by all such employers after December 31, 1946, for services rendered during such month, and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional tax as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month:

"'"1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 5¾ percent;

"'"2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 6 percent;

"'"3. With respect to compensation paid after December 31, 1951, the rate shall be 6¼ percent."

"'(e) Section 1532 (b) of the Internal Revenue Code is amended to read as follows:

"'"(b) Employee: The term 'employee' means any individual in the service of one or more employers for compensation: *Provided, however*, That the term 'employee' shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if (i) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence will have been established to the satisfaction of the Railroad Retirement Board before July 1947; or (ii) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive; or (iii) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age 65 or until August 1945, or (B) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in clause (ii); or (iv) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within 1 year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within 10 years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights: *Provided*, That an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937, or if during the last pay-roll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such pay-roll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a).

"'"The term 'employee' includes an officer of an employer.

"'"The term 'employee' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple."

"'(f) Section 1532 (e) of the Internal Revenue Code is amended by adding at the end thereof the following new paragraph:

"'"A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, 'for

time lost' the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost."

"'(g) Subchapter B of Chapter 9 of the Internal Revenue Code is amended by adding at the end thereof the following new section:

"'"SEC. 1538. Title of subchapter.

"'"This subchapter may be cited as the 'Railroad Retirement Tax Act.'"'"

Page 15, line 21, strike out "of" and insert "if."

Page 16, line 1, strike out "1946" and insert "1947."

Page 16, line 3, strike out "1945" and insert "1946."

Page 16, line 11, strike out "1944" and insert "1945."

Page 16, line 14, strike out "1944" and insert "1945."

Page 16, line 22, strike out "nine" and insert "ten."

Page 17, line 23, strike out "Section 1 (m) is amended to read as follows:" and insert "A new subsection is added as follows."

Page 17, line 24, strike out "(m)" and insert "(o)."

Page 18, line 21, strike out "(o)" and insert "(p)."

Page 23, line 14, strick out all after "equitable." down to and including "recognized" in line 19, and insert "In computing the monthly compensation, no part of any month's compensation in excess of $300 shall be recognized."

Page 26, line 15, strike out "1946" and insert "1947."

Page 28, line 22, strike out "1946" and insert "1947."

Page 29, line 6, strike out "1946" and insert "1947."

Page 32, line 23, strike out "1946" and insert "1947."

Page 33, line 17, strike out "1946" and insert "1947."

Page 34, line 7, strike out "Social Security Board" and insert "Federal Security Administrator."

Page 34, line 23, strike out "either board" and insert "the Board or the Federal Security Administrator."

Page 35, line 2, strike out "board which" and insert "Board or the Federal Security Administrator, whichever."

Page 35, line 25, strike out "1946" and insert "1947."

Page 38, line 11, strike out "1947" and insert "1948."

Page 39, lines 1 and 2, strike out "multiplied by the number of months he will have been in service as an employee" and insert "for any calendar month in such year."

Page 41, strike out all after line 23 over to and including line 3, on page 42.

Page 45, line 2, strike out all after "compensation" down to and including "employment)" in line 4, and insert "with respect to employment."

Page 51, strike out lines 3 to 23, inclusive, and insert:

"'SEC. 318. (a) Section 8 (a) is amended by changing the word "payable" to "paid" wherever it appears; and by substituting for the portion of the subsection beginning with the words "and each such employer" and continuing to the end of the subsection, the following: "and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the contribution with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services during any calendar month after 1946 bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional contribution as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month."'"

Page 51, after line 2, insert:

"(b) Subsection (h) of section 8 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"'(h) All provisions of law, including penalties, applicable with respect to any tax imposed by section 1800 or 2700 of the Internal Revenue Code, and the provisions of section 3661 of such code, insofar as applicable and not inconsistent with the provisions of this act, shall be applicable with respect to the contributions required by this act: *Provided*, That all authority and functions conferred by or pursuant to such provisions upon any officer or employee of the United States, except the authority to institute and prosecute, and the function of instituting and prosecuting, criminal proceedings, shall, with respect to such contributions, be vested in and exercised by the Board or such officers and employees of the Board as it may designate therefor.'"

Page 57, line 7, strike out "1946" and insert "1947."

Page 57, line 10, strike out "1946" and insert "1947."

Page 57, line 11, strike out "1946" and insert "1947."

Page 57, line 15, strike out "sections" and insert "section 306 shall become effective on July 1, 1946, and sections."

Page 57, line 16, strike out "306."

Page 57, line 16, strike out "1946" and insert "1947."

Page —, after line —, insert the following:

"The amendments to section 1532 of the Internal Revenue Code made by sections 1, and 3 (e) and (f) shall be effective only with respect to services rendered after December 31, 1946. The amendments made by section 4 (a), (b), (c), and (d) shall take effect January 1, 1947. Sections 1500, 1510, and 1520 of the Internal Revenue Code as in effect on December 31, 1946, shall remain in full force and effect on and after January 1, 1947, with respect to any remuneration which constitutes compensation under the law as in effect on December 31, 1946, to which such sections as amended by this act are not applicable.'"

Page 57, lines 18 and 19, strike out "July 1, 1945," and insert "on the date of enactment of this act."

Page 57, line 20, strike out "1946" and insert "1947."

Page 58, line 11, strike out "1946" and insert "1947."

Page 58, line 19, strike out "1946" and insert "1947."

Page 58, line 20, strike out "1947" and insert "1948."

Page 59, line 2, strike out "1946" and insert "1947."

Page 59, line 4, strike out "1946" and insert "1947."

Page 59, line 20, strike out "1946" and insert "1947."

Page 60, line 15, strike out "1945" and insert "1946."

Page 60, line 15, strike out "1946" and insert "1947."

Page 60, strike out lines 18 to 20, inclusive. clusive.

The SPEAKER. The gentleman from Ohio moves to suspend the rules and agree to the Senate amendments to the bill H. R. 1362.

Is a second demanded?

Mr. LEA. Mr. Speaker, I demand a second.

Mr. CROSSER. Mr. Speaker, I ask unanimous consent that a second be considered as ordered.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

There was no objection.

CALL OF THE HOUSE

Mr. BUCK. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. The Chair will count. [After counting.] Two hundred and three Members are present; not a quorum.

Mr. McCORMACK. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 246]

Adams	Domengeaux	McKenzie
Allen, La.	Earthman	McMillan, S. C.
Almond	Eaton	Mahon
Anderson, Calif.	Ellsworth	Maloney
Andrews, N. Y.	Elsaesser	Mankin
Bailey	Elston	Mansfield, Mont.
Baldwin, Md.	Engel, Mich.	
Baldwin, N. Y.	Fellows	Mansfield, Tex.
Barrett, Pa.	Fogarty	Marcantonio
Barry	Folger	Mason
Bates, Ky.	Fuller	May
Bates, Mass.	Gallagher	Merrow
Beall	Gary	Miller, Calif.
Beckworth	Gathings	Morgan
Bender	Gifford	Murray, Tenn.
Bennet, N. Y.	Gillespie	Norton
Blackney	Gossett	O'Konski
Bland	Granahan	O'Neal
Boren	Grant, Ind.	O'Toole
Boykin	Green	Outland
Bradley, Mich.	Gwinn, N. Y.	Pace
Bradley, Pa.	Hall, Edwin Arthur	Patman
Brooks	Halleck	Patrick
Brumbaugh	Hare	Patterson
Bryson	Harness, Ind.	Peterson, Ga.
Buckley	Hart	Pfeifer
Buffett	Hartley	Philbin
Bunker	Hébert	Ploeser
Butler	Heffernan	Powell
Cannon, Fla.	Hess	Priest
Carlson	Hill	Quinn, N. Y.
Case, N. J.	Hoffman, Pa.	Rabin
Case, S. Dak.	Holifield	Randolph
Celler	Izac	Rayfiel
Clark	Jennings	Reece, Tenn.
Clements	Johnson, Calif.	Rees, Kans.
Clippinger	Johnson, Okla.	Rich
Cochran	Johnson, Tex.	Richards
Coffee	Judd	Rivers
Cole, Kans.	Kean	Robertson, Va.
Cole, N. Y.	Keefe	Robinson, Utah
Combs	Kefauver	Robsion, Ky.
Cooper	Keogh	Rockwell
Courtney	Kerr	Roe, N. Y.
Cravens	Kilburn	Rogers, N. Y.
Crawford	Kilday	Rooney
Cunningham	Kinzer	Russell
Curley	Klein	Ryter
Daughton, Va.	Landis	Shafer
Davis	Lane	Sharp
Dawson	Latham	Sheridan
Delaney, James J.	Lewis	Short
Delaney, John J.	Lud'ow	Slaughter
Dirksen	Lynch	Smith, Maine
Dolliver	McGehee	Somers, N. Y.
	McGlinchey	Sparkman
		Starkey

Stewart	Torrens	West
Sundstrom	Towe	Wickersham
Tarver	Traynor	Wilson
Taylor	Vinson	Winter
Thomas, N. J.	Wasielewski	Wolfenden, Pa.
Thomas, Tex.	Weaver	Wood
Tolan	Welch	

The SPEAKER. On this roll call 243 Members have answered to their names, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

RAILROAD RETIREMENT ACT

The SPEAKER. The gentleman from Ohio [Mr. CROSSER] is recognized for 20 minutes and the gentleman from California [Mr. LEA] will be recognized for 20 minutes.

Mr. CROSSER. Mr. Speaker, let me explain the amendments that were adopted by the Senate. Of course, I would rather not have the amendments, but I am very glad to accept them. The first amendment simply strikes out all of section 1 of the bill and restores the coverage, so-called, under the present law. There would be no change in the coverage under the present law. The second amendment provides for the collection of taxes or assessments, whichever you want to call them, by the Treasury Department, as heretofore, instead of by the Retirement Board. I think there is a saving to be made by having the Retirement Board do it, but it does not make very much difference to us who collects the taxes, so far as that goes, so I do not object. Another change made by the second amendment continues the present limitation of $300 for each month considered separately.

We had provided in the bill, and I think it was a just provision, that in calculating the maximum amount of salary in any month upon which benefits could be based under the retirement law the whole amount earned in a calendar year should be divided by the number of months in which the person may have worked, and the average, not in excess of $300, should be his monthly compensation. Those are substantially the only changes made by the Senate in the bill. I do not think it will serve any good purpose to discuss further the Senate amendments. There is absolutely no justification for sending the bill to conference. The Senate amendments, in substance, were offered in the House during the consideration of the bill before it went to the Senate by the Member who has just moved to send the bill to conference. I did not favor them, but the opposition urged them as an improvement of the bill. The bill, except as to the amendments just explained, could not, under the rules, be changed in conference. Since as already explained the amendments were offered and advocated by the opposition when the bill was considered in the House originally, there is really nothing in controversy which should be submitted to a conference. I hope, therefore, the motion to concur will be carried by an overwhelming vote.

Mr. Speaker, I reserve the balance of my time.

Mr. LEA. Mr. Speaker, I yield 5 minutes to the gentleman from New Jersey [Mr. WOLVERTON].

Mr. WOLVERTON of New Jersey. Mr. Speaker, I rise in opposition to the motion which has been made by the gentleman from Ohio [Mr. CROSSER]. I think this legislation is probably one of the most complex and technical that we, the Committee on Interstate and Foreign Commerce, have ever been called upon to consider. When the bill was brought to the House, it was brought in under conditions that I am fearful did not give the opportunity for an explanation of the issues involved which the importance of the subject was entitled to have. As a result of the confusion or misunderstanding in the House, at the time the committee amendments were voted upon, the bill was passed in such condition that the imperfections were so apparent that even the proponents of the amendments acknowledged it. Because of the action taken by the House with reference to amendments offered by proponents of the amendments and the manner in which they were voted upon, the bill went out of the House carrying dates that everyone knew could not remain in the bill and still be constitutional. But so anxious were some to pass some kind of a bill that it did not seem to make any difference in that respect, with the result that we had a hodge-podge, so far as legislative drafting is concerned, that has never been equalled in my experience in this House.

Those remarks I have just made are not referring to the questions that relate to the rights of employees. There could be an honest difference of opinion with respect to that, but I am now speaking of the ineffective method that was adopted to give to employees improved benefits.

The other body of Congress acted upon the bill, after the committee of that body reported the bill to the Senate in the same form in which it was passed by the House, without correcting the dates or those important matters in the bill that would have to do with its constitutionality. It came before the Senate without any correction of that kind. An effort was made to pass it through that body without making those amendments, relying upon a concurrent resolution to be adopted after the bill had been passed, to correct the imperfections. But the Members of the other body took the position, from the debate as it appears in the CONGRESSIONAL RECORD, that they were unwilling to let that kind of legislation go out of that body under any such conditions, and accordingly made amendments that do correct those features to which I have referred.

As one who is interested in good legislation from the standpoint of good drafting as well as the contents of the legislation, I am proud of the fact that the other body did rise to the occasion at least in that particular.

The important part of this legislation is first to make certain and sure that the retirement features of the law, which is now in existence, will give, at the time the individual employee needs it, that which it was intended he should have. I had a part in the passage of that original legislation. I have had a part in the passage of every piece of legislation that has been passed in this House in favor of the employees of the railroads. While some may have been advertised more than I have, there is no one who has fought harder in their behalf than I have.

The SPEAKER. The time of the gentleman from New Jersey has expired.

Mr. LEA. Mr. Speaker, I yield the gentleman three additional minutes.

Mr. WOLVERTON of New Jersey. So, when I speak today, I am not speaking as one who is opposed to giving additional benefits to our railroad employees. I voted for all the additional benefits provided for in the pending bill. But when we give them those benefits we ought to make sure that they are going to get them. The retirement fund at the present time is not actuarily sound. No one will deny that fact. So that the first thing—and, of primary importance—is to make certain that the fund is sound. That is what we sought to do in the legislation offered by the majority of the Committee on Interstate and Foreign Commerce when this bill was originally reported to the House.

Now, the pending bill comes before us. If you will look at page 10162 of this CONGRESSIONAL RECORD, which contains Senator GEORGE's amendment to tax features of the bill you will see how technical this question of rates really is. There is no one can look at that amendment and determine by a reading of it whether the rates that have been provided under that Senate amendment will give protection to the men which they are entitled to have. I am therefore, as a friend of the employees, insisting that if you want to do real service to them, then this bill should go to a conference committee where this matter can be considered and an examination made as to whether the rates provided in the bill will provide the benefits to the employees it is intended they should have. It is only that we may have careful legislation on this important subject that I am opposing this method of dealing with this important matter, that involves the welfare of so many thousands of employees who are depending upon us to protect their interests.

I voted for the bill that would increase the benefits for railroad employees, when the bill was before this House, so it cannot be charged that I am an opponent of increased benefits for these workers; but I do want to make sure that what we do is well done so that we will not be faced with a situation hereafter in which individuals will not get that which we intended they should get or which they expected to get.

The SPEAKER. The time of the gentleman from New Jersey has again expired.

Mr. McDONOUGH. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. McDONOUGH. In the event this motion should not receive the required two-thirds vote, does the bill then automatically go to conference?

The SPEAKER. No; that could be objected to, as it was a while ago. There are other avenues by which it could be

acted on later; but the answer to the gentleman's inquiry is "No."

Mr. CROSSER. Mr. Speaker, I yield 5 minutes to the gentleman from Massachusetts [Mr. McCORMACK].

Mr. McCORMACK. Mr. Speaker, in answer to the inquiry of the gentleman from California [Mr. McDONOUGH] if this motion does not receive a two-thirds vote, then the only way the bill could go to conference would be by unanimous consent or by a rule from the Rules Committee taking the bill from the Speaker's desk and sending it to conference, or by a motion to suspend the rules which would have to receive a two-thirds vote. That is my understanding of the parliamentary situation regarding the methods that could be employed to send the bill to conference.

So we know that for all practical purposes if the pending motion is not adopted, this bill, so far as this conference is concerned, is dead, in all probability.

This bill has received severe opposition. It is rather difficult for me to understand in my own mind all of this effort to try and prevent its passage. There is no question but what the only chance this bill has to get through this session is to have the motion of the gentleman from Ohio [Mr. CROSSER] adopted. The amendments of the Senate were offered by the chairman of the committee when the bill was being considered in the House in the Committee of the Whole. The thing that happened there was that they overloaded the bill with a lot of amendments and under the guise of putting through a good bill they tried to kill it, or it would result in a bill with practically no benefits.

If this bill were to go to conference the chances are that the bill would be dead anyway; and if the conference report came back we would have to vote it up or down, and the chances are there would be a dead or ineffective bill come back. If it was not dead in conference it would be a dead bill that was reported back by the conference.

There are 1,500,000 employees of the railroads who are interested in the provisions of this bill if it becomes law. They are looking toward the Congress with anxious eyes. They have friends on both sides of the aisle, Democrats and Republicans. This fight has been waged under the courageous leadership of the gentleman from Ohio [Mr. CROSSER] and he has been backed by Members of the House on both sides of the aisle, Democrats and Republicans.

In the closing days of the session this is probably the one day that we will have a quorum. I am not saying there will not be a quorum next week but we have a quorum here now, and if we are going to accomplish anything this session in connection with legislation of this kind, in connection with this bill, we have got to do it today, in my opinion, or it will not be done at all.

This is a fair bill as we look at its overall provisions. If there is anything to be corrected we can correct it later. Certainly these men who are benefited know what is beneficial to them. For 10 years I sat on the Ways and Means Committee, and in fact I handled the tax provisions of the first railroad retirement bill that became a law. The gentleman from Ohio remembers that well. He put through the legislative provisions. Then the tax provisions came from the Ways and Means Committee and I had the honor to handle it for the railroad men, the various brotherhoods. My experience of 10 years on the Ways and Means Committee with the brotherhoods appearing before the committee was to produce in my mind a deep respect for those men who represented the different brotherhoods. They are men who know their case, they came before the committee and presented their case honorably and in a fair manner. They made a most profound impression upon me. I consider their representatives to be honorable and trustworthy, men who present their evidence soundly and ably and they think their case out well before they appear before any legislative committee.

They are satisfied with this bill. They know if they do not get this bill through now the chances are there will be no bill this session. We have gone up the hill. Let us not go down the hill again.

The SPEAKER. The time of the gentleman from Massachusetts has expired.

Mr. CROSSER. Mr. Speaker, I yield the gentleman three additional minutes.

Mr. McCORMACK. Mr. Speaker, let us vote for the motion offered by the gentleman from Ohio [Mr. CROSSER] which means that having gone up the hill we keep on going up and we will send this bill on to passage and to victory.

I respect the views of my friend from New Jersey. The gentleman is honest in his views. But this bill is one that has been considered by both branches. It is in the best shape it can get in this session. As we look at the bill in all its aspects, it is entirely beneficial to the men who are the employees of the railroads, it is fair and just legislation. The bill having passed the House by a vote of 235 to 49, I hope that the Members of the House today on this motion to suspend the rules will vote to suspend the rules by well over the required two-thirds majority, and send the bill to final passage.

Mr. LEA. Mr. Speaker, I yield myself 7 minutes.

Mr. Speaker, I remind the House that in the first instance I requested this bill be sent to conference. Objection was made.

Now we have the motion before us which would bar any further effort to improve the bill and accept the Senate amendments without any other change. Those amendments are in part of those offered by me when the matter was before the House but are entirely inadequate to meet the needs of this legislation.

Mr. Speaker, the bill should be sent to conference. Some place along the line it should have been considered by the Congress and every opportunity to improve it by amendment should have been used. That should have been done not for the sake of the Congress but for the sake of the country.

Speaking candidly, as I see it, to pass this legislation as it stands would be highly discreditable to the Congress of the United States. I want to take just a little time to review this matter, to give something of the perspective of this bill. Let us take a glancing look at what it is and what it means.

This is a 60-page bill, virtually written by a special group, and in its own interest. I cast no reflection on the members of that group. You cannot blame that group for getting away with it if they can. The blame, if any, falls on the Congress of the United States for approving such an unwholesome piece of legislation, so exaggerated in its terms, so out of proportion in our social-security program, and so burdensome to the transportation agencies of the country. When we place unnecessary burdens on our transportation agencies we place those burdens on those who use them, on the consumers, on the shippers, on the traffic of the United States.

As I stated, this bill contains 60 pages. It involves a very complex problem, that of social security.

It involves a problem comparable to that to which the Ways and Means Committee devoted a year without bringing here anything except a small segment of the problem—60 pages, written virtually by the beneficiaries of the legislation. It came to the House and as it finally left the House, not an "i" was dotted or a "t" crossed. We swallowed it, hide, tail, feathers, and all.

This legislation, as near as can be ascertained, with the burdens of the present law, places upon the carriers of the United States, the railroads principally, a total burden that will run to over $700,000,000 a year That is a charge against the people of the country. It is a charge against their freight bills. It becomes a charge to justify higher freight rates.

This bill has some features that I do not think this Congress can afford to approve. We cannot afford to forget that we have a great social-security problem to meet in this country. My judgment is that as a matter of doing justice to many not now in that program, if we are going to have equality of treatment, we must materially extend our social-security program in the next few years. Our Government is sponsoring three systems: One for Government employees, one for railway employees and one for employees generally. So when we are legislating here, more important than the mere millions that may be involved in this bill, is the precedent that we will establish for our social security system. For instance, here we propose to raise unemployment insurance from $20 to $25 a week. That does not sound very big, but what is going to be the rule for the employers of 55,000,000 people in the United States generally?

Can we vote for this special class a maximum of $25 a week when we voted only $20 for the soldiers and when under our great social-security plan the States usually allow much less? Shall we set this group up to stand forever ahead of all other groups, or will it inevitably follow that we will be called upon to give to all of the groups in the country what we give to this group? We cannot afford to require the employers of the country to pay too high a percentage of this labor cost for productive employment for nonproductive idleness.

If we go too far in placing upon productive industry the burden of carrying nonproductive inactivities, we may make it impossible to maintain our system of free enterprise.

When this bill comes to full operation it will place a burden of about 18 percent on the pay rolls of our public-service carriers. At the same time, Congress, by its own legislation, is imposing on the rest of the employers of the country a trivial amount by comparison. Does that seem either sensible or just?

I ask you to face the question candidly. What is going to be the situation when we place on industry generally in this country a burden on its pay rolls of 18 percent for nonproductive purposes? Are we willing to go home and candidly tell our people that we have voted a precedent for such a program for them?

Another provision changes the period of compensation for unemployment from 20 to 26 weeks. Already in some instances the compensation for an employee for unemployment may be greater than for his total period of employment. We have an illustration of what we are getting into in the constantly increasing demands. In the first place, the Unemployment Act provided for a coverage of 80 days' unemployment. In a very few years it was raised to 100 days, and now it is proposed to jump to 130 days. I have in my office now petitions recently received from rail workers who ask increased benefits for unemployment which would require a tax of their pay rolls of over 30 percent. These petitions are signed by thousands. When will the country have a Congress that will draw the line for the protection of the unrepresented public interest? This bill places under the head of unemployment people who are sick, and for that reason are unemployed. The benefits are to be paid solely by the employer.

The SPEAKER. The time of the gentleman from California has expired.

Mr. LEA. Mr. Speaker, I yield myself five additional minutes.

We add to this fund a liability for sickness of the same length and at the same cost as for unemployment. The result is that it is possible that one man may draw unemployment insurance for 51 out of the 52 weeks of the year. Under the railroad system, which is more liberal in that respect than other systems of unemployment, a man can work 2 days of the week without having that charged against his employment. So he might gain $20 a week for 2 days' employment and $25 a week for unemployment insurance.

Then we have the matter of maternity benefits; maternity benefits for 16 weeks for a woman who may not have been in the employ of the railroad at any time during pregnancy or at the time maternity occurs. She is to receive compensation at rates that exceed that paid for unemployment insurance. Is that a just charge against employers?

We must distinguish, too, between the cases where we are conferring benefits because they are needed and where they are furnished regardless of need. Unemployment is paid regardless of the financial condition of the employee. The employee may be in a better financial condition than his employer, but nevertheless the employer has to pay the bill for sickness regardless of the fact that the illness is in no way due to his employment.

Then this bill adds increased liabilities for disabilities.

There is an appealing natural satisfaction in paying a benefit to an employee who incurs a disability due to his occupation.

But under this bill, extended disability payments are required for disabilities in no way connected with the employment of the employer.

As compared with the extreme provisions of this bill our committee substitute was a modest one, but we proposed increased benefits that would aggregate over $65,000,000 a year to the employees and their beneficiaries in excess of what they secure at the present time. A jump of $65,000,000 a year is not a small thing when added to benefits already allowable.

I feel that this bill should have gone to conference. It left here without our dotting an "i" or crossing a "t." It went to another body, and when it got there what was the magnificent argument presented against any amendment offered to improve this bill? Time after time it was in substance repeated, "If any kind of an amendment is made to this bill, no difference how simple it may be or how important it may be, it means the bill is dead." So with that club they went after the votes over there. Is that any way to treat the serious problems of this Government? This legislation is not placed on a sound financial basis. This legislation was contemplated on the basis that the beneficiaries would contribute on a level payment basis. Our actuary tells us, and I think with pretty reliable ability, that this bill as it stands would incur a deficit of about $100,000,000 a year. It is not on a self-supporting basis. Under the law as it stands, that means a charge of that amount against the Treasury of the United States.

In my judgment this motion should be defeated, and the bill sent to conference.

The SPEAKER. The question is, Will the House suspend the rules and concur in the Senate amendments?

The question was taken; and on a division (demanded by Mr. LEA) there were—ayes 126, noes 60.

Mr. LEA. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 190, nays 64, not voting 176, as follows:

[Roll No. 247]

YEAS—190

Abernethy	Barrett, Wyo.	Brehm
Andresen, August H.	Bell	Brown, Ga.
Andrews, Ala.	Bennett, Mo.	Buchanan
Angell	Biemiller	Byrne, N. Y.
Arnold	Bloom	Byrnes, Wis.
Auchincloss	Bolton	Camp
	Bonner	Campbell
Canfield	Healy	Outland
Cannon, Mo.	Hedrick	Pace
Carnahan	Hendricks	Patman
Chelf	Henry	Peterson, Fla.
Chenoweth	Heselton	Pickett
Chiperfield	Hobbs	Pittenger
Clason	Hoch	Poage
Cole, Mo.	Hoeven	Pratt
Colmer	Holmes, Wash.	Price, Fla.
Cooley	Hook	Price, Ill.
Corbett	Horan	Rabaut
Cox	Huber	Rains
Crosser	Hull	Ramey
D'Alesandro	Jackson	Reed, Ill.
De Lacy	Jarman	Resa
D'Ewart	Jenkins	Richards
Dingell	Jensen	Riley
Dirksen	Johnson, Ind.	Rizley
Doughton, N. C.	Johnson, Okla.	Robertson, N. Dak.
Douglas, Calif.	Jones	Rogers, Fla.
Douglas, Ill.	Jonkman	Rogers, Mass.
Doyle	Kearney	Rowan
Durham	Kee	Sabath
Dworshak	Kelley, Pa.	Sadowski
Eberharter	Kelly, Ill.	Sasscer
Ellis	King	Savage
Engle, Calif.	Kirwan	Schwabe, Mo.
Fallon	Kopplemann	Shafer
Feighan	LaFollette	Sheppard
Fenton	LeFevre	Sikes
Fernandez	Lemke	Simpson, Ill.
Fisher	Lesinski	Smith, Maine
Flannagan	Lewis	Spence
Flood	Link	Starkey
Folger	Luce	Stefan
Forand	Lyle	Stevenson
Fulton	McCormack	Stigler
Gardner	McCowen	Sullivan
Gavin	McDonough	Talbot
Gearhart	McMillen, Ill.	Talle
Geelan	Madden	Thom
Gerlach	Manasco	Thomas, Tex.
Gibson	Michener	Thomason
Gillie	Miller, Nebr.	Tibbott
Gordon	Mills	Trimble
Gore	Monroney	Voorhis, Calif.
Gorski	Morrison	Vursell
Graham	Mundt	Walter
Granger	Murdock	Weichel
Grant, Ala.	Murray, Tenn.	White
Griffiths	Murray, Wis.	Whitten
Hagen	Neely	Winstead
Hand	Norblad	Wolcott
Harless, Ariz.	Norrell	Woodhouse
Harris	O'Brien, Ill.	Worley
Havenner	O'Brien, Mich.	Zimmerman
Hays	O'Neal	

NAYS—64

Allen, Ill.	Gregory	O'Hara
Andersen, H. Carl	Gross	Phillips
Arends	Gwynne, Iowa.	Rankin
Bishop	Hall, Leonard W.	Reed, N. Y.
Brown, Ohio	Hancock	Rodgers, Pa.
Buck	Harness, Ind.	Roe, Md.
Bulwinkle	Hinshaw	Schwabe, Okla.
Chapman	Hoffman, Mich.	Scrivner
Church	Holmes, Mass.	Simpson, Pa.
Clevenger	Hope	Smith, Ohio
Cunningham	Howell	Smith, Va.
Curtis	Johnson, Ill.	Smith, Wis.
Dondero	Knutson	Springer
Drewry	Lanham	Stockman
Elliott	Lea	Sumner, Ill.
Ellsworth	LeCompte	Taber
Ervin	McConnell	Vorys, Ohio
Gamble	McGregor	Wadsworth
Gillette	Martin, Iowa	Whittington
Goodwin	Martin, Mass.	Wigglesworth
Grant, Ind.	Mathews	Wolverton, N. J.
		Woodruff

NOT VOTING—176

Adams	Bradley, Pa.	Courtney
Allen, La.	Brooks	Cravens
Almond	Brumbaugh	Crawford
Anderson, Calif.	Bryson	Curley
Andrews, N. Y.	Buckley	Daughton, Va.
Bailey	Buffett	Davis
Baldwin, Md.	Bunker	Dawson
Baldwin, N. Y.	Butler	Delaney, James J.
Barden	Cannon, Fla.	Delaney, John J.
Barrett, Pa.	Carlson	Dolliver
Barry	Case, N. J.	Domengeaux
Bates, Ky.	Case, S. Dak.	Earthman
Bates, Mass.	Celler	Eaton
Beall	Clark	Elsaesser
Beckworth	Clements	Elston
Bender	Clippinger	Engel, Mich.
Bennet, N. Y.	Cochran	Fellows
Blackney	Coffee	Fogarty
Bland	Cole, Kans.	Fuller
Boren	Cole, N. Y.	Gallagher
Boykin	Combs	
Bradley, Mich.	Cooper	

Gary	Lane	Rees, Kans.
Gathings	Larcade	Rich
Gifford	Latham	Rivers
Gillespie	Ludlow	Robertson, Va.
Gossett	Lynch	Robinson, Utah
Granahan	McGehee	Robsion, Ky.
Green	McGlinchey	Rockwell
Gwinn, N. Y.	McKenzie	Roe, N. Y.
Hale	McMillan, S. C.	Rogers, N. Y.
Hall, Edwin Arthur	Mahon	Rooney
	Maloney	Russell
Halleck	Mankin	Ryter
Hare	Mansfield, Mont.	Sharp
Hart	Mansfield, Tex.	Sheridan
Hartley	Marcantonio	Short
Hébert	Mason	Slaughter
Heffernan	May	Somers, N. Y.
Herter	Merrow	Sparkman
Hess	Miller, Calif.	Stewart
Hill	Morgan	Sumners, Tex.
Hoffman, Pa.	Norton	Sundstrom
Holifield	O'Konski	Tarver
Izac	O'Toole	Taylor
Jennings	Patrick	Thomas, N. J.
Johnson, Calif.	Patterson	Tolan
Johnson, Tex.	Peterson, Ga.	Torrens
Judd	Pfeifer	Towe
Kean	Philbin	Traynor
Keefe	Ploeser	Vinson
Kefauver	Plumley	Wasielewski
Keogh	Powell	Weaver
Kerr	Priest	Welch
Kilburn	Quinn, N. Y.	West
Kilday	Rabin	Wickersham
Kinzer	Randolph	Wilson
Klein	Rayfiel	Winter
Kunkel	Reece, Tenn.	Wolfenden, Pa.
Landis		Wood

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendments were concurred in.

The Clerk announced the following pairs:

Additional general pairs:

Mr. Keogh with Mr. Taylor.
Mr. Sheridan with Mr. Sundstrom.
Mr. Hart with Mr. Winter.
Mr. Bradley of Pennsylvania with Mr. Judd.
Mr. Lynch with Mr. Keefe.
Mr. Almond with Mr. Jennings.
Mr. Pfeifer with Mr. Hess.
Mr. Green with Mr. Gifford.
Mr. McGehee with Mr. Hill.
Mr. John J. Delaney with Mr. Fuller.
Mr. Coffee with Mr. Hale.
Mr. Rooney with Mr. Fellows.
Mr. Holifield with Mr. Elsaesser.
Mr. Vinson with Mr. Elston.
Mr. Heffernan with Mr. Cole of New York.
Mr. Cooper with Mr. Brumbaugh.
Mr. Sparkman with Mr. Cole of Kansas.
Mr. Quinn of New York with Mr. Bradley of Michigan.
Mr. Bailey with Mr. Crawford.
Mr. Domengeaux with Mr. Anderson of California.
Mr. Rayfiel with Mr. Beall.
Mr. Fogarty with Mr. Thomas of New Jersey.
Mr. McGlinchey with Mr. Blackney.
Mr. Rabin with Mr. Wilson.
Mr. Lane with Mr. Mason.
Mr. O'Toole with Mr. Ploeser.
Mr. Hébert with Mr. Rees of Kansas.
Mr. Celler with Mr. Plumley.
Mr. Johnson of Texas with Mr. Rich.
Mr. Izac with Mr. Short.
Mr. McMillan of South Carolina with Mr. Robsion of Kentucky.
Mr. Somers of New York with Mr. Hoffman of Pennsylvania.
Mr. McKenzie with Mr. Eaton.
Mr. James J. Delaney with Mr. Hartley.
Mr. Maloney with Mr. Dolliver.
Mrs. Norton with Mr. Carlson.
Mr. Mahon with Mr. Herter.
Mr. Buckley with Mr. Butler.
Mr. Randolph with Mr. Adams.
Mr. Barry with Mr. Halleck.
Mr. Wood with Mr. Buffett.
Mr. Boykin with Mr. Rockwell.
Mr. Priest with Mr. Bender.
Mr. Rogers of New York with Mr. Merrow.
Mr. Powell with Mr. Latham.
Mr. Marcantonio with Mr. Kunkel.
Mr. Klein with Mr. Landis.
Mr. Mansfield of Montana with Mr. Kilburn.
Mr. Roe of New York with Mr. Gwinn of New York.

Mr. COX, Mr. BONNER, and Mr. JOHNSON of Indiana changed their votes from "nay" to "yea."

The result of the vote was announced as above recorded.

The doors were opened.

A motion to reconsider was laid on the table.

MESSAGE FROM THE HOUSE

The message also announced that the House had agreed to the amendments of the Senate to the bill (H. R. 1362) to amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code, and for other purposes.

[PUBLIC LAW 572—79TH CONGRESS]

[CHAPTER 709—2D SESSION]

[H. R. 1362]

AN ACT

To amend the Railroad Retirement Acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DIVISION I

SECTION 1. Section 1 (c) of the Railroad Retirement Act of 1937, section 1 (e) of the Railroad Unemployment Insurance Act, and section 1532 (d) of the Internal Revenue Code are each amended as follows: After the word "if" where it first appears therein insert "(i)" and for the phrase "which services he renders for compensation" substitute the following: "or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and (ii) he renders such service for compensation", and for the purpose of continuing the amendment of the Railroad Retirement Act of 1937, only, add after the word "compensation" the following: ", or a method of computing the monthly compensation for such service is provided in section 3 (c)". Said subsections are further amended by inserting at the end of the first proviso the following: ", and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation".

SEC. 2. Section 1 (h) of the Railroad Retirement Act of 1937 is amended by substituting for the words "earned by" the words "paid to", and section 1 (i) of the Railroad Unemployment Insurance Act is amended by substituting for the word "payable" the word "paid"; and by inserting at the end of said section 1 (h) of the Railroad Retirement Act of 1937 and at the end of said section 1 (i) of the Railroad Unemployment Insurance Act, the following: "A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, 'for time lost' the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a

less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 8, the period during which such compensation will have been earned."; and in said section 1 (h), immediately after the word "earned" at the end of this insertion, insert the following additional language: "In determining the monthly compensation, the average monthly remuneration, and quarters of coverage of any employee, there shall be attributable as compensation paid to him in each calendar month in which he is in military service creditable under section 4 the amount of $160 in addition to the compensation, if any, paid to him with respect to such month."

SEC. 3. (a) Section 1500 of the Internal Revenue Code is amended to read as follows:

"SEC. 1500. RATE OF TAX.

"In addition to other taxes, there shall be levied, collected, and paid upon the income of every employee a tax equal to the following percentages of so much of the compensation, paid to such employee after December 31, 1946, for services rendered by him after such date, as is not in excess of $300 for any calendar month:

"1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 5¾ per centum;

"2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 6 per centum;

"3. With respect to compensation paid after December 31, 1951, the rate shall be 6¼ per centum."

(b) The second sentence of section 1501 (a) of the Internal Revenue Code is amended to read as follows: "If an employee is paid compensation after December 31, 1946, by more than one employer for services rendered during any calendar month after 1946 and the aggregate of such compensation is in excess of $300, the tax to be deducted by each employer other than a subordinate unit of a national railway-labor-organization employer from the compensation paid by him to the employee with respect to such month shall be that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300, each subordinate unit of a national railway-labor-organization employer shall deduct such pro-

portion of any additional tax as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month."

(c) Section 1510 of the Internal Revenue Code is amended to read as follows:

"SEC. 1510. RATE OF TAX.

"In addition to other taxes, there shall be levied, collected, and paid upon the income of each employee representative a tax equal to the following percentages of so much of the compensation, paid to such employee representative after December 31, 1946, for services rendered by him after such date, as is not in excess of $300 for any calendar month:

"1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 11½ per centum;

"2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 12 per centum;

"3. With respect to compensation paid after December 31, 1951, the rate shall be 12½ per centum."

(d) Section 1520 of the Internal Revenue Code is amended to read as follows:

"SEC. 1520. RATE OF TAX.

"In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of so much of the compensation, paid by such employer after December 31, 1946, for services rendered to him after December 31, 1936, as is, with respect to any employee for any calendar month, not in excess of $300: *Provided, however*, That if an employee is paid compensation after December 31, 1946, by more than one employer for services rendered during any calendar month after 1936, the tax imposed by this section shall apply to not more than $300 of the aggregate compensation paid to such employee by all such employers after December 31, 1946, for services rendered during such month, and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional tax as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month:

"1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 5¾ per centum;

"2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 6 per centum;

"3. With respect to compensation paid after December 31, 1951, the rate shall be 6¼ per centum."

(e) Section 1532 (b) of the Internal Revenue Code is amended to read as follows:

"(b) EMPLOYEE.—The term 'employee' means any individual in the service of one or more employers for compensation: *Provided, however*, That the term 'employee' shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if (i) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence will have been established to the satisfaction of the Railroad Retirement Board before July 1947; or (ii) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive; or (iii) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age sixty-five or until August 1945, or (B) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in clause (ii); or (iv) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within ten years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights: *Provided*, That an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937, or if during the last pay-roll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such pay-roll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a).

"The term 'employee' includes an officer of an employer.

"The term 'employee' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple."

(f) Section 1532 (e) of the Internal Revenue Code is amended by adding at the end thereof the following new paragraph:

"A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, 'for time lost' the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost."

(g) Subchapter B of Chapter 9 of the Internal Revenue Code is amended by adding at the end thereof the following new section:

"SEC. 1538. TITLE OF SUBCHAPTER.

"This subchapter may be cited as the 'Railroad Retirement Tax Act'."

DIVISION II

SEC. 201. Section 1 (d) of the Railroad Retirement Act of 1937 is amended to read as follows:

"(d) An individual shall be deemed to have been in the employment relation to an employer on the enactment date if (i) he was on that date on leave of absence from his employment, expressly granted to him by the employer by whom he was employed, or by a duly authorized representative of such employer, and the grant of such leave of absence will have been established to the satisfaction of the Board before July 1947; or (ii) he was in the service of an employer after the enactment date and before January 1946 in each of six calendar months, whether or not consecutive; or (iii) before the enactment date he did not retire and was not retired or discharged from the service of the last employer by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before the enactment date to be in the service of such employer and thereafter remained continuously disabled until he attained age sixty-five or until August 1945 or (B) solely for such last stated reason an employer by whom he was employed before the enactment date or an employer who is its successor did not on or after the enactment date and before August 1945 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in clause (ii); or (iv) he was on the enactment date absent from the service of an employer by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the employer, as wrongful, and which was followed within ten years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights: *Provided*, That an individual shall not be deemed to have been on the enactment date in the employment relation to an employer if before that date he was granted a pension

or gratuity on the basis of which a pension was awarded to him pursuant to section 6, or if during the last pay-roll period before the enactment date in which he rendered service to an employer he was not in the service of an employer, in accordance with subsection (c), with respect to any service in such pay-roll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after the enactment date in the service of a local lodge or division defined as an employer in section 1 (a).

SEC. 202. Section 1 (f) is amended by changing the period at the end of the proviso to a semicolon and adding "it may also be included as to service rendered to a person not an employer in the performance of operations involving the use of standard railroad equipment if such operations were performed by an employer on the enactment date." Section 1 (f) is further amended by substituting for the word "An" in the next to the last sentence the following: "Ultimate fractions shall be taken at their actual value, except that if the individual will have had not less than fifty-four months of service, an" and by striking out the last sentence.

SEC. 203. A new subsection is added to section 1 as follows:

"(o) An individual shall be deemed to have 'a current connection with the railroad industry' at the time an annuity begins to accrue to him and at death if, in any thirty consecutive calendar months before the month in which an annuity under section 2 begins to accrue to him (or the month in which he dies if that first occurs), he will have been in service as an employee in not less than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he will not have been engaged in any regular employment other than employment for an employer in the period before such month and after the end of such thirty months. For the purposes of section 5 only, an individual shall be deemed also to have a 'current connection with the railroad industry' if he is in all other respects completely insured but would not be fully insured under the Social Security Act; or if he is in all other respects partially insured but would be neither fully nor currently insured under the Social Security Act, or if he has no wage quarters of coverage."

SEC. 204. A new subsection is added to section 1 as follows:

"(p) The terms 'quarter' and 'calendar quarter' shall mean a period of three calendar months ending on March 31, June 30, September 30, or December 31."

SEC. 205. Section 2 (a) is amended by substituting for all that portion of the subsection after the first numbered paragraph the following:

"2. Women who will have attained the age of sixty and will have completed thirty years of service.

"3. Individuals who will have attained the age of sixty and will have completed thirty years of service, but the annuity of such an individual shall be reduced by one one-hundred-and-eightieth for each calendar month that he is under age sixty-five when his annuity begins to accrue.

"4. Individuals having a current connection with the railroad industry, and whose permanent physical or mental condition is such as to be disabling for work in their regular occupation, and who (i) will

have completed twenty years of service or (ii) will have attained the age of sixty. The Board, with the cooperation of employers and employees, shall secure the establishment of standards determining the physical and mental conditions which permanently disqualify employees for work in the several occupations in the railroad industry, and the Board, employers, and employees shall cooperate in the promotion of the greatest practicable degree of uniformity in the standards applied by the several employers. An individual's condition shall be deemed to be disabling for work in his regular occupation if he will have been disqualified by his employer because of disability for service in his regular occupation in accordance with the applicable standards so established; if the employee will not have been so disqualified by his employer, the Board shall determine whether his condition is disabling for work in his regular occupation in accordance with the standards generally established; and, if the employee's regular occupation is not one with respect to which standards will have been established, the standards relating to a reasonably comparable occupation shall be used. If there is no such comparable occupation, the Board shall determine whether the employee's condition is disabling for work in his regular occupation by determining whether under the practices generally prevailing in industries in which such occupation exists such condition is a permanent disqualification for work in such occupation. For the purposes of this section, an employee's 'regular occupation' shall be deemed to be the occupation in which he will have been engaged in more calendar months than the calendar months in which he will have been engaged in any other occupation during the last preceding five calendar years, whether or not consecutive, in each of which years he will have earned wages or salary, except that, if an employee establishes that during the last fifteen consecutive calendar years he will have been engaged in another occupation in one-half or more of all the months in which he will have earned wages or salary, he may claim such other occupation as his regular occupation; or

"5. Individuals whose permanent physical or mental condition is such that they are unable to engage in any regular employment and who (i) have completed ten years of service, or (ii) have attained the age of sixty.

"Such satisfactory proof shall be made from time to time as prescribed by the Board, of the disability provided for in paragraph 4 or 5 and of the continuance of such disability (according to the standards applied in the establishment of such disability) until the employee attains the age of sixty-five. If the individual fails to comply with the requirements prescribed by the Board as to proof of the continuance of the disability until he attains the age of sixty-five years, his right to an annuity by reason of such disability shall, except for good cause shown to the Board, cease, but without prejudice to his rights to any subsequent annuity to which he may be entitled. If before attaining the age of sixty-five an employee in receipt of an annuity under paragraph 4 or 5 is found by the Board to be no longer disabled as provided in said paragraphs his annuity shall cease upon the last day of the month in which he ceases to be so disabled. An employee, in receipt of such annuity, who earns more than $75 in service for hire, or in self-employment, in each of any six consecutive

calendar months, shall be deemed to cease to be so disabled in the last of such six months; and such employee shall report to the Board immediately all such service for hire, or such self-employment. If after cessation of his disability annuity the employee will have acquired additional years of service, such additional years of service may be credited to him with the same effect as if no annuity had previously been awarded to him."

SEC. 206. Section 2 (b) is amended by substituting for "2 (b)" and "3" the numbers "4" and "5", respectively.

SEC. 207. Section 3 (b) (4) is amended by substituting for the portion of the sentence following "June 30, 1937" the following: "and after the end of the calendar year in which the individual attains the age of sixty-five".

SEC. 208. Section 3 (c) is amended by substituting the phrase "paid to an employee with respect to" for the phrase "earned by an employee in".

SEC. 209. Section 3 (c) is further amended by substituting for that portion of the subsection following the phrase "and (2)" the following: "the amount of compensation paid or attributable as paid to him with respect to each month of service before September 1941 as a station employee whose duties consisted of or included the carrying of passengers' hand baggage and otherwise assisting passengers at passenger stations and whose remuneration for service to the employer was, in whole or in substantial part, in the forms of tips, shall be the monthly average of the compensation paid to him as a station employee in his months of service in the period September 1940–August 1941: *Provided, however*, That where service in the period 1924–1931 in the one case, or in the period September 1940–August 1941 in the other case, is, in the judgment of the Board, insufficient to constitute a fair and equitable basis for determining the amount of compensation paid or attributable as paid to him in each month of service before 1937, or September 1941, respectively, the Board shall determine the amount of such compensation for each such month in such manner as in its judgment shall be fair and equitable. In computing the monthly compensation, no part of any month's compensation in excess of $300 shall be recognized."

SEC. 210. Section 3 (e) is amended to read as follows:

"(e) In the case of an individual having a current connection with the railroad industry and not less than five years of service, the minimum annuity payable shall, before any reduction pursuant to subsection 2 (a) (3), be whichever of the following is the least: (1) $3 multiplied by the number of his years of service; or (2) $50; or (3) his monthly compensation."

SEC. 211. Section 3 (f) is amended to read as follows:

"Annuity payments which will have become due an individual but will not yet have been paid at death shall be paid to the same individual or individuals who, in the event that a lump sum will have become payable pursuant to section 5 hereof upon such death, would be entitled to receive such lump sum, in the same manner as, and subject to the same limitations under which, such lump sum would be paid, except that, as determined by the Board, first, brothers and sisters of the deceased, and if there are none such, then grandchildren of the deceased, if living on the date of the determination, shall be

entitled to receive payment prior to any payment being made for reimbursement of burial expenses. If there be no individual to whom payment can thus be made, such annuity payments shall escheat to the credit of the Railroad Retirement Account."

SEC. 212. Section 4 is repealed, section 3A is renumbered as section 4, subsections (h) and (m) of said section are repealed, and all references to section "3A" are changed to "4".

SEC. 213. The heading preceding section 5, and section 5 are amended to read as follows:

"ANNUITIES AND LUMP SUMS FOR SURVIVORS

"SEC. 5. (a) WIDOW'S INSURANCE ANNUITY.—A widow of a completely insured employee, who will have attained the age of sixty-five, shall be entitled during the remainder of her life or, if she remarries, then until remarriage to an annuity for each month equal to three-fourths of such employee's basic amount.

"(b) WIDOW'S CURRENT INSURANCE ANNUITY.—A widow of a completely or partially insured employee, who is not entitled to an annuity under subsection (a) and who at the time of filing an application for an annuity under this subsection will have in her care a child of such employee entitled to receive an annuity under subsection (c) shall be entitled to an annuity for each month equal to three-fourths of the employee's basic amount. Such annuity shall cease upon her death, upon her remarriage, when she becomes entitled to an annuity under subsection (a), or when no child of the deceased employee is entitled to receive an annuity under subsection (c), whichever occurs first.

"(c) CHILD'S INSURANCE ANNUITY.—Every child of an employee who will have died completely or partially insured shall be entitled, for so long as such child lives and meets the qualifications set forth in paragraph (1) of subsection (l), to an annuity for each month equal to one-half of the employee's basic amount.

"(d) PARENT'S INSURANCE ANNUITY.—Each parent, sixty-five years of age or over, of a completely insured employee, who will have died leaving no widow and no child, shall be entitled, for life, or, if such parent remarries after the employee's death, then until such remarriage, to an annuity for each month equal to one-half of the employee's basic amount.

"(e) When there is more than one employee with respect to whose death a parent or child is entitled to an annuity for a month, such annuity shall be one-half of whichever employee's basic amount is greatest.

"(f) LUMP-SUM PAYMENT.—Upon the death, on or after January 1, 1947, of a completely or partially insured employee who will have died leaving no widow, child, or parent who would on proper application therefor be entitled to receive an annuity under this section for the month in which such death occurred, there shall be paid a lump sum of eight times the employee's basic amount to the following person (or if more than one there shall be distributed among them) whose relationship to the deceased employee will have been determined by the Board, and who will have been living on the date of such determination: to the widow or widower of the deceased; **or,** if **no** such widow or widower be then living, to any

child or children of the deceased and to any other person or persons who, under the intestacy law of the State where the deceased will have been domiciled, will have been entitled to share as distributees with such children of the deceased, in such proportions as is provided by such law; or, if no widow or widower and no such child and no such other person be then living, to the parent or parents of the deceased, in equal shares. A person who is entitled to share as distributee with an above-named relative of the deceased shall not be precluded from receiving a payment under this subsection by reason of the fact that no such named relative will have survived the deceased or of the fact that no such named relative of the deceased will have been living on the date of such determination. If none of the persons described in this subsection be living on the date of such determination, such amount shall be paid to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the expenses of burial of the deceased. If a lump sum would be payable to a widow, child, or parent under this subsection except for the fact that a survivor will have been entitled to receive an annuity for the month in which the employee will have died, but within one year after the employee's death there will not have accrued to survivors of the employee, by reason of his death annuities which, after all deductions pursuant to paragraph (1) of subsection (i) will have been made, are equal to such lump sum, a payment to any then surviving widow, children, or parents shall nevertheless be made under this subsection equal to the amount by which such lump sum exceeds such annuities so accrued after such deductions. No payment shall be made to any person under this subsection, unless application therefor shall have been filed, by or on behalf of any such person (whether or not legally competent), prior to the expiration of two years after the date of death of the deceased employee, except that if the deceased employee is a person to whom section 2 of the Act of March 7, 1942 (56 Stat. 143, 144), is applicable such two years shall run from the date on which the deceased employee, pursuant to said Act, is determined to be dead, and for all other purposes of this section such employee, so long as it does not appear that he is in fact alive, shall be deemed to have died on the date determined pursuant to said Act to be the date or presumptive date of death.

"(g) CORRELATION OF PAYMENTS.—(1) An individual, entitled on applying therefor to receive for a month before January 1, 1947, an insurance benefit under the Social Security Act on the basis of an employee's wages, which benefit is greater in amount than would be an annuity for such individual under this section with respect to the death of such employee, shall not be entitled to such annuity. An individual, entitled on applying therefor to any annuity or lump sum under this section with respect to the death of an employee, shall not be entitled to a lump-sum death payment or, for a month beginning on or after January 1, 1947, to any insurance benefits under the Social Security Act on the basis of the wages of the same employee.

"(2) A widow or child, otherwise entitled to an annuity under this section, shall be entitled only to that part of such annuity for

a month which exceeds the total of any retirement annuity, and insurance benefit under the Social Security Act to which such widow or child would be entitled for such month on proper application therefor. A parent, otherwise entitled to an annuity under this section, shall be entitled only to that part of such annuity for a month which exceeds the total of any other annuity under this section, retirement annuity, and insurance benefit under the Social Security Act to which such parent would be entitled for such month on proper application therefor.

"(h) MAXIMUM AND MINIMUM ANNUITY TOTALS.—Whenever according to the provisions of this section as to annuities, payable for a month with respect to the death of an employee, the total of annuities is more than $20 and exceeds either (a) $120, or (b) an amount equal to twice such employee's basic amount, or with respect to employees other than those who will have been completely insured solely by virtue of subsection (l) (7) (iii), such total exceeds (c) an amount equal to 80 per centum of his average monthly remuneration, whichever of such amounts is least, such total of annuities shall, prior to any deductions under subsection (i), be reduced to such least amount or to $20, whichever is greater. Whenever such total of annuities is less than $10, such total shall, prior to any deductions under subsection (i), be increased to $10.

"(i) DEDUCTIONS FROM ANNUITIES.—(1) Deductions shall be made from any payments under this section to which an individual is entitled, until the total of such deductions equals such individual's annuity or annuities under this section for any month in which such individual—

"(i) will have rendered compensated service within or without the United States to an employer;

"(ii) will have rendered service for wages of not less than $25;

"(iii) if a child under eighteen and over sixteen years of age, will have failed to attend school regularly and the Board finds that attendance will have been feasible; or

"(iv) if a widow otherwise entitled to an annuity under subsection (b) will not have had in her care a child of the deceased employee entitled to receive an annuity under subsection (c);

"(2) The total of deductions for all events described in paragraph (1) occurring in the same month shall be limited to the amount of such individual's annuity or annuities for that month. Such individual (or anyone in receipt of an annuity in his behalf) shall report to the Board the occurrence of any event described in paragraph (1).

"(3) Deductions shall also be made from any payments under this section with respect to the death of an employee until such deductions total—

"(i) any death benefit, paid with respect to the death of such employee, under sections 5 of the Retirement Acts (other than a survivor annuity pursuant to an election);

"(ii) any lump sum paid, with respect to the death of such employee, under title II of the Social Security Act, or under section 203 of the Social Security Act in force prior to the date of the Social Security Act Amendments of 1939;

"(iii) any lump sum paid to such employee under section 204 of the Social Security Act in force prior to the date of the enact-

ment of the Social Security Act Amendments of 1939, provided such lump sum will not previously have been deducted from any insurance benefit paid under the Social Security Act; and

"(iv) an amount equal to 1 per centum of any wages paid to such employee for services performed in 1939, and subsequent to his attaining age sixty-five, with respect to which the taxes imposed by section 1400 of the Internal Revenue Code will not have been deducted by his employer from his wages or paid by such employer, provided such amount will not previously have been deducted from any insurance benefit paid under the Social Security Act.

"(4) The deductions provided in this subsection shall be made in such amounts and at such time or times as the Board shall determine. Decreases or increases in the total of annuities payable for a month with respect to the death of an employee shall be equally apportioned among all annuities in such total. An annuity under this section which is not in excess of $5 may, in the discretion of the Board, be paid in a lump sum equal to its commuted value as the Board shall determine.

"(j) WHEN ANNUITIES BEGIN AND END.—No individual shall be entitled to receive an annuity under this section for any month before January 1, 1947. An application for any payment under this section shall be made and filed in such manner and form as the Board prescribes. An annuity under this section for an individual otherwise entitled thereto shall begin with the month in which such individual filed an application for such annuity: *Provided*, That such individual's annuity shall begin with the first month for which he will otherwise have been entitled to receive such annuity if he files such application prior to the end of the third month immediately succeeding such month. No application for an annuity under this section filed prior to three months before the first month for which the applicant becomes otherwise entitled to receive such annuity shall be accepted. No annuity shall be payable for the month in which the recipient thereof ceases to be qualified therefor.

"(k) PROVISIONS FOR CREDITING RAILROAD INDUSTRY SERVICE UNDER THE SOCIAL SECURITY ACT IN CERTAIN CASES.—(1) For the purpose of determining insurance benefits under title II of the Social Security Act which would begin to accrue on or after January 1, 1947, to a widow, parent, or surviving child, and with respect to lump-sum death payments under such title payable in relation to a death occurring on or after such date, section 15 of the Railroad Retirement Act of 1935, section 209 (b) (9) of the Social Security Act, and section 17 of this Act shall not operate to exclude from 'employment', under title II of the Social Security Act, service which would otherwise be included in such 'employment' but for such sections. For such purpose, compensation paid in a calendar year shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in services as an employee.

"(2) Not later than January 1, 1950, the Board and the Federal Security Administrator shall make a special joint report to the President to be submitted to Congress setting forth the experience of the Board in crediting wages toward awards, and the experience of the Social Security Board in crediting compensation toward

awards, and their recommendations for such legislative changes as are deemed advisable for equitable distribution of the financial burden of such awards between the retirement account and the Federal Old Age and Survivors Insurance Trust Fund.

"(3) The Board and the Federal Security Administrator shall, upon request, supply each other with certified reports of records of compensation or wages and periods of service and of other records in their possession or which they may secure, pertinent to the administration of this section or title II of the Social Security Act as affected by paragraph (1). Such certified reports shall be conclusive in adjudication as to the matters covered therein: *Provided*, That if the Board or the Federal Security Administrator receives evidence inconsistent with a certified report and the application involved is still in course of adjudication or otherwise open for such evidence, such recertification of such report shall be made as, in the judgment of the Board or the Federal Security Administrator, whichever made the original certification, the evidence warrants. Such recertification and any subsequent recertification shall be treated in the same manner and be subject to the same conditions as an original certification.

"(l) DEFINITIONS.—For the purposes of this section the term 'employee' includes an individual who will have been an 'employee', and—

"(1) The qualifications for 'widow', 'child', and 'parent' shall be, except for the purposes of subsection (f), those set forth in section 209 (j) and (k), and section 202 (f) (3) of the Social Security Act, respectively; and in addition—

"(i) a 'widow' shall have been living with her husband employee at the time of his death;

"(ii) a 'child' shall have been dependent upon its parent employee at the time of his death; shall not be adopted after such death; shall be unmarried; and less than eighteen years of age; and

"(iii) a 'parent' shall have been wholly dependent upon and supported at the time of his death by the employee to whom the relationship of 'parent' is claimed; and shall have filed proof of such dependency and support within two years after such date of death, or within six months after January 1, 1947.

A 'widow' or a 'child' shall be deemed to have been so living with a husband or so dependent upon a parent if the conditions set forth in section 209 (n) or section 202 (c) (3) or (4) of the Social Security Act, respectively, are fulfilled. In determining whether an applicant is the wife, widow, child, or parent of an employee as claimed, the rules set forth in section 209 (m) of the Social Security Act shall be applied;

"(2) The term 'retirement annuity' shall mean an annuity under section 2 awarded before or after its amendment but not including an annuity to a survivor pursuant to an election of a joint and survivor annuity; and the term 'pension' shall mean a pension under section 6;

"(3) The term 'quarter of coverage' shall mean a compensation quarter of coverage or a wage quarter of coverage, and the term 'quarters of coverage' shall mean compensation quarters of coverage, or wage quarters of coverage, or both: *Provided*, That there shall be

for a single employee no more than four quarters of coverage for a single calendar year;

"(4) The term 'compensation quarter of coverage' shall mean any quarter of coverage computed with respect to compensation paid to an employee after 1936 in accordance with the following table:

Months of service in a calendar year	Total compensation paid in the calendar year				
	Less than $50	$50 but less than $100	$100 but less than $150	$150 but less than $200	$200 or more
1-3	0	1	1	1	1
4-6	0	1	2	2	2
7-9	0	1	2	3	3
10-12	0	1	2	3	4

"(5) The term 'wage quarter of coverage' shall mean any quarter of coverage determined in accordance with the provisions of title II of the Social Security Act;

"(6) The term 'wages' shall mean wages as defined in section 209 (a) of the Social Security Act;

"(7) An employee will have been 'completely insured' if it appears to the satisfaction of the Board that at the time of his death, whether before or after the enactment of this section, he will have had the qualifications set forth in any one of the following paragraphs:

"(i) a current connection with the railroad industry; and a number of quarters of coverage, not less than six, and at least equal to one-half of the number of quarters, elapsing in the period after 1936, or after the quarter in which he will have attained the age of twenty-one, whichever is later, and up to but excluding the quarter in which he will have attained the age of sixty-five years or died, whichever will first have occurred (excluding from the elapsed quarters any quarter during any part of which a retirement annuity will have been payable to him); and if the number of such elapsed quarters is an odd number such number shall be reduced by one; or

"(ii) a current connection with the railroad industry; and forty or more quarters of coverage; or

"(iii) a pension will have been payable to him; or a retirement annuity based on service of not less than ten years (as computed in awarding the annuity) will have begun to accrue to him before 1948;

"(8) An employee will have been 'partially insured' if it appears to the satisfaction of the Board that at the time of his death, whether before or after the enactment of this section, he will have had (i) a current connection with the railroad industry; and (ii) six or more quarters of coverage in the period beginning with the third calendar year next preceding the year in which he will have died and ending with the quarter next preceding the quarter in which he will have died;

"(9) An employee's 'average monthly remuneration' shall mean the quotient obtained by dividing (A) the sum of the compensation

and wages paid to him after 1936 and before the quarter in which he will have died, eliminating for any single calendar year, from compensation, any excess over $300 for any calendar month in such year, and from the sum of wages and compensation any excess over $3,000, by (B) three times the number of quarters elapsing after 1936 and before the quarter in which he will have died: *Provided*, That for the period prior to and including the calendar year in which he will have attained the age of twenty-two there shall be included in the divisor not more than three times the number of quarters of coverage in such period: *Provided further*, That there shall be excluded from the divisor any calendar quarter during any part of which a retirement annuity will have been payable to him.

"With respect to an employee who will have been awarded a retirement annuity, the term 'compensation' shall, for the purposes of this paragraph, mean the compensation on which such annuity will have been based;

"(10) The term 'basic amount' shall mean—

"(i) for an employee who will have been partially insured, or completely insured solely by virtue of paragraph (7) (i) or (7) (ii) or both: the sum of (A) 40 per centum of his average monthly remuneration, up to and including $75; plus (B) 10 per centum of such average monthly remuneration exceeding $75 and up to and including $250, plus (C) 1 per centum of the sum of (A) plus (B) multiplied by the number of years after 1936 in each of which the compensation, wages, or both, paid to him will have been equal to $200 or more; if the basic amount, thus computed, is less than $10 it shall be increased to $10;

"(ii) for an employee who will have been completely insured solely by virtue of paragraph (7) (iii): the sum of 40 per centum of his monthly compensation if an annuity will have been payable to him, or, if a pension will have been payable to him, 40 per centum of the average monthly earnings on which such pension was computed, up to and including $75, plus 10 per centum of such compensation or earnings exceeding $75 and up to and including $250. If the average monthly earnings on which a pension payable to him was computed are not ascertainable from the records in the possession of the Board, the amount computed under this subdivision shall be $33.33, except that if the pension payable to him was less than $25, such amount shall be four-thirds of the amount of the pension or $13.33, whichever is greater. The term 'monthly compensation' shall, for the purposes of this subdivision, mean the monthly compensation used in computing the annuity;

"(iii) for an employee who will have been completely insured under paragraph (7) (iii) and either (7) (i) or (7) (ii): the higher of the two amounts computed in accordance with subdivisions (i) and (ii)."

SEC. 214. Section 8 is amended by striking out the word "monthly" each time it appears; by substituting for the phrase "Any such return" the phrase "The Board's record of the compensation so returned"; by substituting for the phrases "earned by" and "be earned by" the phrases "paid to" and "will have been paid to", respectively; by insert-

ing after the phrase "the fact that" the phrase "the Board's records show that"; and by substituting for the terms "month" and "calendar month" the word "period".

SEC. 215. Section 11 is amended to read as follows:

"Decisions of the Board determining the rights or liabilities of any person under this Act shall be subject to judicial review in the same manner, subject to the same limitations, and all provisions of law shall apply in the same manner as though the decision were a determination of corresponding rights or liabilities under the Railroad Unemployment Insurance Act except that the time within which proceedings for the review of a decision with respect to an annuity, pension, or lump-sum benefit may be commenced shall be one year after the decision will have been entered upon the records of the Board and communicated to the claimant."

DIVISION III

The Railroad Unemployment Insurance Act is amended as follows:

SEC. 301. (a) Subsection 1 (h) is amended by inserting after the phrase "last preceding registration period" the phrase "which began with a day for which he registered at an employment office".

(b) Subsection 1 (h) is further amended by adding the following sentence:

"The term 'registration period' means also, with respect to any employee, the period which begins with the first day with respect to which a statement of sickness is filed in his behalf in accordance with such regulations as the Board may prescribe, or the first such day after the end of a registration period which will have begun with a day with respect to which a statement of sickness was filed in his behalf, and ends with the thirteenth day thereafter."

SEC. 302. Subsection 1 (j) is amended by substituting for the period at the end thereof a comma and adding "maternity insurance, or sickness insurance".

SEC. 303. The first paragraph of subsection 1 (k) is amended by inserting "(1)" after the phrase "section 4 of this Act,", and by substituting for the colon before the phrase "*Provided, however,*" the following: "; and (2) a 'day of sickness', with respect to any employee, means a calendar day on which because of any physical, mental, psychological, or nervous injury, illness, sickness, or disease he is not able to work or which is included in a maternity period, and with respect to which (i) no remuneration is payable or accrues to him, and (ii) in accordance with such regulations as the Board may prescribe, a statement of sickness is filed within such reasonable period, not in excess of ten days, as the Board may prescribe:".

SEC. 304. Subsection 1 (l) is amended by substituting therefor the following:

"(l) The term 'benefits' (except in phrases clearly designating other payments) means the money payments payable to an employee as provided in this Act, with respect to his unemployment or sickness.

"(l) (1) The term 'statement of sickness' means a statement with respect to days of sickness of an employee, and the term 'statement of maternity sickness' means a statement with respect to a maternity period of a female employee, in each case executed in such manner and

form by an individual duly authorized pursuant to section 12 (i) to execute such statements, and filed as the Board may prescribe by regulations.

"(l) (2) The term 'maternity period' means the period beginning fifty-seven days prior to the date stated by the doctor of a female employee to be the expected date of the birth of the employee's child and ending with the one hundred and fifteenth day after it begins or with the thirty-first day after the day of the birth of the child, whichever is later."

SEC. 305 (a) The first sentence of subsection 2 (a) is amended to read as follows: "Benefits shall be payable to any qualified employee (i) for each day of unemployment in excess of seven during the first registration period, within a benefit year, in which he will have had seven or more days of unemployment, and for each day of unemployment in excess of four during any subsequent registration period in the same benefit year, and (ii) for each day of sickness (other than a day of sickness in a maternity period) in excess of seven during the first registration period, within a benefit year, in which he will have had seven or more such days of sickness, and for each such day of sickness in excess of four during any subsequent registration period in the same benefit year, and (iii) for each day of sickness in a maternity period."

(b) Subsection 2 (a) is further amended by inserting after the word "unemployment" in the second sentence the words "or sickness", by changing the phrase "the total amount of compensation payable to him with respect to employment" to "his total compensation with respect to employment", by substituting the following lines for the last line of the table:

"$1,600 to $1,999.99	$4.00
$2,000 to $2,499.99	4.50
$2,500 and over	5.00"

and by adding to the subsection, after the table, the following paragraphs:

"The amount of benefits payable for the first fourteen days in each maternity period, and for the first fourteen days in a maternity period after the birth of the child, shall be one and one-half times the amount otherwise payable under this subsection. Benefits shall not be paid for more than eighty-four days of sickness in a maternity period prior to the birth of the child. Qualification for and rate of benefits for days of sickness in a maternity period shall not be affected by the expiration of the benefit year in which the maternity period will have begun unless in such benefit year the employee will not have been a qualified employee.

"In computing benefits to be paid, days of unemployment shall not be combined with days of sickness in the same registration period."

SEC. 306. Subsection 2 (c) is amended by substituting for "one hundred" at the end thereof the following: "one hundred and thirty, and the maximum number of days of sickness, other than days of sickness in a maternity period, within a benefit year for which benefits may be paid to an employee shall be one hundred and thirty".

SEC. 307. Subsection 2 (f) is amended by inserting after the word "unemployment" each time it appears the words "or sickness".

SEC. 308. Section 3 is amended by changing the phrase "there was payable to him compensation of" to "his compensation will have been".

SEC. 309. (a) Section 4 (a) is amended by redesignating it section 4 (a–1), by including therein only paragraphs (iv) to (vii), inclusive, by redesignating said paragraphs as (i) through (iv), by inserting after the phrase "day of unemployment," in the first clause thereof the phrase "or as a day of sickness,", and by changing the semicolon at the end thereof to a period.

(b) Section 4 (a–1) is further amended by changing paragraph (ii) thereof to read as follows:

"(ii) any day in any period with respect to which the Board finds that he is receiving or will have received annuity payments or pensions under the Railroad Retirement Act of 1935 or the Railroad Retirement Act of 1937, or insurance benefits under title II of the Social Security Act, or unemployment, maternity, or sickness benefits under an unemployment, maternity, or sickness compensation law of any State or of the United States other than this Act, or any other social-insurance payments under a law of any State or of the United States: *Provided*, That if an employee receives or is held entitled to receive any such payments, other than unemployment, maternity, or sickness payments, with respect to any period which include days of unemployment or sickness in a registration period, after benefits under this Act for such registration period will have been paid, the amount by which such benefits under this Act will have been increased by including such days as days of unemployment or as days of sickness shall be recoverable by the Board: *Provided further*, That, if that part of any such payment or payments, other than unemployment, maternity, or sickness payments, which is apportionable to such days of unemployment or days of sickness is less in amount than the benefits under this Act which, but for this paragraph, would be payable and not recoverable with respect to such days of unemployment or days of sickness, the preceding provisions of this paragraph shall not apply but such benefits under this Act for such days of unemployment or days of sickness shall be diminished or recoverable in the amount of such part of such other payment or payments;".

(c) Section 4 is further amended by inserting after subsection (a–1) a subsection to be designated (a–2), in the following language: "There shall not be considered as a day of unemployment, with respect to any employee——", by including in subsection (a–2) paragraphs (i), (ii), (iii), and (viii) of subsection 4 (a) as it existed prior to its amendment by this Act, and by redesignating said paragraph (viii) as paragraph (iv).

SEC. 310. Subsections 4 (b) through 4 (e) are amended by substituting for the references to "4 (a) (i)", "4 (a) (ii)", and "4 (a) (iii)", references to "4 (a–2) (i)", "4 (a–2) (ii)", and "4 (a–2) (iii)", respectively.

SEC. 311. (a) The first paragraph of subsection 5 (c) is amended by striking out the phrase "district board" at the end of the first sentence thereof and substituting "referee or such other reviewing body as the Board may establish or assign thereto", and by striking out the balance thereof.

(b) The third paragraph of subsection 5 (c) is amended by deleting the phrase "does not comply with the provisions of this Act and", and by inserting between the second and third sentences thereof the following:

"The Board may also designate one of its officers or employees to receive evidence and report to the Board whether or not any person or company is entitled to a refund of contributions or should be required to pay contributions under this Act, regardless of whether or not any claims for benefits will have been filed upon the basis of service in the employ of such person or company, and shall follow such procedure if contributions are assessed and payment is refused or payment is made and a refund claimed upon the basis that such person or company is or will not have been liable for such contributions."

Subsection 5 (c) is further amended by adding the following paragraph:

"Any issue determinable pursuant to this subsection and subsection (f) of this section shall not be determined in any manner other than pursuant to this subsection and subsection (f)."

SEC. 312. Subsection 5 (d) is amended by substituting for the phrase "district boards" the words "reviewing bodies", and by striking out the phrase "a district board or of" each time it appears.

SEC. 313. Subsection 5 (e) is amended by deleting the phrases "upon a claim for benefits," and "allowing or denying benefits", and by changing the word "claimant" to "parties".

SEC. 314. The first sentence of subsection 5 (f) is amended to read as follows:

"Any claimant, or any railway labor organization organized in accordance with the provisions of the Railway Labor Act, of which claimant is a member, or any other party aggrieved by a final decision under subsection (c) of this section, may, only after all administrative remedies within the Board will have been availed of and exhausted, obtain a review of any final decision of the Board by filing a petition for review within ninety days after the mailing of notice of such decision to the claimant or other party, or within such further time as the Board may allow, in the United States circuit court of appeals for the circuit in which the claimant or other party resides or will have had his principal place of business or principal executive office, or in the United States Circuit Court of Appeals for the Seventh Circuit or in the Court of Appeals for the District of Columbia."

SEC. 315. Subsection 5 (g) is amended by substituting for the phrase "benefits or refund and" the words "benefits or refund, the determination of any other matter pursuant to subsection (c) of this section, and".

SEC. 316. Subsection 5 (i) is amended by inserting after the word "claimant" each time it appears the words "or other properly interested person", and by inserting after the phrase "counsel or agent" the words "for a claimant".

SEC. 317. Section 6 is amended by substituting for the phrase "earned by", each time it appears, and for the phrase "be earned by", the phrases "paid to" and "have been paid to", respectively.

SEC. 318. (a) Section 8 (a) is amended by changing the word "payable" to "paid" wherever it appears; and by substituting for the

portion of the subsection beginning with the words "and each such employer" and continuing to the end of the subsection, the following: "and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the contribution with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services during any calendar month after 1946 bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional contribution as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month."

(b) Subsection (h) of section 8 of the Railroad Unemployment Insurance Act, as amended, is amended to read as follows:

"(h) All provisions of law, including penalties, applicable with respect to any tax imposed by section 1800 or 2700 of the Internal Revenue Code, and the provisions of section 3661 of such code, insofar as applicable and not inconsistent with the provisions of this Act, shall be applicable with respect to the contributions required by this Act: *Provided*, That all authority and functions conferred by or pursuant to such provisions upon any officer or employee of the United States, except the authority to institute and prosecute, and the function of instituting and prosecuting, criminal proceedings, shall, with respect to such contributions, be vested in and exercised by the Board or such officers and employees of the Board as it may designate therefor."

SEC. 319. Subsection 12 (b) is amended by inserting after the phrase "being carried on in the District of Columbia," the phrase "or the District Court of the United States for the Northern District of Illinois, if the investigation or proceeding is being carried on in the Northern District of Illinois,"; and by inserting before the phrase "in such proceedings may run" the phrase "or of the District Court of the United States for the Northern District of Illinois".

SEC. 320. Subsection 12 (f) is amended by changing the phrases "unemployment-compensation laws", "unemployment benefits", and "unemployment-compensation law" to "unemployment-compensation, sickness, or maternity laws", "unemployment, sickness, or maternity benefits", and "unemployment-compensation, sickness, or maternity law", respectively.

SEC. 321. Subsection 12 (g) is amended by inserting after the word "unemployment", each time it appears, the phrase ", sickness, or maternity", and by striking out the phrase ", with respect to unemployment after June 30, 1939,".

SEC. 322. Subsection 12 (i) is amended by inserting the following paragraph between the second and third paragraphs thereof:

"The Board shall provide a form or forms for statements of sickness and a procedure for the execution and filing thereof. Such forms and procedure shall be designed with a view to having such

statements provide substantial evidence of the days of sickness of the employee and, in the case of maternity sickness, the expected date of birth and the actual date of birth of the child. Such statements may be executed by any doctor (authorized to practice in the State or foreign jurisdiction in which he practices his profession) or any officer or supervisory employee of a hospital, clinic, group health association, or other similar organization, who is qualified under such regulations as the Board may prescribe to execute such statements. The Board shall issue regulations for the qualification of such persons to execute such statements. When so executed by any such person, or, in the discretion of the Board, by others designated by the Board individually or by groups, they may be accepted as initial proof of days of sickness sufficient to certify for payment a claim for benefits."

SEC. 323. Section 12 is further amended by adding thereto the following subsections:

"(n) Any employee claiming, entitled to, or receiving sickness benefits under this Act may be required to take such examination, physical, medical, mental, or otherwise, in such manner and at such times and by such qualified individuals, including medical officers or employees of the United States or a State, as the Board may prescribe. The place or places of examination shall be reasonably convenient for the employee. No sickness or maternity benefits shall be payable under this Act with respect to any period during which the employee unreasonably refuses to take or willfully obstructs an examination as prescribed by the Board.

"Any doctor who renders any attendance, treatment, attention, or care, or performs any examination with respect to a sickness of an employee or as to the expected date of birth of a female employee's child, or the birth of such a child, upon which a claim or right to benefits under this Act is based, shall furnish the Board, in such manner and form and at such times as the Board by regulations may prescribe, information and reports relative thereto and to the condition of the employee. An application for sickness or maternity benefits under this Act shall contain a waiver of any doctor-patient privilege that the employee may have with respect to any sickness or maternity period upon which such application is based: *Provided*, That such information shall not be disclosed by the Board except in a court proceeding relating to any claim for benefits by the employee under this Act.

"The Board may enter into agreements or arrangements with doctors, hospitals, clinics, or other persons for securing the examination, physical, medical, mental, or otherwise, of employees claiming, entitled to, or receiving sickness or maternity benefits under this Act and the performance of services or the use of facilities in connection with the execution of statements of sickness. The Board may compensate any such doctors, hospitals, clinics, or other persons upon such reasonable basis as the Board shall prescribe. Such doctors, hospitals, clinics, or other persons and persons employed by any of them shall not be subject to the Act of Congress approved March 3, 1917 (39 Stat. 1106, ch. 163, sec. 1). In the event that the Board pays for the physical or mental examination of an employee or for the execution of a statement of sickness and such employee's

claim for benefits is based upon such examination or statement, the Board shall deduct from any sickness or maternity benefits payable to the employee pursuant to such claim such amount as, in the judgment of the Board, is a fair and reasonable charge for such examination or execution of such statement.

"(o) Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement.

"(p) The Board may, after hearing, disqualify any person from executing statements of sickness who, the Board finds, (i) will have solicited, or will have employed another to solicit, for himself or for another the execution of any such statement, or (ii) will have made false or misleading statements to the Board, to any employer, or to any employee, in connection with the awarding of any benefits under this Act, or (iii) will have failed to submit medical reports and records required by the Board under this Act, or will have failed to submit any other reports, records, or information required by the Board in connection with the administration of this Act or any other Act heretofore or hereafter administered by the Board, or (iv) will have engaged in any malpractice or other professional misconduct. No fees or charges of any kind shall accrue to any such person from the Board after his disqualification.

"(q) The Board shall engage in and conduct research projects, investigations, and studies with respect to the cause, care, and prevention of, and benefits for, accidents and disabilities and other subjects deemed by the Board to be related thereto, and shall recommend legislation deemed advisable in the light of such research projects, investigations, and studies."

SEC. 324. Subsection 13 (b) is amended by inserting after "1939," in the first, second, and third sentences thereof, "and for the payment of sickness and maternity benefits for sickness or for maternity periods after June 30, 1947,", "or to sickness or maternity benefits under a sickness or maternity law of any State with respect to sickness or to maternity periods occurring after June 30, 1947,", and "or of State sickness or maternity laws after June 30, 1947", respectively.

DIVISION IV

SEC. 401. Except as otherwise provided in this Act, the provisions thereof shall become effective upon approval.

SEC. 402. Section 306 shall become effective on July 1, 1946, and sections 203, 205, 206, 207, 210, 211, 213, and 318 shall become effective on January 1, 1947.

The amendments to section 1532 of the Internal Revenue Code made by sections 1 and 3 (e) and (f) shall be effective only with respect to services rendered after December 31, 1946. The amendments made by section 3 (a), (b), (c), and (d) shall take effect January 1, 1947. Sections 1500, 1510, and 1520 of the Internal Revenue Code as in effect on December 31, 1946, shall remain in full force and effect on and after January 1, 1947, with respect to any remuneration which constitutes compensation under the law as in effect on December 31, 1946, to which such sections as amended by this Act are not applicable.

SEC. 403. Sections 301, 302, 303, 304, 305 (except for the revision of the table which shall be effective on the date of enactment of this Act), 307, 308, 309, and 310 shall become effective on July 1, 1947.

SEC. 404. Except as hereinafter provided, the rights of persons to whom pensions or annuities were awarded before the date of approval of this Act shall continue to be governed by the provisions of law applicable thereto prior to the approval of this Act. In the award of annuities or increases in annuities after the date of approval of this Act on applications on which no award or a partial award has been made prior to said date, service prior to 1937 (and the compensation therefor) shall be credited only if such service is creditable under the amendments made by section 201. No annuity or increase in annuity so awarded crediting such service shall begin to accrue prior to the date of approval of this Act.

SEC. 405. The election of a joint and survivor annuity made before the date of approval of this Act by an individual to whom an annuity accrues before January 1, 1947, shall be given effect as though the provisions of law under which the election was made had continued to be operative unless no annuity was awarded to such individual prior to the date of approval of this Act and, within one year after the approval of this Act, he revokes the election in such form and manner as the Board may prescribe. Such election by an individual to whom no annuity accrues before January 1, 1947, shall also be given such effect if the individual, before January 1, 1948, reaffirms the election in such form and manner as the Board may prescribe.

SEC. 406. Payments upon death as provided in sections 5 of the Railroad Retirement Acts of 1935 and 1937, other than survivor annuities pursuant to an election, shall be made only with respect to deaths occurring before January 1, 1947.

SEC. 407. An individual to whom an annuity accrued prior to January 1, 1947, and who would as of the date of initial accrual have been entitled to an annuity in a greater amount by reason of the amendments made by section 201, 202, 205, or 210 had such amendments been in effect at the date of initial accrual (or, in the case of a survivor annuity, at the date of initial accrual of the annuity from which it derives), shall, without further application therefor other than a statement of any service claimed under section 202, be awarded an annuity in such greater amount beginning as of the date the applicable amendment shall have become operative: *Provided, however*, That, in such award service before 1937 (and the compensation therefor) shall not be credited if such service would not be creditable upon application of all the amendments made by this Act. In determinations made pursuant to this section any individual to whom an annuity

based on not less than five years of service accrues before January 1, 1947, shall be deemed to have a "current connection with the railroad industry". If an annuity increased pursuant to this section is a joint and survivor annuity, the increase shall be in the same form, the actuarial value being computed as of the date the increase begins, unless on that date there is no spouse living for whom the election was made, in which case the increase shall be awarded on a single life basis. If the increase herein provided effects a survivor annuity only, the increase shall be so determined as to bear the same ratio to the survivor annuity, as the increase in the basic annuity would bear to such basic annuity, if the employee annuitant were living and had made no joint and survivor election.

SEC. 408. No annuities accruing after the month in which this Act is approved shall be reduced under section 2 (a) 3 of the Railroad Retirement Act of 1937 to compensate for an annuity terminated by recovery from disability.

SEC. 409. In the application of section 6 of the Railroad Retirement Act of 1937 with respect to persons who were not employers before the enactment of section 1 of this Act, the dates January 1, 1946, and January 1, 1947, shall be substituted for March 1, 1937, and July 1, 1937, respectively.

Approved July 31, 1946.

LISTING OF REFERENCE MATERIALS

Report to the Committee on Interstate and Foreign Commerce on *Actuarial Cost Estimates for H.R. 1362 (Railroad Retirement Legislation)–March 14, 1946.*

U.S. Congress. House. Committee on Interstate and Foreign Commerce. *Railroad Retirement. Hearings . . . 79th Congress, 1st session, on H.R. 1362.*

79TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 2398

AMENDING THE FIRST WAR POWERS ACT, 1941

JUNE 27, 1946.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CELLER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 6890]

The Committee on the Judiciary, to whom was referred the bill (H. R. 6890) to amend the First War Powers Act, 1941, having considered the same, report favorably thereon, with the recommendation that the bill do pass.

Public hearings were held on H. R. 5089 before Subcommittee No. 1 of the Judiciary Committee, after which H. R. 6890 was introduced to reflect changes which the committee deemed desirable.

I. STATEMENT OF PURPOSES OF THE BILL

The bill has five major objectives. These are:

First. To facilitate the speedy sale of alien properties vested in the Alien Property Custodian under the Trading With the Enemy Act, as amended, while at the same time providing an express judicial remedy for the payment of compensation to the former owner in appropriate cases (sec. 33). Second: To provide machinery for paying claims of creditors against the former owners of vested properties on an equitable basis to the extent that the assets vested from each debtor permit (sec. 35). Third: To make certain and to define the authority of the Alien Property Custodian to pay taxes (sec. 37). Fourth: To clarify the Custodian's power to carry insurance on vested properties (sec. 38). Fifth: To authorize the return of vested property to innocent victims of Axis aggression who may have been nationals or residents of enemy countries (amendment of sec. 32).

In addition, the bill would supply a statute of limitations upon the filing of claims and suits with respect to property vested in or transferred to the Alien Property Custodian (sec. 34); would confirm and clarify the authority for the promulgation of rules and regulations in

connection with the filing and prosecution of claims with regard to such property (sec. 36), and would provide an appropriate section number, now lacking, for the amendment made by the recently enacted Public Law 382, permitting the shipment of relief supplies to enemy countries (sec. 39).

The bill in its present form has the unanimous approval of the State, Treasury, and Justice Departments, and the Alien Property Custodian. The Custodian has advised the committee that the proposed legislation is of great urgency in order to expedite the winding up of his administration of alien property taken over by the United States during World War II, with due regard to the legitimate interests of nonenemy claimants and the Government. The committee believe that the bill makes equitable provision for the interests of the Government and those of private parties.

The bill is coordinated with Public Law 322, Seventy-ninth Congress, second session, approved March 8, 1946, which likewise amended the First War Powers Act, 1941, and added a new section 32 to the Trading With the Enemy Act. Public Law 322 conferred on the President or his delegate the authority, under stated conditions, to make returns of vested property to certain persons who were never hostile to the United States. By this bill, persons eligible to receive return under Public Law 322 are given an express judicial remedy, provided certain additional conditions are met.

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SECTION 37

This section requires the payment of Federal, State, and local taxes by the Custodian, notwithstanding the fact that property vested in or transferred to him becomes the property of the United States. It has as its precedent section 24 of the Trading With the Enemy Act as it existed before World War II. By reason of doubts as to the continued applicability of section 24, the Custodian has reserved the payment of current taxes until further explicit authority is granted for the purpose. It is clearly to the detriment of State and local taxing bodies that former enemy property in the hands of the Federal Government should be tax-free. It is equally unfair to owners of private enterprises that such competitive businesses as are directly operated by the Custodian should not be subjected to Federal, State, and local taxes. The committee are, therefore, of the opinion that this section is important and clearly desirable. It was formulated in conjunction with representatives of the Bureau of Internal Revenue as well as the other interested agencies.

Section 37 (a) states the principle that the vesting in or transfer to the Custodian of any property or interest during the present war, or the receipt by him of any earnings, increment or proceeds thereof, should not render inapplicable any Federal, State, Territorial, or local tax, whether such tax accrued prior or subsequent to vesting or transfer. In short, the tax provisions are designed to insure payment of taxes as nearly as possible as if Government ownership through vesting had not intervened.

At the request of the Federal Security Agency, express provision has been made for payment of retirement and survivorship benefits under title II of the Social Security Act (42 U. S. C. secs. 401–409). It would obviously be useless to pay employment taxes, as the bill contemplates, without correlative payment of corresponding benefits. These employment taxes and benefits would be payable only in a small number of cases where employees were retained or employed by vested business enterprises and thereby became, technically, employees of the United States but did not become entitled to the retirement benefits available to regular Federal employees. Without express reference to the Social Security Act in the pending legislation, such employees would also be precluded from receiving benefits based on their service under that act, so that they would be deprived of both Federal employee benefits and Social Security Act benefits.

By section 37 (b) the Custodian is required to pay taxes, but the time of payment is necessarily left flexible so as not to interfere with the proper administration of vested property. Such taxes, when paid by the Custodian, shall be paid out of the vested property of the particular former owner involved and not out of any general mass of enemy property. It is not intended that the payment of income taxes be limited strictly to those accruing on particular income received by the Custodian. The former owner's taxes, broadly speaking, are to be paid. But should he have unvested property which can be reached by the tax-collection authorities, it is expected

that the unvested property will be primarily resorted to for payment of taxes on such property and on income derived therefrom. Again, consistently with orderly administration of enemy property, it is provided that enforcement against vested property cannot be had without the Custodian's consent, so that such property will not, for example, be subjected to distraint or tax sales. Further, the Custodian may sell property free and clear of taxes and hold the proceeds of sale for the payment of the taxes.

By virtue of section 37 (c) normal tax procedures would apply, except as subsection (b) may otherwise expressly provide. Subject to the qualifications already stated, payment will be in accordance with regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. The statutes of limitation on assessment, collection, refund, and credit of taxes are suspended during the period of vesting and for 6 months thereafter, but no interest is payable on any refund with respect to any such period of suspension.

Section 37 (d) defines "tax" broadly to include all types of taxes, including, as noted, income taxes, as well as import duties and special assessments. In using the term "employment tax" it is intended to include contributions under State unemployment-compensation laws.

Section 37 (e) preserves existing express tax exemptions, such as that contained in section 1802 (c) (7) of the Internal Revenue Code, under which the stamp tax on the sale or transfer of stock certificates is not to be imposed upon any delivery or transfer—

From a foreign country or national thereof to the United States or any agency thereof, or to the government of any foreign country, directed pursuant to the authority vested in the President by section 5 (b) of the Trading With the Enemy Act * * *

SECTION 38

By section 38 authority would be conferred upon the Custodian to insure vested properties. It is understood that the World War I Custodian carried insurance, but the present Custodian has been advised that doubt exists as to his authority in this connection by reason of the general rule that the Government is a self-insurer. He has, therefore, requested that the matter be explicitly determined by the Congress.

The cost of insurance is small in comparison to the possible consequences of noninsurance. It is generally desirable to preserve the value of vested property for satisfaction of claims and for such use as Congress may determine. Moreover a large amount of the property controlled by the Custodian is now protected by insurance, since it is held by corporations in which the Custodian has vested stock but which continue as separate entities. There is no sufficient reason why comparable property which has been vested directly in the Custodian should not similarly be protected by insurance.

AMENDMENT TO SECTION 32

Section 2 of the bill would amend subdivisions (C) and (D) of section 32 (a) (2) of the Trading With the Enemy Act as added by Public Law 322, approved March 8, 1946.

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Union Calendar No. 726

79TH CONGRESS
2D SESSION

H. R. 6890

[Report No. 2398]

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 1946

Mr. SUMNERS of Texas introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 27, 1946

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend the First War Powers Act, 1941.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the First War Powers Act, 1941 (55 Stat. 838), as amended, is hereby further amended by adding at the end of title III thereof the following:

"SEC. 305. The Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, is hereby further amended by inserting after section 32 thereof, and before the section added by Public Law 382, Seventy-ninth Congress, the following sections:

"'SEC. 33. (a) A foreign country or national thereof

as defined pursuant to section 5 (b) hereof may not institute, prosecute, or further maintain a suit pursuant to section 9 (a) hereof in respect of any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof: *Provided*, That neither the Philippine Government nor any Philippine national shall, solely by reason of being, or having at any time been, domiciled in or a citizen or resident of the Philippines, be deemed a foreign national for purposes of any such suit.

"'(b) (1) Notwithstanding the provisions of section 7 (c) hereof, any person, other than a person who—

"'(A) would be barred by virtue of section 32 (a) (1) or (2) hereof from receiving a return of property; or

"'(B) has participated in any arrangement to conceal during the time of war any property or interest within the United States of any person who would be so barred; or

"'(C) has during the time of war and prior to the cessation of actual fighting done business within the territory (excluding that occupied by the military or naval forces) of any nation with which the United States has at any time since December 7, 1941, been at war; or

"'(D) has during the time of war and prior to the cessation of actual fighting directly or indirectly acted with or aided or abetted any nation with which the United States has at any time since December 7, 1941, been at war,

may bring a suit against the United States in the Court of Claims for just compensation in respect of any property or interest taken from such person and vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941). No such suit shall, however, be instituted unless the plaintiff has, at least ninety days prior to its institution, filed a notice of claim pursuant to section 9 (a) or 32 hereof.

"'(2) In any suit under this subsection, the Attorney General may request the Secretary of State to certify to the Court of Claims that the government of the country of which the plaintiff is a citizen, or in which the plaintiff is incorporated, or has its principal place of business, has notified the Secretary of State that it will permit within its territory the taking of evidence according to the law and procedure of the Court of Claims, before a person authorized to take evidence within the United States in cases instituted in the Court of Claims, and that, upon application of such person, the courts of that country will issue such

process as may be necessary to compel the attendance and testimony of witnesses and the production, examination, and transcription of documents before him, unless issuance of process or disclosure of like testimony or evidence is prohibited by law in cases in its own courts. Upon such request, further prosecution of the suit may be stayed until the Secretary of State so certifies with respect to the government or governments referred to in the Attorney General's request and the suit may be dismissed unless the certification is made within a reasonable time. The Secretary of State shall certify to the Court of Claims any notification received hereunder from a foreign government.

"'(3) In any suit under this subsection, the plaintiff shall have the burden of proving all material facts, without benefit of any presumption with respect to ownership, control, residence, or nationality. At the request of the defendant, the plaintiff shall produce for examination by the defendant and for use at the trial, any witness, document, record, book, book of account, file, or paper or other writing, which could be produced through legal process at the request of either party if the parties and the witness or evidence were within the United States, but the plaintiff shall be excused from producing such witness or evidence if he satisfies the court that the witness or evidence is available to the defendant for examination and for use at the trial to the same extent as

if they were within the United States, or can be made so available by the defendant through legal process. The court may stay further prosecution of the suit for failure by the plaintiff to produce any witness or evidence which he is obliged to produce hereunder and shall dismiss the suit if such witness or evidence is not produced within a reasonable time. It shall be no defense to a stay or dismissal hereunder that production of any such witness or evidence is prevented by reason of the laws of any foreign country, including, without limitation, laws respecting the secrecy of information with respect to ownership and control of property, transactions and communications, and laws respecting process, the privileges or immunities of parties and witnesses, the right of examination and cross-examination of witnesses, the execution of letters rogatory and the taking of depositions. The provisions of this paragraph (3) shall be applicable whether or not certification has been requested pursuant to paragraph (2) hereof.

"'(4) Any person authorized to take evidence within the United States in cases instituted in the Court of Claims may be designated by the chief justice of the Court of Claims to hold sessions at any place within or without the United States to hear witnesses and take evidence in any case instituted under this subsection. Such person and stenographers and interpreters authorized by the court, and the

attorneys for the United States and stenographers and interpreters authorized by the Attorney General, shall receive their necessary travel expenses and their actual expenses incurred for subsistence while traveling on duty outside the United States in an amount not to exceed $25 per day in the case of persons designated to hold such sessions and attorneys, and not to exceed $15 per day in the case of stenographers and interpreters. Allowances for expenses of travel and subsistence herein authorized shall be made by order of the Court of Claims or by direction of the Attorney General, as the case may be. They shall be deemed general administrative expenses of the Office of Alien Property Custodian and, upon certification by the chief justice of the Court of Claims or by the Attorney General, as the case may be, shall be paid as such by the Alien Property Custodian in accordance with law.

" 'If the court shall determine that the plaintiff is entitled to just compensation under subsection (b) hereof, it shall enter a finding of the value of the property or interest at the time of taking, as determined by the court. In determining such value at the time of taking, nothing shall be included on account of any patent, copyright or trademark, or any portion thereof, or any application for or interest in such patent, copyright or trademark, which the court shall determine to be invalid. Against the value so found, the

court shall credit the value of such part of the property or interest or proceeds as has been returned or paid to any claimant under this Act or tendered to the plaintiff. If, after such credit, the court shall determine that no amount remains to be awarded to the plaintiff, it shall dismiss the petition on the merits. If the court shall determine that an amount remains to be awarded, it shall enter a finding of such amount and upon the expiration of sixty days from the entry, shall enter judgment upon such finding unless, within such sixty days, a return or tender to the plaintiff has been made and notice thereof given to the court. In the event of such return or tender, the court shall modify the finding by deducting from the award the value of the property or interest or proceeds so returned or tendered, and shall enter judgment upon the modified finding. For the purposes of this subsection, determination of the value of any property or interest or proceeds returned or paid or tendered shall be as of the date of tender, whether or not accepted. All judgments rendered pursuant to this section shall be subject to review by the Supreme Court as provided in section 288 of title 28 of the United States Code.

"'(d) Any person who institutes a suit under subsection (b) hereof may not thereafter institute, prosecute, or further maintain a suit under section 9 (a) in respect of the same property or interest or the net proceeds

thereof. The entry of a final judgment for the plaintiff in a suit under section 9 (a) for the payment or conveyance, transfer, assignment, or delivery of any property or interest or proceeds, or the entry in such a suit of a final judgment for the defendant on a ground or grounds which would preclude relief in a suit under subsection (b), shall bar the institution of any suit under subsection (b) in respect of the same property or interest.

"'(e) Legal representatives (whether or not appointed by a court in the United States) or successors in interest by inheritance, devise, bequest, or operation of law, other than persons themselves precluded from bringing suit under subsection (b) hereof, shall be eligible to institute, prosecute, and maintain suits, and to file notices of claim, under this section and section 9 (a) to the same extent as their principals or predecessors would have been.

"'SEC. 34. No return may be made pursuant to section 9 (a) or 32 (a) unless notice of claim for return has been filed within two years from the seizure by or vesting in the Alien Property Custodian, as the case may be, of the property or interest in respect of which the claim is made or within two years from the date of enactment of this section, whichever is later. No suit pursuant to section 9 (a) or 33 (b) may be instituted after the expiration of two years from the date of seizure by or vesting in the

Alien Property Custodian, as the case may be, of the property or interest in respect of which relief is sought or from the date of enactment of this section, whichever is later, but in computing such two years there shall be excluded any period during which there was pending a claim for return pursuant to section 9 (a) or 32 hereof, or a suit pursuant to section 9 (a).

"'SEC. 35. (a) Any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, shall be equitably applied by the Custodian in accordance with the provisions of this section to the payment of debts owed by the person who owned such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian. No debt claim shall be allowed under this section if it was not due and owing at the time of such vesting or transfer, or if it arose from any action or transactions prohibited by or pursuant to this Act and not licensed or otherwise authorized pursuant thereto, or (except in the case of debt claims acquired by the Custodian) if it was at the time of such vesting or transfer due and owing to any person who is precluded from bringing suit under section 33 (b) hereof or who has since the beginning of the war been

convicted of violation of this Act, as amended, sections 1–6 of the Criminal Code (18 U. S. C. 1–6), title I of the Act of June 15, 1917 (ch. 30, 40 Stat. 217), as amended; the Act of April 20, 1918 (ch. 59, 40 Stat. 534), as amended; the Act of June 8, 1934 (ch. 327, 52 Stat. 631), as amended; the Act of January 12, 1938 (ch. 2, 52 Stat. 3); title I, Alien Registration Act, 1940 (ch. 439, 54 Stat. 670); the Act of October 17, 1940 (ch. 897, 54 Stat. 1201); or the Act of June 25, 1942 (ch. 447, 56 Stat. 390). Any defense to the payment of such claims which would have been available to the debtor shall be available to the Custodian, except that the period from and after the beginning of the war shall not be included for the purpose of determining the application of any statute of limitations. Debt claims allowable hereunder shall include only those of citizens of the United States or of the Philippine Islands; those of corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia or the Philippine Islands; those of other natural persons who are and have been since the beginning of the war residents of the United States and who have not during the war been interned or paroled pursuant to the Alien Enemy Act (50 U. S. C. 21); and those acquired by the Custodian. Legal representatives (whether or not appointed by a court in the United States) or successors in

interest by inheritance, devise, bequest, or operation of law of debt claimants, other than persons themselves precluded from bringing suit under section 33 (b) hereof, shall be eligible for payment to the same extent as their principals or predecessors would have been.

"'(b) The Custodian shall fix a date or dates after which the filing of debt claims in respect of any or all debtors shall be barred, and may extend the time so fixed, and shall give at least sixty days' notice thereof by publication in the Federal Register. In no event shall the time extend beyond the expiration of two years from the date of the last vesting in or transfer to the Custodian of any property or interest of a debtor in respect of whose debts the date is fixed, or from the date of enactment of this section, whichever is later. No debt shall be paid prior to the expiration of one hundred and twenty days after publication of the first such notice in respect of the debtor, nor in any event shall any payment of a debt claim be made out of any property or interest or proceeds in respect of which a proceeding pursuant to this Act for return or for just compensation is pending and was instituted prior to the expiration of such one hundred and twenty days.

"'(c) The Custodian shall examine the claims, and such evidence in respect thereof as may be presented to him or as he may introduce into the record, and shall make a

determination, with respect to each claim, of allowance or disallowance, in whole or in part.

"'(d) Payment of debt claims shall be made only out of such money included in, or received as net proceeds from the sale, use, or other disposition of, any property or interest owned by the debtor immediately prior to its vesting in or transfer to the Alien Property Custodian, as shall remain after deduction of (1) the amount of the expenses of the Office of Alien Property Custodian (including both expenses in connection with such property or interest or proceeds thereof, and such portion as the Custodian shall fix of the other expenses of the Office of Alien Property Custodian), and of taxes, as defined in section 37 hereof, paid by the Custodian in respect of such property or interest or proceeds, and (2) such amount, if any, as the Custodian may establish as a cash reserve for the future payment of such expenses and taxes. If the money available hereunder for the payment of debt claims against the debtor is insufficient for the satisfaction of all claims allowed by the Custodian, ratable payments shall be made in accordance with subsection (g) hereof to the extent permitted by the money available and additional payments shall be made whenever the Custodian shall determine that substantial further money has become available, through liquidation of any such property or interest or otherwise. The Cus-

todian shall not be required through any judgment of any court, levy of execution, or otherwise to sell or liquidate any property or interest vested in or transferred to him, for the purpose of paying or satisfying any debt claim.

"'(e) If the aggregate of debt claims filed as prescribed does not exceed the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall pay each claim to the extent allowed, and shall serve by registered mail, on each claimant whose claim is disallowed in whole or in part, a notice of such disallowance. Within ~~forty-five~~ *sixty* days after the date of mailing of the Custodian's determination, any debt claimant whose claim has been disallowed in whole or in part may file in the District Court of the United States for the District of Columbia a complaint for review of such disallowance naming the Custodian as defendant. Such complaint shall be served on the Custodian. The Custodian, ~~promptly~~ *within forty-five days* after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to the claim in question *upon good cause shown such time may be extended by the court.* Such record shall include the claim as filed, such evidence with respect thereto as may have been presented to the Custodian

or introduced into the record by him, and the determination of the Custodian with respect thereto, including any findings made by him. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian, or could not reasonably have been adduced before him or was not available to him. The court shall enter judgment affirming, modifying, or reversing the Custodian's determination, and directing payment in the amount, if any, which it finds due.

"'(f) If the aggregate of debt claims filed as prescribed exceeds the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall prepare and serve by registered mail on all claimants a schedule of all debt claims allowed and the proposed payment to each claimant. In preparing such schedule, the Custodian shall assign priorities in accordance with the provisions of subsection (g) hereof. Within sixty days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Custodian as defendant. A copy of such complaint shall be served upon the Custodian and on each claimant named in the schedule. The Custodian, within forty-five days after

service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to such schedule. Upon good cause shown such time may be extended by the court. Such record shall include the claims in question as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, any findings or other determinations made by the Custodian with respect thereto, and the schedule prepared by the Custodian. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian or could not reasonably have been adduced before him or was not available to him. Any interested debt claimant who has filed a claim with the Custodian pursuant to this section, upon timely application to the court, shall be permitted to intervene in such review proceedings. The court shall enter judgment affirming or modifying the schedule as prepared by the Custodian and directing payment, if any be found due, pursuant to the schedule as affirmed or modified and to the extent of the money from which, in accordance with subsection (d) hereof, payment may be made. Pending the decision of the court on such complaint for review, and pending final determination of any appeal from such decision, payment may be made only

to an extent, if any, consistent with the contentions of all claimants for review.

"'(g) Debt claims shall be paid in the following order of priority: (1) Wage and salary claims, not to exceed $600; (2) claims entitled to priority under sections 191 and 193 of title 31 of the United States Code, except as provided in subsection (h) hereof; (3) all other claims for services rendered, for expenses incurred in connection with such services, for rent, for goods and materials delivered to the debtor, and for payments made to the debtor for goods or services not received by the claimant; (4) all other debt claims. No payment shall be made to claimants within a subordinate class unless the money from which, in accordance with subsection (d) hereof, payment may be made permits payment in full of all allowed claims in every prior class.

"'(h) No debt of any kind shall be entitled to priority under any law of the United States or any State, Territory, or possession thereof, or the District of Columbia, solely by reason of becoming a debt due or owing to the United States as a result of its acquisition by the Alien Property Custodian.

"'(i) The sole relief and remedy available to any person seeking satisfaction of a debt claim out of any property or interest which shall have been vested in or transferred to

the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the proceeds thereof, shall be the relief and remedy provided in this section, and suits for the satisfaction of debt claims shall not be instituted, prosecuted, or further maintained except in conformity with this section: *Provided,* That no person asserting any interest, right, or title in any property or interest or proceeds acquired by the Alien Property Custodian, shall be barred from proceeding pursuant to this Act for the return thereof or for just compensation in respect thereof, by reason of any proceeding which he may have brought pursuant to this section; nor shall any security interest asserted by the creditor in any such property or interest or proceeds be deemed to have been waived solely by reason of such proceeding. The Alien Property Custodian shall treat all debt claims now filed with him as claims filed pursuant to this section. Nothing contained in this section shall bar any person from the prosecution of any suit at law or in equity against the original debtor or against any other person who may be liable for the payment of any debt for which a claim might have been filed hereunder. No purchaser, lessee, licensee, or other transferee of any property or interest from the Alien Property Custodian shall, solely by reason of such purchase, lease, license, or transfer, become liable for the

payment of any debt owed by the person who owned such property or interest prior to its vesting in or transfer to the Alien Property Custodian. Payment by the Alien Property Custodian to any debt claimant shall constitute, to the extent of payment, a discharge of the indebtedness represented by the claim.

"'SEC. 36. The officer or agency empowered to entertain claims under sections 9 (a), 32, and 35 hereof shall have power to hold such hearings as may be deemed necessary; to prescribe rules and regulations governing the form and contents of claims, the proof thereof, and all other matters related to proceedings on such claims; and in connection with such proceedings to issue subpenas, administer oaths, and examine witnesses. Such powers, and any other powers conferred upon such officer or agency by sections 9 (a), 32, and 35 hereof may be exercised through subordinate officers designated by such officer or agency.

"'SEC. 37. (a) The vesting in or transfer to the Alien Property Custodian of any property or interest (other than any property or interest acquired by the United States prior to December 18, 1941), or the receipt by him of any earnings, increment, or proceeds thereof shall not render inapplicable any Federal, State, Territorial, or local tax for any period prior or subsequent to the date of such vesting or transfer, nor render applicable the exemptions provided in

title II of the Social Security Act with respect to service performed in the employ of the United States Government or of any instrumentality of the United States.

"'(b) The Alien Property Custodian shall, notwithstanding the filing of any claim or the institution of any suit under this Act, pay any tax incident to any such property or interest, or the earnings, increment, or proceeds thereof, at the earliest time appearing to him to be not contrary to the interest of the United States. The former owner shall not be liable for any such tax accruing while such property, interest, earnings, increment, or proceeds are held by the Alien Property Custodian, unless they are returned pursuant to this Act without payment of such tax by the Alien Property Custodian. Every such tax shall be paid by the Alien Property Custodian to the same extent, as nearly as may be deemed practicable, as though the property or interest had not been vested in or transferred to the Alien Property Custodian, and shall be paid only out of the property or interest, or earnings, increment, or proceeds thereof, to which they are incident or out of other property or interests acquired from the same former owner, or earnings, increment, or proceeds thereof. No tax liability may be enforced from any property or interest or the earnings, increment, or proceeds thereof while held by the Alien Property Custodian except with his consent. Where any property or

interest is transferred, otherwise than pursuant to section 9 (a), 32, or 33 hereof, the Alien Property Custodian may transfer the property or interest free and clear of any tax, except to the extent of any lien for a tax existing and perfected at the date of vesting, and the proceeds of such transfer shall, for tax purposes, replace the property or interest in the hands of the Alien Property Custodian.

"'(c) Subject to the provisions of subsection (b) hereof, the manner of computing any Federal taxes, including without limitation by reason of this enumeration, the applicability in such computation of credits, deductions, and exemptions to which the former owner is or would be entitled, and the time and manner of any payment of such taxes and the extent of any compliance by the Custodian with provisions of Federal law and regulations applicable with respect to Federal taxes, shall be in accordance with regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury to effectuate this section. Statutes of limitations on assessment, collection, refund, or credit of Federal taxes shall be suspended, with respect to any vested property or interest, or the earnings, increment or proceeds thereof, while vested and for six months thereafter; but no interest shall be paid upon any refund with respect to any period during which the statute of limitations is so suspended.

"'(d) The word "tax" as used in this section shall include, without limitation by reason of this enumeration, any property, income, excess-profits, war-profits, excise, estate and employment tax, import duty, and special assessment; and also any interest, penalty, additional amount, or addition thereto not arising from any act, omission, neglect. failure, or delay on the part of the Custodian.

"'(e) Any tax exemption accorded to the Alien Property Custodian by specific provision of existing law shall not be affected by this section.

"'SEC. 38. The Alien Property Custodian may procure insurance in such amounts, and from such insurers, as he believes will adequately protect him against loss in connection with property or interest or proceeds held by him.'"

SEC. 2. Subdivisions (C) and (D) of section 32 (a) (2) of the Trading With the Enemy Act are hereby amended to read as follows:

"(C) an individual voluntarily resident at any time since December 7, 1941, within the territory of such nation, other than a citizen of the United States or a diplomatic or consular officer of a nation with which the United States has not at any time since December 7, 1941, been at war: *Provided*, That an individual who, while in the territory of a nation with which the United States has at any time since Decem-

ber 7, 1941, been at war, was deprived of life or substantially deprived of liberty pursuant to any law, decree, or regulation of such nation discriminating against political, racial, or religious groups, shall not be deemed to have voluntarily resided in such territory; or

"(D) an individual who was at any time after December 7, 1941, a citizen or subject of a nation with which the United States has at any time since December 7, 1941, been at war, and who on or after December 7, 1941, and prior to the date of the enactment of this section, was present (other than in the service of the United States) in the territory of such nation or in any territory occupied by the military or naval forces thereof or engaged in any business in any such territory: *Provided*, That notwithstanding the provisions of this subdivision (D), return may be made to an individual who, as a consequence of any law, decree, or regulation of the nation of which he was then a citizen or subject, discriminating against political, racial, or religious groups, has at no time between December 7, 1941, and the time when such law, decree, or regulation was abrogated, enjoyed full rights of citizenship under the law of such nation; or".

SEC. 3. The section added to The Trading With the Enemy Act by Public Law 382, Seventy-ninth Congress, is hereby amended by inserting "39" after "SEC.".

Union Calendar No. 726

79TH CONGRESS
2D SESSION

H. R. 6890

[Report No. 2398]

A BILL

To amend the First War Powers Act, 1941.

By Mr. SUMNERS of Texas

JUNE 26, 1946

Referred to the Committee on the Judiciary

JUNE 27, 1946

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

AMENDMENT OF FIRST WAR POWERS ACT, 1941

Mr. SABATH from the Committee on Rules, reported the following privileged resolution (H. Res. 705, Rept. No. 2515), which was referred to the House Calendar and ordered to be printed:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H. R. 6890) to amend the First War Powers Act, 1941. That after general debate, which shall be confined to the bill and shall continue not to exceed 1 hour to be equally divided and controlled by the chairman and the ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the bill for amendment, the Committee shall rise and report the same to the House with such amendments as may have been adopted and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

AMENDING THE FIRST WAR POWERS ACT, 1941

The Clerk called the bill (H. R. 6890) to amend the First War Powers Act, 1941.

Mr. PHILBIN. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

FIRST WAR POWERS ACT, 1941

The Clerk called the bill (H. R. 6890) to amend the First War Powers Act, 1941.

Mr. COLE of New York. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

AMENDING THE FIRST WAR POWERS ACT, 1941

Mr. CELLER. Mr. Speaker, I move to suspend the rules and pass the bill (H. R. 6890) to amend the First War Powers Act, 1941, as amended.

The Clerk read the title of the bill.

The Clerk read the bill, as follows:

Be it enacted, etc., That the First War Powers Act, 1941 (55 Stat. 838), as amended, is hereby further amended by adding at the end of title III thereof the following:

"SEC. 305. The Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, is hereby further amended by inserting after section 32 thereof, and before the section added by Public Law 382, Seventy-ninth Congress, the following sections:

"'SEC. 33. No return may be made pursuant to section 9 (a) or 32 (a) unless notice of claim for return has been filed within 2 years from the seizure by or vesting in the Alien Property Custodian, as the case may be, of the property or interest in respect of which the claim is made or within 2 years from the date of enactment of this section, whichever is later. No suit pursuant to section 9 (a) may be instituted after the expiration of 2 years from the date of seizure by or vesting in the Alien Property Custodian, as the case may be, of the property or interest in respect of which relief is sought or from the date of enactment of this section, whichever is later, but in computing such 2 years there shall be excluded any period during which there was pending a claim for return pursuant to section 9 (a) or 32 hereof.

"'SEC. 34. (a) Any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, shall be equitably applied by the Custodian in accordance with the provisions of this section to the payment of debts owed by the person who owned such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian. No debt claim shall be allowed under this section if it was not due and owing at the time of such vesting or transfer, or if it arose from any action or transactions prohibited by or pursuant to this act and not licensed or otherwise authorized pursuant thereto, or (except in the case of debt claims acquired by the Custodian) if it was at the time of such vesting or transfer due and owing to any person who has since the beginning of the war been convicted of violation of this act, as amended, sections 1-6 of the Criminal Code (18 U. S. C. 1-6), title I of the act of June 15, 1917 (ch. 30, 40 Stat. 217), as amended; the act of April 20, 1918 (ch. 59, 40 Stat. 534), as amended; the act of June 8, 1934 (ch. 327, 52 Stat. 631), as amended; the act of January 12, 1938 (ch. 2, 52 Stat. 3); title I, Alien Registration Act, 1940 (ch. 439, 54 Stat. 670); the act of October 17, 1940 (ch. 897, 54 Stat. 1201); or the act of June 25, 1942 (ch. 447, 56 Stat. 390). Any defense to the payment of such claims which would have been available to the debtor shall be available to the Custodian, except that the period from and after the beginning of the war shall not be included for the purpose of determining the application of any statute of limitations. Debt claims allowable here under shall include only those of citizens of the United States or of the Philippine Islands; those of corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia or the Philippine Islands; those of other natural persons who are and have been since the beginning of the war residents of the United States and who have not during the war been interned or paroled pursuant to the Alien Enemy Act (50 U. S. C. 21); and those acquired by the Custodian. Legal representatives (whether or not appointed by a court in the United States) or successors in interest by inheritance, devise, request, or operation of law of debt claimants, other than persons who would themselves be disqualified hereunder from allowance of a debt claim, shall be eligible for payment to the same extent as their principals or predecessors would have been.

"'(b) The Custodian shall fix a date or dates after which the filing of debt claims in respect of any or all debtors shall be barred, and may extend the time so fixed, and shall give at least 60 days' notice thereof by publication in the Federal Register. In no event shall the time extend beyond the expiration of 2 years from the date of the last vesting in or transfer to the Custodian of any property or interest of a debtor in respect of whose debts the date is fixed, or from the date of enactment of this section, whichever is later. No debt shall be paid prior to the expiration of 120 days after publication of the first such notice in respect of the debtor, nor in any event shall any payment of a debt claim be made out of any property or interest or proceeds in respect of which a proceeding pursuant to this act for return or for just compensation is pending and was instituted prior to the expiration of such 120 days.

"'(c) The Custodian shall examine the claims, and such evidence in respect thereof as may be presented to him or as he may introduce into the record, and shall make a determination, with respect to each claim, of allowance or disallowance, in whole or in part.

"'(d) Payment of debt claims shall be made only out of such money included in, or received as net proceeds from the sale, use, or other disposition of, any property or interest owned by the debtor immediately prior to its vesting in or transfer to the Alien Property Custodian, as shall remain after deduction of (1) the amount of the expenses of the Office of Alien Property Custodian (including both expenses in connection with such property or interest or proceeds thereof, and such portion as the Custodian shall fix of the other expenses of the Office of Alien Property Custodian), and of taxes, as defined in section 36 hereof, paid by the Custodian in respect of such property or interest or proceeds, and (2) such amount, if any, as the Custodian may establish as a cash reserve for the future payment of such expenses and taxes. If the money available hereunder for the payment of debt claims against the debtor is insufficient for the satisfaction of all claims allowed by the Custodian, ratable payments shall be made in accordance with subsection (g) hereof to the extent permitted by the money available and additional payments shall be made whenever the Custodian shall determine that substantial further money has become available, through liquidation of any such property or interest or otherwise. The Custodian shall not be required through any judgment of

any court, levy of execution, or otherwise to sell or liquidate any property or interest vested in or transferred to him, for the purpose of paying or satisfying any debt claim.

"'(e) If the aggregate of debt claims filed as prescribed does not exceed the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall pay each claim to the extent allowed, and shall serve by registered mail, on each claimant whose claim is disallowed in whole or in part, a notice of such disallowance. Within 60 days after the date of mailing of the Custodian's determination, any debt claimant whose claim has been disallowed in whole or in part may file in the District Court of the United States for the District of Columbia a complaint for review of such disallowance naming the Custodian as defendant. Such complaint shall be served on the Custodian. The Custodian, within 45 days after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to the claim in question. Upon good cause shown such time may be extended by the court. Such record shall include the claim as field, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, and the determination of the Custodian with respect thereto, including any finding made by him. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian, or could not reasonably have been adduced before him or was not available to him. The court shall enter judgment affirming, modifying, or reversing the Custodian's determination, and directing payment in the amount, if any, which it finds due.

"'(f) If the aggregate of debt claims filed as prescribed exceeds the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall prepare and serve by registered mail on all claimants a schedule of all debt claims allowed and the proposed payment to each claimant. In preparing such schedule, the Custodian shall assign priorities in accordance with the provisions of subsection (g) hereof. Within 60 days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Custodian as defendant. A copy of such complaint shall be served upon the Custodian and on each claimant named in the schedule. The Custodian, within 45 days after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to such schedule. Upon good cause shown such time may be extended by the court. Such record shall include the claims in question as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, any findings or other determinations made by the Custodian with respect thereto, and the schedule prepared by the Custodian. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian or could not reasonably have been adduced before him or was not available to him. Any interested debt claimant who has filed a claim with the Custodian pursuant to this section, upon timely application to the court, shall be permitted to intervene in such review proceedings. The court shall enter judgment affirming or modifying the schedule as prepared by the Custodian and directing payment, if any be found due, pursuant to the schedule as affirmed or modified and to the extent of the money from which, in accordance with subsection (d) hereof, payment may be made. Pending the decision of the court on such complaint for review, and pending final determination of any appeal from such decision, payment may be made only to an extent, if any, consistent with the contentions of all claimants for review.

"'(g) Debt claims shall be paid in the following order of priority: (1) Wage and salary claims, not to exceed $600; (2) claims entitled to priority under sections 191 and 193 of title 31 of the United States Code, except as provided in subsection (h) hereof; (3) all other claims for services rendered, for expenses incurred in connection with such services, for rent, for goods and materials delivered to the debtor, and for payments made to the debtor for goods or services not received by the claimant; (4) all other debt claims. No payment shall be made to claimants within a subordinate class unless the money from which, in accordannce with subsection (d) hereof, payment may be made permits payment in full of all allowed claims in every prior class.

"'(h) No debt of any kind shall be entitled to priority under any law of the United States or any State, Territory, or possession thereof, or the District of Columbia, solely by reason of becoming a debt due or owing to the United States as a result of its acquisition by the Alien Property Custodian.

"'(i) The sole relief and remedy available to any person seeking satisfaction of a debt claim out of any property or interest which shall have been vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United State prior to December 18, 1941), or the proceeds thereof, shall be the relief and remedy provided in this section, and suits for the satisfaction of debt claims shall not be instituted, prosecuted, or further maintained except in conformity with this section: *Provided*, That no person asserting any interest, right, or title in any property or interest or proceeds acquired by the Alien Property Custodian, shall be barred from proceeding pursuant to this act for the return thereof or for just compensation in respect hereof, by reason of any proceeding which he may have brought pursuant to this section; nor shall any security interest asserted by the creditor in any such property or interest or proceeds be deemed to have been waived solely by reason of such proceeding. The Alien Property Custodian shall treat all debt claims now filed with him as claims filed pursuant to this section. Nothing contained in this section shall bar any person from the prosecution of any suit at law or in equity against the original debtor or against any other person who may be liable for the payment of any debt for which a claim might have been filed hereunder. No purchaser, lessee, licensee, or other transferee of any property or interest from the Alien Property Custodian shall, solely by reason of such purchase, lease, license, or transfer, become liable for the payment of any debt owed by the person who owned such property or interest prior to its vesting in or transfer to the Alien Property Custodian. Payment by the Alien Property Custodian to any debt claimant shall constitute, to the exent of payment, a discharge of the indebtedness represented by the claim.

"'SEC. 35. The officer or agency empowered to entertain claims under sections 9 (a), 32, and 34 hereof shall have power to hold such hearings as may be deemed necessary; to prescribe rules and regulations governing the form and contents of claims, the proof thereof, and all other matters related to proceedings on such claims; and in connection with such proceedings to issue subpenas, administer oaths, and examine witnesses. Such powers, and any other powers conferred upon such officer or agency by sections 9 (a), 32, and 34 hereof may be exercised through subordinate officers designated by such officer or agency.

"'SEC. 36. (a) The vesting in or transfer to the Alien Property Custodian of any property or interest (other than any property or interest acquired by the United States prior to December 18, 1941), or the receipt by him of any earnings, increment, or proceeds thereof shall not render inapplicable any Federal, State, Territorial, or local tax for any period prior or subsequent to the date of such vesting or transfer, nor render applicable the exemptions provided in title II of the Social Security Act with respect to service performed in the employ of the United States Government or of any instrumentality of the United States.

"'(b) The Alien Property Custodian shall, notwithstanding the filing of any claim or the institution of any suit under this act pay any tax incident to any such property or interest, or the earnings, increment, or proceeds thereof, at the earliest time appearing to him to be not contrary to the interest of the United States. The former owner shall not be liable for any such tax accruing while such property, interest, earnings, increment, or proceeds are held by the Alien Property Custodian, unless they are returned pursuant to this act without payment of such tax by the Alien Property Custodian. Every such tax shall be paid by the Alien Property Custodian to the same extent, as nearly as may be deemed practicable, as though the property or interest had not been vested in or transferred to the Alien Property Custodian, and shall be paid only out of the property or interest, or earnings, increment, or proceeds thereof, to which they are incident or out of other property or interests acquired from the same former owner, or earnings, increment, or proceeds thereof. No tax liability may be enforced from any property or interest or the earnings, increment, or proceeds thereof while held by the Alien Property Custodian except with his consent. Where any property or interest is transferred, otherwise than pursuant to section 9 (a) or 32 hereof, the Alien Property Custodian may transfer the property or interest free and clear of any tax, except to the extent of any lien for a tax existing and perfected at the date of vesting, and the proceeds of such transfer shall, for tax purposes, replace the property or interest in the hands of the Alien Property Custodian.

"'(c) Subject to the provisions of subsection (b) hereof, the manner of computing any Federal taxes, including without limitation by reason of this enumeration, the applicability in such computation of credits, deductions, and exemptions to which the former owner is or would be entitled, and the time and manner of any payment of such taxes and the extent of any compliance by the Custodian with provisions of Federal law and regulations applicable with respect to Federal taxes, shall be in accordance with regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury to effectuate this section. Statutes of limitations on assessment, collection, refund, or credit of Federal taxes shall be suspended, with respect to any vested property or interest, or the earnings, increment or proceeds thereof, while vested and for 6 months thereafter; but no interest shall be paid upon any refund with respect to any period during which the statute of limitations is so suspended.

"'(d) The word "tax" as used in this section shall include, without limitation by reason of this enumeration, any property, income, excess-profits, war-profits, excise, estate and employment tax, import duty, and special assessment; and also any interest, penalty, additional amount, or addition thereto not arising from any act, omission, neglect, failure, or delay on the part of the Custodian.

"'(e) Any tax exemption accorded to the Alien Property Custodian by specific provision of existing law shall not be affected by this section.

"'SEC. 37. The Alien Property Custodian may procure insurance in such amounts, and from such insurers, as he believes will adequately protect him against loss in connection with property or interests or proceeds held by him.'"

SEC. 2. Subdivisions (C) and (D) of section 32 (a) (2) of the Trading With the Enemy Act are hereby amended to read as follows:

"(C) an individual voluntarily resident at any time since December 7, 1941, within the territory of such nation, other than a citizen of the United States or a diplomatic or consular officer of a nation with which the United States has not at any time since December 7, 1941, been at war: *Provided*, That an individual who, while in the territory of a nation with which the United States has at any time since December 7, 1941, been at war, was deprived of life or substantially deprived of liberty pursuant to any law, decree, or regulation of such nation discriminating against political, racial, or religious groups, shall not be deemed to have voluntarily resided in such territory; or

"(D) an individual who was at any time after December 7, 1941, a citizen or subject of a nation with which the United States has at any time since December 7, 1941, been at war, and who on or after December 7, 1941, and prior to the date of the enactment of this section, was present (other than in the service of the United States) in the territory of such nation or in any territory occupied by the military or naval forces thereof or engaged in any business in any such territory: *Provided*, That notwithstanding the provisions of this subdivision (D), return may be made to an individual who, as a consequence of any law, decree, or regulation of the nation of which he was then a citizen or subject, discriminating against political, racial, or religious groups, has at no time between December 7, 1941, and the time when such law, decree, or regulation was abrogated, enjoyed full rights of citizenship under the law of such nation; or."

SEC. 3. The section added to the Trading With the Enemy Act by Public Law 382, Seventy-ninth Congress, is hereby amended by inserting "38" after "SEC."

The SPEAKER. Is a second demanded?

Mr. MICHENER. Mr. Speaker, I demand a second.

Mr. CELLER. Mr. Speaker, I ask unanimous consent that a second be considered as ordered.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

Mr. CELLER. The purpose of this bill, Mr. Speaker, among other things, is to provide machinery for paying the claims of American creditors against the former owners of property vested in the Alien Property Custodian's Office, vested because the property belonged to enemy aliens or their allies or their stooges and cloaks. At the present time there is something like $113,000,000 worth of claims filed for American citizens against property seized and vested by the Alien Property Custodian's Office. A recent decision coming from the district court, provides that if any debt claimant against that property brings suit it is within the power of that claimant to exhaust the entire property to the detriment of other claimants; that is, the claimant would recover upon a "first come, first served" basis. Such an arrangement might preclude other claimants and is more unjust. The bill before us provides that the Alien Property Custodian takes the property and sells it and divides the proceeds equitably among all creditors as pari passu, in bankruptcy.

In addition, this bill provides that the Alien Property Custodian shall have authority to pay taxes. Under present conditions it is questionable whether he has the right to pay taxes. Municipalities, States, and the Federal Government suffer for the lack of those taxes, as well as for lack of payment of penalties added to the taxes.

This bill also provides authority to the Alien Property Custodian to insure the property that he has under his control. It has been stated that the United States Government, which is represented by the Alien Property Custodian, is a self-insurer, and need not take out insurance. Therefore, if some property is destroyed, the claimant or claimants against this property may be deprived of their rightful dues. Since the property, say, was totally burned, the claims cannot attach to anything. Since the claimants cannot sue the vested owner, the United States, he is without remedy.

In addition thereto, there is set up a statute of limitations, 2 years for the purpose of filing claims and 2 years for the purpose of filing suits. Under the old Alien Property Custodian Act after the last war there was no statute of limitations. The result was that that office continued for over 20 years.

The present Alien Property Custodian is anxious to wind up his affairs in short order and asks, therefore, for this 2-year period.

Furthermore, this bill would authorize the Alien Property Custodian to set up rules and regulations governing the procedure of filing claims and the hearing of claims in his office. There is an amendment which would give a section number to Public Law 382 which we passed permitting the shipment of relief supplies to enemy countries. We passed that bill which amended the Trading With the Enemy Act without any number. This bill would provide a number for that section.

Mr. SPRINGER. Mr. Speaker, will the gentleman yield?

Mr. CELLER. I yield.

Mr. SPRINGER. Under the Alien Property Custodian Act following World War I how long a period of time did the Alien Property Custodian operate in winding up his business matters?

Mr. CELLER. I think he turned over eventually this authority to the Department of Justice 4 years ago. He continued his activities from the time of the ending of the war until the Department of Justice took on—after a period exceeding 20 years.

Mr. SPRINGER. In other words, the Alien Property Custodian operated for more than 20 years following World War I.

Mr. CELLER. Correct.

Mr. SPRINGER. Under this particular act the Alien Property Custodian will have a 2-year period in which to close up all matters.

Mr. CELLER. At least 2 years' time within which claims must be filed, but suitably thereafter he would wind up his affairs.

I may say, Mr. Speaker, that this bill was reported out of the Judiciary Committee unanimously. It has the support of the State Department, the Department of Justice, the Treasury Department, and the Alien Property Custodian's office.

Mr. Speaker, I send to the Clerk's desk amendments which will make this bill conform to the bill as reported by——

The SPEAKER. That is not the way to pass a bill under suspension. There is no amendment period; under a motion to suspend the rules the bill is reported as amended by the Committee.

Mr. MICHENER. Mr. Speaker, I think this is the situation. This bill, H. R. 6890, was favorably reported by the Judiciary Committee. A similar bill was presented to the Senate and reported with section 33 beginning on line 11, page 1, stricken out.

This is a very important bill. It has to do largely with the Alien Property Custodian. Extensive, and I mean extensive, hearings have been held before the subcommittee of the Judiciary Committee and the full Committee considered it. All the departments interested are in agreement, the Attorney General, the War Department, Navy Department, everybody; but the Senate committee struck out section 33. If we get anything at this session, therefore, it will not be this bill with section 33 included.

I talked this morning with the Alien Property Custodian and with Mr. Cutler, the very capable counsel for the Alien Custodian, who is very much interested in this.

I understood that the gentleman from New York would move to pass the bill, H. R. 6890, with an amendment to strike out section 33. Am I correct?

Mr. CELLER. The gentleman is correct.

Mr. MICHENER. Mr. Speaker, I ask unanimous consent that the RECORD be modified so that the request of the gentleman from New York will read accordingly.

Mr. McCORMACK. Mr. Speaker, will the gentleman yield?

Mr. CELLER. I yield to the gentleman from Massachusetts.

Mr. McCORMACK. My understanding of the matter is that there was some controversy over the first section, which is section 33, and that the amendment of the gentleman from New York would strike that section out, which is the controversial section.

Mr. CELLER. It is not controversial so far as the Judiciary Committee is concerned.

Mr. McCORMACK. Yes, but there was some controversy.

Mr. CELLER. There was some question.

Mr. MICHENER. We must take the bill without section 33. Every department, including the Justice Department, is asking for this legislation. They want this passed without 33 if that is necessary.

Mr. McCORMACK. That is my understanding.

Mr. MICHENER. Mr. Speaker, I ask unanimous consent that the request of the gentleman from New York [Mr. CELLER] be modified so that it will be: "I move to suspend the rules and pass H. R. 6890 with amendments."

Mr. CELLER. It is not an amendment but several amendments, because if you strike out 33 you would have to renumber the other sections.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

Mr. PHILBIN. Mr. Speaker, reserving the right to object, if section 33 is eliminated from this bill, then the law as then written would give to foreign friendly nationals the right to be sued and to sue in our courts and have their rights adjudicated?

Mr. CELLER. I may say to the gentleman that the elimination of section 33 gives the right to a foreign national to sue for the return of his property, either in law or in equity. That does not apply to an enemy alien, only to a friendly foreign national. That right remains unchanged if we eliminate section 33.

Mr. PHILBIN. Under this bill foreign friendly nationals would no longer be prohibited from being sued or bringing suit in law or equity.

Mr. CELLER. No. But the court has held that the suit cannot result in a judgment against the United States.

Mr. VOORHIS of California. Mr. Speaker, reserving the right to object, I merely want to observe that I am very sorry myself that this section has been stricken from the bill. It is a section of great importance if an effective job is to be done with regard to German external assets. That is all I have to say. I realize you have to do what you are doing, but I regret it very sincerely.

Mr. CELLER. In the interest of getting something done, we had to eliminate it.

Mr. MICHENER. I think the entire committee regrets it. It is a half loaf or no loaf at all, and the Alien Property Custodian needs as much of this bill as he can get now.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER. The question is on suspending the rules and passing the bill.

The question was taken; and two-thirds having voted in favor thereof, the rules were suspended, and the bill was passed.

House Resolution 705 was laid on the table.

A motion to reconsider was laid on the table.

Calendar No. 1875

79TH CONGRESS, 2d Session | SENATE | REPORT No. 1839

ADMINISTRATION OF ALIEN PROPERTY

JULY 26 (legislative day, JULY 5), 1946.—Ordered to be printed

Mr. HUFFMAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2378]

The Committee on the Judiciary, to whom was referred the bill (S. 2378) to amend the First War Powers Act, 1941, having considered the same, report the bill to the Senate favorably, with amendments, and recommend that the bill as amended do pass.

Public hearings on this bill were held on July 1 and 18, 1946, by a subcommittee of the Senate Committee on the Judiciary. In the House of Representatives, hearings were held before a subcommittee of the Committee on the Judiciary on H. R. 5089, after which H. R. 6890 was introduced to reflect certain changes which the committee deemed desirable. S. 2378, as introduced, was identical with H. R. 6890, as reported out by the House Committee on the Judiciary. As ordered reported, S. 2378 now differs from H. R. 6890 as the result of the following committee amendments.

AMENDMENTS

Committee amendment No. 1: On page 1, beginning with line 11, strike out all down to and including line 16 on page 8.

Committee amendment No. 2: On page 8, line 17, strike out "34" and insert in lieu thereof "33".

Committee amendment No. 3: On page 8, line 24, strike out "or 33 (b)".

Committee amendment No. 4: On page 9, line 6, strike out "hereof, or a suit pursuant" and insert in lieu thereof "hereof."; and on line 7, strike out "to section 9 (a)."

Committee amendment No. 5: On page 9, line 8, strike out "35" and insert in lieu thereof "34".

Committee amendment No. 6: On page 9, beginning with line 23, strike out all down to and including line 1 on page 10 and insert in lieu thereof the following: "who has since the beginning of the war been convicted of violation of this Act, as amended, sections 1–6"

Committee amendment No. 7: On page 11, lines 2 and 3, strike out "claimants, other than persons themselves precluded from bringing suit under section 33 (b) hereof," and insert in lieu thereof "claimants, other than persons who would themselves be disqualified hereunder from allowance of a debt claim,".

Committee amendment No. 8: On page 12, line 13, strike out "37" and insert in lieu thereof "36".

Committee amendment No. 9: On page 18, line 5, strike out "36" and insert in lieu thereof "35".

Committee amendment No. 10: On page 18, line 6, strike out "35" and insert in lieu thereof "34".

Committee amendment No. 11: On page 18, line 14, strike out "35" and insert in lieu thereof "34".

Committee amendment No. 12: On page 18, line 16, strike out "37" and insert in lieu thereof "36".

Committee amendment No. 13: In line 18, page 18, strike out the word "and" and insert in lieu thereof "any".

Committee amendment No. 14: On page 20, line 2, strike out "9 (a), 32, or 33" and insert in lieu thereof "9 (a) or 32".

Committee amendment No. 15: In line 19, page 20, strike out the word "assessments" and insert in lieu thereof "assessment".

Committee amendment No. 16: On page 21, line 11, strike out "38" and insert in lieu thereof "37".

Committee amendment No. 17: On page 23, line 3, strike out "39" and insert in lieu thereof "38".

STATEMENT

The bill, as amended, has four major objectives. These are: First. To provide machinery for paying claims of creditors against the former owners of vested properties on an equitable basis to the extent that the assets vested from each debtor permit (sec. 34). Second. To make certain and to define the authority of the Alien Property Custodian to pay taxes (sec. 36). Third. To clarify the Custodian's power to carry insurance on vested properties (sec. 37). Fourth. To authorize the return of vested property to innocent victims of Axis aggression who may have been nationals or residents of enemy countries (amendment of sec. 32).

In addition, the bill would supply a statute of limitations upon the filing of claims and suits with respect to property vested in or transferred to the Alien Property Custodian (sec. 33); would confirm and clarify the authority for the promulgation of rules and regulations in connection with the filing and prosecution of claims with regard to such property (sec. 35); and would provide an appropriate section number, now lacking, for the amendment made by the recently enacted Public Law 382, permitting the shipment of relief supplies to enemy countries (sec. 38).

The first amendment by the committee strikes out line 11 on page 1 and down to and including line 16 on page 8. The purpose of this amendment is to eliminate the proposal to cut off the right of a friendly foreign national to sue for and obtain the return of his property under section 9 (a). The bill as thus amended preserves in full these rights under 9 (a) which the friendly foreign national, together with the United States citizen has had for more than 25 years under the act.

SECTION 33

The committee are of the view that, provided adequate remedies are supplied and a sufficient time is given within which to exercise them, litigation with respect to alien property matters should be brought to a close and the Government should not for all time be open to attack. Without this, the Custodian's efforts to conclude within a reasonable time the administration of alien property can hardly be expected to succeed. By section 33, accordingly, a limit of 2 years from the date of seizure or vesting or from the enactment of this section, whichever is later, would be imposed upon the filing of claims or suits for return of property or for just compensation. In computing the 2-year period, however, fairness requires that there be excluded any period during which a claim for return has been pending pursuant to section 9 (a) or section 32, or any period during which a suit has been pending pursuant to section 9 (a).

The term "seizure," although comprised as a matter of law within the term "vesting," is here used to describe acquisitions of property in connection with the First World War under section 7 of the Trading With the Enemy Act. Thus, First World War litigation will now be brought to a close as well as litigation growing out of the present war.

SECTION 34

Section 34 provides the urgently needed authority for the Custodian to pay, on a basis of equitable distribution, debt claims asserted by creditors of the former owners of vested properties. American creditors have long awaited satisfaction of their claims, which has necessarily been deferred because of doubts surrounding the authority of the Alien Property Custodian to pay them. On December 10, 1945, the Supreme Court held, in *Markham* v. *Cabell* (66 S. Ct. 193), that creditors of enemies or allies of enemies whose property has been seized by the Custodian, may maintain suits against the Custodian on their debt claims under section 9 (a) of the Trading With the Enemy Act. In this decision the court concluded that the debt-claim provisions of section 9 (a) remain effective notwithstanding the limitations as to time expressed in section 9 (e). The court, however, expressly reserved the questions whether section 5 (b) of the act, as amended, may operate to prevent the satisfaction of any judgment obtained in such a suit, and what effect section 5 (b) may have with respect to the procedure looking to payment of judgments prescribed in section 9 (a). The court commented that problems of this character raise questions of policy for the Congress to decide. If residual questions such as these must be settled by the judicial process, the extent of American creditors' rights will remain in doubt for a still longer period.

If by further decisions it is made clear that the Custodian is required to pay debt claims under the provisions of section 9 (a), the rule of "first come, first served" will apply, resulting in a race of diligence among creditors, exhaustion of many properties without an opportunity to make equitable distribution (many of the properties being insolvent), and interference with the authority, conferred by the First War Powers Act, 1941, to use the property in the interest of the United States. The Custodian has emphasized to the committee

that he is anxious to satisfy the proper claims of creditors and the committee concur in the view that there exists a strong moral obligation to satisfy them inasmuch as, but for the vesting of their debtors' property, they would presumably have been able to pursue ordinary remedies against the debtors.

Section 34 is not a radical departure from the treatment of debt claims in World War I, since the principles of payment and of judicial determination are preserved. There is no intent to depart from established judicial precedents in this field, with respect to such matters as what constitutes a "debt," except where express changes would be made by section 34. The principal change is from "first come, first served" to" equitable distribution." That this change is meritorious is shown by the following tabulation prepared in the Custodian's office on the basis of the best estimates available. It shows that out of debt claims totaling $113,000,000, which were filed as of December 31, 1945, assets of the vested accounts against which claims are asserted would permit payment of only some $39,500,000. No more cogent demonstration could be made of the need for a system of pro rata payment.

Unsecured debt claims received through Dec. 31, 1945, and amounts which could be paid from available assets

[In thousands of dollars]

Property against which claims are asserted	Total		Claims received from vested enterprises		Claims received from other American creditors		Claims received from foreign creditors	
	Amount claimed	Amount which could be paid if allowed	Amount claimed	Amount which could be paid if allowed	Amount claimed	Amount which could be paid if allowed	Amount claimed	Amount which could be paid if allowed
Total	113,000	39,500	34,600	22,010	76,950	16,740	1,450	750
Against assets and excess assets of banks and insurance companies	46,500	11,000	13,650	2,470	32,450	8,130	400	400
Against assets of other enterprises	28,500	11,500	8,650	7,240	19,150	3,960	700	300
Against stock (etc.) of business enterprises	26,000	15,500	12,290	12,290	13,710	3,210	----------	----------
Against other property	12,000	1,500	10	10	11,640	1,440	350	50

Section 34 (a) first states the principle that vested properties shall be equitably applied to the payment of debts owed by the persons owning the property immediately prior to vesting in the Custodian, or prior to transfer to him.

Debt claims debarred from allowance are those not due and owing at the time of vesting or transfer to the Custodian, those arising from transactions prohibited by the Trading With the Enemy Act, and those owing to a specified group of persons hostile to the United States. This group includes interned or paroled alien enemies, and persons who have been convicted of treason, sedition, espionage, sabotage, and similar wartime crimes. The running of any statute of limitations would be suspended during the period of the war in connection with which the property was vested, since in a practical sense creditors do not have normal opportunities for collection of their debts during

war. In line with established doctrines, the burden of proof will be on the claimants.

The debt claims which may be approved by the Custodian are (1) those of citizens of the United States and corporations incorporated here; (2) those of persons who, although not citizens, have been residents of the United States since the beginning of the war (subject to the qualifications already noted); and (3) claims vested by the Custodian or otherwise acquired by him, as by assignment.

It will be noted that alien individuals who have been residents of the United States at all times since the beginning of the war are permitted to file and prosecute debt claims if they meet the other qualifications laid down, including the requirement that they shall not have been interned or paroled pursuant to the Alien Enemy Act (50 U. S. C. 21). Such alien residents of whatever nationality, who have not been found deserving of internment and who have not engaged in cloaking activities or aided or abetted the enemy, should, the committee believe, be placed on a par with citizens in this respect. The committee do not believe it appropriate to extend this relief to resident aliens more recently arrived or to nonresident aliens. In many cases, the assets available to meet debt claims are already insufficient to satisfy American creditors. Further, to permit all friendly aliens to file debt claims might seriously reduce the general surplus of enemy assets available to this Government for ultimate disposition in the general public interest. In addition, enemy property has been seized by numerous foreign countries and it is not unreasonable that nationals of those countries should address themselves to such property. Finally, it should be remembered that nonresident aliens did not ordinarily extend credit in reliance upon American assets of their debtors.

During the course of their hearings on H. R. 5089, the attention of the House Judiciary Committee was directed to certain cases of severe personal hardship which have resulted from the complete immobilization of the preliberation assets in this country of the governments and nationals of Italy, Bulgaria, Hungary, and Rumania. This immobilization has also caused serious hardships to the diplomatic missions in the United States, of these four countries. The funds involved have not been vested by the Alien Property Custodian and therefore are not within the purview of this bill. They are frozen assets under the jurisdiction of the Treasury Department which administers the Executive orders relating to the control of foreign property in the United States. Payments from these funds have not been made, pending an over-all governmental decision as to their ultimate disposition. In view of the hardships involved, the committee recommend the issuance of licenses by the Treasury Department permitting limited withdrawals from these accounts for the support of nationals of Italy, Bulgaria, Hungary, and Rumania resident in such countries, for the support of the diplomatic missions in the United States of such countries, and in certain other cases to alleviate personal hardship.

By section 34 (b) the Custodian is required to fix bar dates within which debt claims may be filed, giving at least 60 days' notice thereof in the Federal Register. The outside limit, consistently with the statute of limitations provided in section 33, is 2 years from the date of vesting or of enactment of this section, whichever is later. Since no useful purpose would be served, and injustice might result from undertaking to pay debt claims out of property which may be returned,

or with respect to which a just-compensation proceeding is brought, claimants for return or just compensation are given 120 days from the first bar-date notice with respect to any debtor within which to institute their claim or proceeding; and any claim or proceeding instituted prior to the expiration of such 120 days precludes the payment of debt claims until such claim or proceeding is disposed of. Eligible claimants may still institute return or just-compensation proceedings after the expiration of the 120-day period, but in that event payment of debt claims need not be suspended and the recovery in any suit for return or just compensation will be reduced by the amount of debt claims paid.

Section 34 (c) directs the Custodian to examine and determine the debt claims. It has been suggested that a time limit for consideration of debt claims by the Custodian be inserted, after which the claimant would be entitled to sue in a district court and if he obtained a judgment, such judgment would be payable in accordance with the distribution provisions of the bill. The committee have rejected this suggestion for the reason that it would be impossible for the Custodian, who has already received over 3,000 debt claims, to examine all debt claims within a specified brief period. The suggestion might benefit an occasional debt claimant, but it would be greatly to the disadvantage of debt claimants as a whole, and it would be contrary to sound principles of administration. The result would be that a large, if not a preponderant, portion of debt claims would be adjudicated in the first instance in the courts and in diverse jurisdictions. This might result in conflict of decisions together with long-drawn-out appeals. Meanwhile, the Custodian's office would be diverted from an examination of debt claims by the necessity of defending a large number of lawsuits. Under such circumstances the Custodian's work of equitable distribution could not effectively proceed. He has strongly affirmed his desire and intention, if this authority is granted him, to proceed with all possible dispatch, and the claimant's day in court will follow by way of review of his determinations as explained hereafter.

It is provided in section 34 (d) that debt claims shall be paid only out of money held by the Custodian (i. e., not in kind); and that he cannot be required to sell property for the satisfaction of debt claims. To require sale of particular properties for the satisfaction of debt claims at any given time would prevent the Custodian from taking advantage of favorable market conditions and from executing the orderly program of liquidation and sale upon which he is actively engaged. Further, it may be impolitic that certain types of property be sold at all. For example, Italian property is not presently being sold, by reason of the request of the State Department that action be suspended. Patents are also not being sold and, in the belief of the committee, should not be sold. The President has determined upon a policy of making all enemy technology generally available. If vested enemy patents are retained by the United States, they may be made freely available to all persons desiring to use them, either by nonexclusive licenses or by dedication to the public. If, on the other hand, such patents were to be sold, they would be available only to the purchaser, who could exclude all others from their use. Over 11,000 enemy patents vested by the Alien Property Custodian have already been made available to the American public through royalty-free nonexclusive licenses.

Safeguards are provided in section 34 (d) for the satisfaction of expenses and taxes prior to payment of debts. The expenses of the Office of Alien Property Custodian are defrayed not from funds provided by the taxpayers, but from vested properties, subject to annual ceilings placed by Congress on general administrative expenses, and annual reporting of all expenses to the Appropriations Committees of the House and Senate. There will eventually be a final pro rata allocation of general administrative expenses to the respective former enemy properties, and a final distribution of expenses specifically incurred with respect to individual properties. Some properties, however, are neither liquid nor income producing. Hence, to permit operation of the Office, temporary utilization must be made of funds available in liquid accounts. Accurate records are kept so that proper reimbursement and allocation may be made between accounts when, and to the extent that, those which are presently sterile reach a liquid position through sale or otherwise. The "other" expenses mentioned in subsection (d) include both general administrative expenses, and any residue of "direct" expenses that may be uncollectible from the particular account to which they relate.

The authority of the Custodian to pay expenses for the fiscal year 1946, for example, was contained in the National War Agencies Appropriation Act, 1946, approved July 17, 1945 (Public Law 156, 79th Cong., 1st sess.). It is, in pertinent part, in the following terms:

> The Alien Property Custodian is hereby authorized to pay out of any funds or other property or interest vested in him or transferred to him all necessary expenses incurred by the Office of Alien Property Custodian in carrying out the powers and duties conferred on the Alien Property Custodian pursuant to the Trading With the Enemy Act of October 6, 1917, as amended (50 U. S. C. App.): *Provided*, That not to exceed $2,500,000 shall be available for the entire fiscal year 1946 for the general administrative expenses of the Office of Alien Property Custodian, * * * *Provided further*, That on or before November 1, 1945, the Alien Property Custodian shall make a report to the Appropriations Committees of the Senate and the House of Representatives giving detailed information on all administrative and nonadministrative expenses incurred in connection with the activities of the Office of Alien Property Custodian: * * *.

In section 34 (e) and (f) appear the provisions for judicial review of debt claim determinations. Subsection (e) deals with solvent accounts and subsection (f) with those which are insolvent. These separate procedures are provided since the solvent accounts will lend themselves to more expeditious treatment, especially in the matter of payments, than the insolvent.

Both subsections provide that the United States District Court for the District of Columbia shall be the forum for review. Since the procedure calls for a marshaling of claims and since, on review, the court may have to give consideration to the entire account, it would cause a serious break-down in administrative and judicial proceedings if debt claim determinations were reviewed by the several district courts throughout the country. It is believed that the matter must be centralized and no injustice should result.

In cases under subsection (e), where the money in an account is sufficient to pay all debt claims filed, payment may be made of allowed claims and any person aggrieved by a disallowance (whether complete or partial) may file his complaint for review with the court. The review is on the record of proceedings before the Custodian; but the court may examine both the facts and law disclosed by such record and, in addition, may take additional evidence if such evidence was offered

to and excluded by the Custodian or could not reasonably have been presented to him or was not available to him. It is the committee's belief that the suggested procedure represents an appropriate balance between a complete trial de novo, on the one hand, and finality of the Custodian's determinations of fact (if supported by evidence), on the other.

The same standard of judicial review will apply in the insolvency case under subsection (f). The schedule of payments which the Custodian proposes to make may be reviewed by the court and, during the pendency of such review, the Custodian, in order that all payments shall not be held up, may make payments to an extent which would not prejudice the rights of an aggrieved claimant in the event he makes good his contentions on review. Under both subsections (e) and (f) normal procedures for appeal to higher courts will apply. The matter of costs, in judicial proceedings under subsections (e) and (f) will be governed by such rules as are normally applied by the courts in cases involving the Government.

The priorities to be applied in the event of insolvency are prescribed in section 34 (g). The priorities are patterned on those in the National Bankruptcy Act, with appropriate modifications to reflect the principal actual categories of claims thus far filed with the Custodian and the equities attaching to each.

Expenses of administration and taxes will take precedence over any of the classes of claims enumerated in subsection (g) since, by section 34 (d), above, expenses and taxes are to be satisfied before the payment of any debt claims is undertaken. The second priority—i. e., that accorded to the United States Government by 31 U. S. C. 191 and 193—would cover other claims of the Federal Government, aside from those which became such through their acquisition by the Custodian. It is assumed, and the committee intend, that 31 U. S. C. 192 will not be applicable to the Custodian or his subordinates. That section imposes a special liability on certain persons who, in the distribution of a private insolvent estate, pay any debt before they satisfy, in their proper relative order, obligations due the United States.

The following tabulation (prepared in the Office of Alien Property Custodian), indicating that the priorities are designed to give first relief to the smaller claimants and to the type of claimant who dealt with particular reference to the property involved, is believed useful:

Unsecured debt claims received through Dec. 31, 1945, classified according to basis of claim (partially estimated)

Basis of claim	Number of claims	Amount claimed
Total	3,200	$113,000,000
Wages	250	800,000
Services	650	4,600,000
Materials	68	5,000,000
Rent	50	400,000
Refunds	1,500	400,000
Insurance (benefit or surrender value)	80	700,000
Loans and advances	50	1,800,000
Unpaid drafts, checks, etc	60	9,900,000
Bonds	140	12,600,000
Interoffice balances of banks	12	40,500,000
Standstill agreements	122	13,000,000
Miscellaneous	218	23,300,000

Section 34 (h) makes it clear that priority shall not attach to claims acquired by the Custodian, solely by reason of their acquisition by him. The committee believe that to assert such priority, where the Custodian is successor to the former enemy owner, would be unduly prejudicial to American creditors.

Section 34 (i) is generally procedural in nature. It provides that the debt-claim provisions of the bill shall constitute the sole relief of creditors, except for their right to sue the original debtor or any other person liable. It is expressly provided that debt-claim suits heretofore filed under section 9 (a) shall not be continued and only suits to review the Custodian's determinations under the bill are maintainable with respect to debt claims. This is believed necessary to the effective operation of the debt-claim provisions of the bill. At the same time the Custodian's purchasers, lessees, and licensees are properly protected from liability, and a payment by the Custodian to any debt claimant constitutes a pro tanto discharge of the debt. Section 34 (i) is not, of course, intended to affect the special attachment procedure provided in section 32 (f) (Public Law 322) for cases of prospective return of property to friendly foreign residents or corporations.

Protection of a secured creditor or a creditor claiming a lien is afforded by the proviso in subsection (i). Such a claimant may proceed as a general creditor, without thereby waiving his security. In addition or alternatively, he may file a claim or suit as a title claimant for return of his security interest in the property or for just compensation in respect of that interest, in which event his recovery would be reduced, as in the case of any other such plaintiff, to the extent of any debt-claim payment made to him (or to any other claimant, if his claim as a title claimant was not filed in time to hold up debt-claim payments). It is believed that this arrangement is preferable to provision of a separate special procedure for secured creditors.

The requirement that the Custodian shall treat debt claims already on file as claims filed pursuant to the new provisions does not, of course, preclude him from eliciting additional information on the claims, including any information as to a security interest.

SECTION 35

This section merely confirms the necessary authority to prescribe rules and regulations for claims, including hearings and the issuance of subpenas, together with the associated authority to delegate such powers, as, for example, to hearing officers. The section is without prejudice to the existing authority, already expressed in section 5 (b) of the act, to require the furnishing of information.

SECTION 36

This section requires the payment of Federal, State, and local taxes by the Custodian, notwithstanding the fact that property vested in or transferred to him becomes the property of the United States. It has as its precedent section 24 of the Trading With the Enemy Act as it existed before World War II. By reason of doubts as to the continued applicability of section 24, the Custodian has reserved the payment of current taxes until further explicit authority is granted for the purpose. It is clearly to the detriment of State and local taxing bodies that

former enemy property in the hands of the Federal Government should be tax-free. It is equally unfair to owners of private enterprises that such competitive businesses as are directly operated by the Custodian should not be subjected to Federal, State, and local taxes. The committee are, therefore, of the opinion that this section is important and clearly desirable. It was formulated in conjunction with representatives of the Bureau of Internal Revenue as well as the other interested agencies.

Section 36 (a) states the principle that the vesting in or transfer to the Custodian of any property or interest during the present war, or the receipt by him of any earnings, increment or proceeds thereof, should not render inapplicable any Federal, State, Territorial, or local tax, whether such tax accrued prior or subsequent to vesting or transfer. In short, the tax provisions are designed to insure payment of taxes as nearly as possible as if Government ownership through vesting had not intervened.

At the request of the Federal Security Agency, express provision has been made for payment of retirement and survivorship benefits under title II of the Social Security Act (42 U. S. C., secs. 401–409). It would obviously be useless to pay employment taxes, as the bill contemplates, without correlative payment of corresponding benefits. These employment taxes and benefits would be payable only in a small number of cases where employees were retained or employed by vested business enterprises and thereby became, technically, employees of the United States but did not become entitled to the retirement benefits available to regular Federal employees. Without express reference to the Social Security Act in the pending legislation, such employees would also be precluded from receiving benefits based on their service under that act, so that they would be deprived of both Federal employee benefits and Social Security Act benefits.

By section 36 (b) the Custodian is required to pay taxes, but the time of payment is necessarily left flexible so as not to interfere with the proper administration of vested property. Such taxes, when paid by the Custodian, shall be paid out of the vested property of the particular former owner involved and not out of any general mass of enemy property. It is not intended that the payment of income taxes be limited strictly to those accruing on particular income received by the Custodian. The former owner's taxes, broadly speaking, are to be paid. But should he have unvested property which can be reached by the tax-collection authorities, it is expected that the unvested property will be primarily resorted to for payment of taxes on such property and on income derived therefrom. Again, consistently with orderly administration of enemy property, it is provided that enforcement against vested property cannot be had without the Custodian's consent, so that such property will not, for example, be subjected to distraint or tax sales. Further, the Custodian may sell property free and clear of taxes and hold the proceeds of sale for the payment of the taxes.

By virtue of section 36 (c) normal tax procedures would apply, except as subsection (b) may otherwise expressly provide. Subject to the qualifications already stated, payment will be in accordance with regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. The statutes of limitation on assessment, collection, refund, and credit of taxes are

suspended during the period of vesting and for 6 months thereafter, but no interest is payable on any refund with respect to any such period of suspension.

Section 36 (d) defines "tax" broadly to include all types of taxes, including, as noted, income taxes, as well as import duties and special assessments. In using the term "employment tax" it is intended to include contributions under State unemployment-compensation laws.

Section 36 (e) preserves existing express tax exemptions, such as that contained in section 1802 (c) (7) of the Internal Revenue Code, under which the stamp tax on the sale or transfer of stock certificates is not to be imposed upon any delivery or transfer—

From a foreign country or national thereof to the United States or any agency thereof, or to the government of any foreign country, directed pursuant to the authority vested in the President by section 5 (b) of the Trading With the Enemy Act * * *.

SECTION 37

By section 37 authority would be conferred upon the Custodian to insure vested properties. It is understood that the World War I Custodian carried insurance, but the present Custodian has been advised that doubt exists as to his authority in this connection by reason of the general rule that the Government is a self-insurer. He has, therefore, requested that the matter be explicitly determined by the Congress.

The cost of insurance is small in comparison to the possible consequences of noninsurance. It is generally desirable to preserve the value of vested property for satisfaction of claims and for such use as Congress may determine. Moreover a large amount of the property controlled by the Custodian is now protected by insurance, since it is held by corporations in which the Custodian has vested stock but which continue as separate entities. There is no sufficient reason why comparable property which has been vested directly in the Custodian should not similarly be protected by insurance.

AMENDMENT TO SECTION 32

Section 2 of the bill would amend subdivisions (C) and (D) of section 32 (a) (2) of the Trading With the Enemy Act as added by Public Law 322, approved March 8, 1946.

Under section 32 as it now stands, administrative returns of vested property may not in general be made to persons who were voluntarily resident in an enemy country, or to citizens of such country who were physically present in its territory or in territory occupied by it. The proposed amendment would remove these bars in the case of victims of Axis oppression who were deprived of life or of civil rights by discriminatory legislation against political, racial, or religious groups in the country where they resided or of which they were nationals. Such claimants will still, however, have to meet the other requirements of section 32, including the requirement that the return be found to be in the national interest. The committee believe that the proposed amendment to section 32 will be effective to afford relief to genuine victims of enemy persecution and yet will not open the door to claims by persons who in fact identified themselves with the Axis cause.

By subparagraph (C) of section 32 (a) (2) it is necessary, in order that a claimant might be eligible for a return of vested property by administrative action to establish that he is not—

an individual voluntarily resident at any time since December 7, 1941, within the territory of such [i. e. enemy] nation, other than a citizen of the United States or a diplomatic or consular officer of a nation with which the United States has not at any time since December 7, 1941, been at war.

The bill proposes to add the following qualification to this requirement:

Provided, That an individual who, while in the territory of a nation with which the United States has at any time since December 7, 1941, been at war, was deprived of life or substantially deprived of liberty pursuant to any law, decree, or regulation of such nation discriminating against political, racial, or religious groups, shall not be deemed to have voluntarily resided in such territory.

The House committee stated:

In employing the phrase "substantially deprived of liberty," the committee recognize that measures in terms addressed to deprivation of property rights may have so seriously impaired the victim's freedom to engage in basic pursuits as to constitute a substantial deprivation of liberty.

A trivial infringement or impairment of property rights, like a slight or noncontinuous interference with personal liberty, is too tenuously related to the fact of persecution to afford a basis for relief. The deprivation of liberty must be "substantial" in order to be given recognition; but it need not be a total deprivation. Deprivation of property which will be regarded as proof of persecution is that which so trenches upon the ownership or use or disposition of property as to prevent the victim from functioning as a free human being. It is not required that he be stripped of all his property in order to be given relief.

Subdivisions (C) and (D) of section 32 (a) (2) both employ the term "pursuant to any law, decree, or regulation." This language, of course, includes discrimination under color of such laws, decrees, or regulations.

The House committee gives the following explanation of certain terms in subdivision (D):

In administering this provision the committee anticipate that the phrase "any law, decree, or regulation * * * discriminating against political, racial, or religious groups" will be construed to include, laws, decrees, or regulations substantially reducing the degree of civil rights which are normally enjoyed. Further, the committee have used the term "abrogated" to refer to nullification of discriminatory laws, decrees, or regulations by the Allied forces or by the reconstituted governments established as a result of Allied action. It is not intended that relief be afforded to members of groups or factions, such as the Iron Guard in Rumania, which were at one time prescribed and later restored to favor by Axis influence.

As the Judiciary Committee of the House has pointed out, it is not intended that the administration of the law shall be clogged by the niceties and technicalities of foreign laws as to "rights of citizenship." The test is the substantial reduction of civil rights. Among these, as is recognized in subdivision (C), is the right not to be deprived of life or substantially deprived of liberty directly or through the substantial deprivation of property.

AMENDMENT OF PUBLIC LAW 382

Section 3 of the bill places Public Law 382, Seventy-ninth Congress, approved May 16, 1946, in its appropriate sequence in the Trading With the Enemy Act. Public Law 382 permits the shipment of relief supplies, to any country with which the United States is at war, after the date of cessatior of hostilities with such country. Public Law 382, as approved, has no section number. The present amendment makes it "section 38" of the Trading With the Enemy Act.

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Calendar No. 1875

79TH CONGRESS
2D SESSION

S. 2378

[Report No. 1839]

IN THE SENATE OF THE UNITED STATES

JUNE 27 (legislative day, MARCH 5), 1946

Mr. MCCARRAN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 26 (legislative day, JULY 5), 1946

Reported by Mr. HUFFMAN, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend the First War Powers Act, 1941.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the First War Powers Act, 1941 (55 Stat. 838), as amended, is hereby further amended by adding at the end of title III thereof the following:

"SEC. 305. The Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, is hereby further amended by inserting after section 32 thereof, and before the section added by Public Law 382, Seventy-ninth Congress, the following sections:

"'SEC. 33. (a) A foreign country or national thereof as defined pursuant to section 5 (b) hereof may not institute, prosecute, or further maintain a suit pursuant to section 9 (a) hereof in respect of any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof: *Provided*, That neither the Philippine Government nor any Philippine national shall, solely by reason of being, or having at any time been, domiciled in or a citizen or resident of the Philippines, be deemed a foreign national for purposes of any such suit.

"'(b) (1) Notwithstanding the provisions of section 7 (c) hereof, any person, other than a person who—

"'(A) would be barred by virtue of section 32 (a) (1) or (2) hereof from receiving a return of property; or

"'(B) has participated in any arrangement to conceal during the time of war any property or interest within the United States of any person who would be so barred; or

"'(C) has during the time of war and prior to the cessation of actual fighting done business within the territory (excluding that occupied by the military or naval

forces) of any nation with which the United States has at any time since December 7, 1941, been at war; or

"'(D) has during the time of war and prior to the cessation of actual fighting directly or indirectly acted with or aided or abetted any nation with which the United States has at any time since December 7, 1941, been at war,

may bring a suit against the United States in the Court of Claims for just compensation in respect of any property or interest taken from such person and vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941). No such suit shall, however, be instituted unless the plaintiff has, at least ninety days prior to its institution, filed a notice of claim pursuant to section 9 (a) or 32 hereof.

"'(2) In any suit under this subsection, the Attorney General may request the Secretary of State to certify to the Court of Claims that the government of the country of which the plaintiff is a citizen, or in which the plaintiff is incorporated, or has its principal place of business, has notified the Secretary of State that it will permit within its territory the taking of evidence according to the law and procedure of the Court of Claims, before a person

authorized to take evidence within the United States in cases instituted in the Court of Claims, and that, upon application of such person, the courts of that country will issue such process as may be necessary to compel the attendance and testimony of witnesses and the production, examination, and transcription of documents before him, unless issuance of process or disclosure of like testimony or evidence is prohibited by law in cases in its own courts. Upon such request, further prosecution of the suit may be stayed until the Secretary of State so certifies with respect to the government or governments referred to in the Attorney General's request and the suit may be dismissed unless the certification is made within a reasonable time. The Secretary of State shall certify to the Court of Claims any notification received hereunder from a foreign government.

"'(3) In any suit under this subsection, the plaintiff shall have the burden of proving all material facts, without benefit of any presumption with respect to ownership, control, residence or nationality. At the request of the defendant, the plaintiff shall produce for examination by the defendant and for use at the trial, any witness, document, record, book, book of account, file, or paper or other writing, which could be produced through legal process at the request of either party if the parties and the witness or evidence were within the United States, but the plaintiff shall be excused from

producing such witness or evidence if he satisfies the court that the witness or evidence is available to the defendant for examination and for use at the trial to the same extent as if they were within the United States, or can be made so available by the defendant through legal process. The court may stay further prosecution of the suit for failure by the plaintiff to produce any witness or evidence which he is obliged to produce hereunder and shall dismiss the suit if such witness or evidence is not produced within a reasonable time. It shall be no defense to a stay or dismissal hereunder that production of any such witnesses or evidence is prevented by reason of the laws of any foreign country, including, without limitation, laws respecting the secrecy of information with respect to ownership and control of property, transactions and communications, and laws respecting process, the privileges or immunities of parties and witnesses, the right of examination and cross-examination of witnesses, the execution of letters rogatory and the taking of depositions. The provisions of this paragraph (3) shall be applicable whether or not certification has been requested pursuant to paragraph (2) hereof.

"'(4) Any person authorized to take evidence within the United States in cases instituted in the Court of Claims may be designated by the chief justice of the Court of Claims to hold sessions at any place within or without the United

States to hear witnesses and take evidence in any case instituted under this subsection. Such person and stenographers and interpreters authorized by the court, and the attorneys for the United States and stenographers and interpreters authorized by the Attorney General, shall receive their necessary travel expenses and their actual expenses incurred for subsistence while traveling on duty outside the United States in an amount not to exceed $25 per day in the case of persons designated to hold such sessions and attorneys, and not to exceed $15 per day in the case of stenographers and interpreters. Allowances for expenses of travel and subsistence herein authorized shall be made by order of the Court of Claims or by direction of the Attorney General, as the case may be. They shall be deemed general administrative expenses of the Office of Alien Property Custodian and, upon certification by the chief justice of the Court of Claims or by the Attorney General, as the case may be, shall be paid as such by the Alien Property Custodian in accordance with law.

"'(c) If the court shall determine that the plaintiff is entitled to just compensation under subsection (b) hereof, it shall enter a finding of the value of the property or interest at the time of taking, as determined by the court. In determining such value at the time of taking, nothing shall be included on account of any patent, copyright or trade-mark,

or any portion thereof, or any application for or interest in such patent, copyright or trade-mark, which the court shall determine to be invalid. Against the value so found, the court shall credit the value of such part of the property or interest or proceeds as has been returned or paid to any claimant under this Act or tendered to the plaintiff. If, after such credit, the court shall determine that no amount remains to be awarded to the plaintiff, it shall dismiss the petition on the merits. If the court shall determine that an amount remains to be awarded, it shall enter a finding of such amount and upon the expiration of sixty days from the entry, shall enter judgment upon such finding unless, within such sixty days, a return or tender to the plaintiff has been made and notice thereof given to the court. In the event of such return or tender, the court shall modify the finding by deducting from the award the value of the property or interest or proceeds so returned or tendered, and shall enter judgment upon the modified finding. For the purposes of this subsection, determination of the value of any property or interest or proceeds returned or paid or tendered shall be as of the date of tender, whether or not accepted. All judgments rendered pursuant to this section shall be subject to review by the Supreme Court as provided in section 288 of title 28 of the United States Code.

"'(d) Any person who institutes a suit under sub-

section (b) hereof may not thereafter institute, prosecute, or further maintain a suit under section 9 (a) in respect of the same property or interest or the net proceeds thereof. The entry of a final judgment for the plaintiff in a suit under section 9 (a) for the payment or conveyance, transfer, assignment, or delivery of any property or interest or proceeds, or the entry in such a suit of a final judgment for the defendant on a ground or grounds which would preclude relief in a suit under subsection (b), shall bar the institution of any suit under subsection (b) in respect of the same property or interest.

"'(c) Legal representatives (whether or not appointed by a court in the United States) or successors in interest by inheritance, devise, bequest, or operation of law, other than persons themselves precluded from bringing suit under subsection (b) hereof, shall be eligible to institute, prosecute, and maintain suits, and to file notices of claim, under this section and section 9 (a) to the same extent as their principals or predecessors would have been.

"'SEC. ~~34~~ 33. No return may be made pursuant to section 9 (a) or 32 (a) unless notice of claim for return has been filed within two years from the seizure by or vesting in the Alien Property Custodian, as the case may be, of the property or interest in respect of which the claim is made or within two years from the date of enactment of this

section, whichever is later. No suit pursuant to section 9 (a) ~~or 33 (b)~~ may be instituted after the expiration of two years from the date of seizure by or vesting in the Alien Property Custodian, as the case may be, of the property or interest in respect of which relief is sought or from the date of enactment of this section, whichever is later, but in computing such two years there shall be excluded any period during which there was pending a claim for return pursuant to section 9 (a) or 32 hereof~~, or a suit pursuant to section 9 (a)~~.

"'SEC. ~~35~~ *34.* (a) Any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, shall be equitably applied by the Custodian in accordance with the provisions of this section to the payment of debts owed by the person who owned such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian. No debt claim shall be allowed under this section if it was not due and owing at the time of such vesting or transfer, or if it arose from any action or transactions prohibited by or pursuant to this Act and not licensed or otherwise authorized pursuant thereto, or (except in the case of debt claims acquired by the Custodian) if it was at the time

of such vesting or transfer due and owing to any person ~~who is precluded from bring suit under section 33 (b) hereof or who has since the beginning of the war been conviction of violation of this Act, as amended, sections 1–6~~ *who has since the beginning of the war been convicted of violation of this Act, as amended, sections 1–6* of the Criminal Code (18 U. S. C. 1–6), title I of the Act of June 15, 1917 (ch. 30, 40 Stat. 217), as amended; the Act of April 20, 1918 (ch. 59, 40 Stat. 534), as amended; the Act of June 8, 1934 (ch. 327, 52 Stat. 531), as amended; the Act of January 12, 1938 (ch. 2, 52 Stat. 3); title I, Alien Registration Act, 1940 (ch. 439, 54 Stat. 670); the Act of October 17, 1940 (ch. 897, 54 Stat. 1201); or the Act of June 25, 1942 (ch. 447, 56 Stat. 390). Any defense to the payment of such claims which would have been available to the debtor shall be available to the Custodian, except that the period from and after the beginning of the war shall not be included for the purpose of determining the application of any statute of limitations. Debt claims allowable hereunder shall include only those of citizens of the United States or of the Philippine Islands; those of corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia or the Philippine Islands; those of other natural persons who are and have been since the beginning of

the war residents of the United States and who have not during the war been interned or paroled pursuant to the Alien Enemy Act (50 U. S. C. 21); and those acquired by the Custodian. Legal representatives (whether or not appointed by a court in the United States) or successors in interest by inheritance, devise, bequest, or operation of law of debt claimants, other than persons *who would* themselves ~~precluded from bringing suit under section 33 (b) hereof~~ *be disqualified hereunder from allowance of a debt claim,* shall be eligible for payment to the same extent as their principals or predecessors would have been.

"'(b) The Custodian shall fix a date or dates after which the filing of debt claims in respect of any or all debtors shall be barred, and may extend the time so fixed, and shall give at least sixty days' notice thereof by publication in the Federal Register. In no event shall the time extend beyond the expiration of two years from the date of the last vesting in or transfer to the Custodian of any property or interest of a debtor in respect of whose debts the date is fixed, or from the date of enactment of this section, whichever is later. No debt shall be paid prior to the expiration of one hundred and twenty days after publication of the first such notice in respect of the debtor, nor in any event shall any payment of a debt claim be made out of any property or interest or proceeds in respect of which a proceeding pur-

suant to this Act for return or for just compensation is pending and was instituted prior to the expiration of such one hundred and twenty days.

"'(c) The Custodian shall examine the claims, and such evidence in respect thereof as may be presented to him or as he may introduce into the record, and shall make a determination, with respect to each claim, of allowance or disallowance, in whole or in part.'

"'(d) Payment of debt claims shall be made only out of such money included in, or received as net proceeds from the sale, use, or other disposition of, any property or interest owned by the debtor immediately prior to its vesting in or transfer to the Alien Property Custodian, as shall remain after deduction of (1) the amount of the expenses of the Office of Alien Property Custodian (including both expenses in connection with such property or interest or proceeds thereof, and such portion as the Custodian shall fix of the other expenses of the Office of Alien Property Custodian), and of taxes, as defined in section ~~37~~ *36* hereof, paid by the Custodian in respect of such property or interest or proceeds, and (2) such amount, if any, as the Custodian may establish as a cash reserve for the future payment of such expenses and taxes. If the money available hereunder for the payment of debt claims against the debtor is insufficient for the satisfaction of all claims allowed

by the Custodian, ratable payments shall be made in accordance with subsection (g) hereof to the extent permitted by the money available and additional payments shall be made whenever the Custodian shall determine that substantial further money has become available, through liquidation of any such property or interest or otherwise. The Custodian shall not be required through any judgment of any court, levy of execution, or otherwise to sell or liquidate any property or interest vested in or transferred to him, for the purpose of paying or satisfying any debt claim.

"'(e) If the aggregate of debt claims filed as prescribed does not exceed the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall pay each claim to the extent allowed, and shall serve by registered mail, on each claimant whose claim is disallowed in whole or in part, a notice of such disallowance. Within sixty days after the date of mailing of the Custodian's determination, any debt claimant whose claim has been disallowed in whole or in part may file in the District Court of the United States for the District of Columbia a complaint for review of such disallowance naming the Custodian as defendant. Such complaint shall be served on the Custodian. The Custodian, within forty-five days after service on him, shall certify and file in said court

a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to the claim in question. Upon good cause shown such time may be extended by the court. Such record shall include the claim as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, and the determination of the Custodian with respect thereto, including any findings made by him. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian, or could not reasonably have been adduced before him or was not available to him. The court shall enter judgment affirming, modifying, or reversing the Custodians determination, and directing payment in the amount, if any, which it finds due.

"'(f) If the aggregate of debt claims filed as prescribed exceeds the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall prepare and serve by registered mail on all claimants a schedule of all debt claims allowed and the proposed payment to each claimant. In preparing such schedule, the Custodian shall assign priorities in accordance with the provisions of subsection (g) hereof. Within sixty days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the District Court

of the United States for the District of Columbia a complaint for review of such schedule, naming the Custodian as defendant. A copy of such complaint shall be served upon the Custodian and on each claimant named in the schedule. The Custodian, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to such schedule. Upon good cause shown such time may be extended by the court. Such record shall include the claims in question as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, any findings or other determinations made by the Custodian with respect thereto, and the schedule prepared by the Custodian. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian or could not reasonably have been adduced before him or was not available to him. Any interested debt claimant who has filed a claim with the Custodian pursuant to this section, upon timely application to the court, shall be permitted to intervene in such review proceedings. The court shall enter judgment affirming or modifying the schedule as prepared by the Custodian and directing payment, if any be found due, pursuant to the schedule as affirmed or modified and to the extent of the money from

which, in accordance with subsection (d) hereof, payment may be made. Pending the decision of the court on such complaint for review, and pending final determination of any appeal from such decision, payment may be made only to an extent, if any, consistent with the contentions of all claimants for review.

"'(g) Debt claims shall be paid in the following order of priority: (1) Wage and salary claims, not to exceed $600; (2) claims entitled to priority under sections 191 and 193 of title 31 of the United States Code, except as provided in subsection (h) hereof; (3) all other claims for services rendered, for expenses incurred in connection with such services, for rent, for goods and materials delivered to the debtor, and for payments made to the debtor for goods or services not received by the claimant; (4) all other debt claims. No payment shall be made to claimants within a subordinate class unless the money from which, in accordance with subsection (d) hereof, payment may be made permits payment in full of all allowed claims in every prior class.

"'(h) No debt of any kind shall be entitled to priority under any law of the United States or any State, Territory, or possession thereof, or the District of Columbia, solely by reason of becoming a debt due or owing to the United

States as a result of its acquisition by the Alien Property Custodian.

"'(i) The sole relief and remedy available to any person seeking satisfaction of a debt claim out of any property or interest which shall have been vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the proceeds thereof, shall be the relief and remedy provided in this section, and suits for the satisfaction of debt claims shall not be instituted, prosecuted, or further maintained except in conformity with this section: *Provided,* That no person asserting any interest, right, or title in any property or interest or proceeds acquired by the Alien Property Custodian, shall be barred from proceeding pursuant to this Act for the return thereof or for just compensation in respect thereof, by reason of any proceeding which he may have brought pursuant to this section; nor shall any security interest asserted by the creditor in any such property or interest or proceeds be deemed to have been waived solely by reason of such proceeding. The Alien Property Custodian shall treat all debt claims now filed with him as claims filed pursuant to this section. Nothing contained in this section shall bar any person from the prosecution of any suit at law or in equity against

the original debtor or against any other person who may be liable for the payment of any debt for which a claim might have been filed hereunder. No purchaser, lessee, licensee, or other transferee of any property or interest from the Alien Property Custodian shall, solely by reason of such purchase, lease, license, or transfer, become liable for the payment of any debt owed by the person who owned such property or interest prior to its vesting in or transfer to the Alien Property Custodian. Payment by the Alien Property Custodian to any debt claimant shall constitute, to the extent of payment, a discharge of the indebtedness represented by the claim.

"'SEC. ~~36~~ *35*. The officer or agency empowered to entertain claims under sections 9 (a), 32, and ~~35~~ *34* hereof shall have power to hold such hearings as may be deemed necessary; to prescribe rules and regulations governing the form and contents of claims, the proof thereof, and all other matters related to proceedings on such claims; and in connection with such proceedings to issue subpenas, administer oaths, and examine witnesses. Such powers, and any other powers conferred upon such officer or agency by sections 9 (a), 32, and ~~35~~ *34* hereof may be exercised through subordinate officers designated by such officer or agency.

"'SEC. ~~37~~ *36*. (a) The vesting in or transfer to the Alien Property Custodian of any property or interest (other

than ~~and~~ *any* property or interest acquired by the United States prior to December 18, 1941), or the receipt by him of any earnings, increment, or proceeds thereof shall not render inapplicable any Federal, State, Territorial, or local tax for any period prior or subsequent to the date of such vesting or transfer, nor render applicable the exemptions provided in title II of the Social Security Act with respect to service performed in the employ of the United States Government or of any instrumentality of the United States.

"'(b) The Alien Property Custodian shall, notwithstanding the filing of any claim or the institution of any suit under this Act, pay any tax incident to any such property or interest, or the earnings, increment, or proceeds thereof, at the earliest time appearing to him to be not contrary to the interest of the United States. The former owner shall not be liable for any such tax accruing while such property, interest, earnings, increment, or proceeds are held by the Alien Property Custodian, unless they are returned pursuant to this Act without payment of such tax by the Alien Property Custodian. Every such tax shall be paid by the Alien Property Custodian to the same extent, as nearly as may be deemed practicable, as though the property or interest had not been vested in or transferred to the Alien Property Custodian, and shall be paid only out of the property or interest, or earnings, increment, or proceeds thereof, to

which they are incident or out of other property or interests acquired from the same former owner, or earnings, increment, or proceeds thereof. No tax liability may be enforced from any property or interest or the earnings, increment, or proceeds thereof while held by the Alien Property Custodian except with his consent. Where any property or interest is transferred, otherwise than pursuant to section 9 (a) ~~, 32, or 33~~ *or 32* hereof, the Alien Property Custodian may transfer the property or interest free and clear of any tax, except to the extent of any lien for a tax existing and perfected at the date of vesting, and the proceeds of such transfer shall, for tax purposes, replace the property or interest in the hands of the Alien Property Custodian.

"'(c) Subject to the provisions of subsection (b) hereof, the manner of computing any Federal taxes, including without limitation by reason of this enumeration, the applicability in such computation of credits, deductions, and exemptions to which the former owner is or would be entitled, and the time and manner of any payment of such taxes and the extent of any compliance by the Custodian with provisions of Federal law and regulations applicable with respect to Federal taxes, shall be in accordance with regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury to effectuate this section. Statutes of limitations on ~~assessments~~ *assessment*, collection,

refund, or credit of Federal taxes shall be suspended, with respect to any vested property or interest, or the earnings, increment or proceeds thereof, while vested and for six months thereafter; but no interest shall be paid upon any refund with respect to any period during which the statute of limitations is so suspended.

"'(d) The word "tax" as used in this section shall include, without limitation by reason of this enumeration, any property, income, excess-profits, war-profits, excise, estate and employment tax, import duty, and special assessment; and also any interest, penalty, additional amount, or addition thereto not arising from any act, omission, neglect, failure, or delay on the part of the Custodian.

"'(a) Any tax exemption accorded to the Alien Property Custodian by specific provision of existing law shall not be affected by this section.

"'SEC. ~~38~~ *37*. The Alien Property Custodian may procure insurance in such amounts, and from such insurers, as he believes will adequately protect him against loss in connection with property or interest or proceeds held by him.'"

SEC. 2. Subdivision (C) and (D) of section 32 (a) (2) of the Trading With the Enemy Act are hereby amended to read as follows:

"(C) an individual voluntarily resident at any time since December 7, 1941, within the territory of

such nation, other than a citizen of the United States or a diplomatic or consular officer of a nation with which the United States has not at any time since December 7, 1941, been at war: *Provided,* That an individual who, while in the territory of a nation with which the United States has at any time since December 7, 1941, been at war, was deprived of life or substantially deprived of liberty pursuant to any law, decree or regulation of such nation discriminating against political, racial or religious groups, shall not be deemed to have voluntarily resided in such territory; or

"(D) an individual who was at any time after December 7, 1941, a citizen or subject of a nation with which the United States has at any time since December 7, 1941, been at war, and who on or after December 7, 1941, and prior to the date of the enactment of this section, was present (other than in the service of the United States) in the territory of such nation or in any territory occupied by the military or naval forces thereof or engaged in any business in any such territory: *Provided,* That notwithstanding the provisions of this subdivision (D), return may be made to an individual who, as a consequence of any law, decree or regulation of the nation of which he was then a citizen or subject, discriminating against political, racial or re-

ligious groups, has at no time between December 7, 1941, and the time when such law, decree or regulation was abrogated, enjoyed full rights of citizenship under the law of such nation; or".

SEC. 3. The section added to The Trading With the Enemy Act by Public Law 382, Seventy-ninth Congress, is hereby amended by inserting ~~"39"~~ *"38"* after "SEC.".

Calendar No. 1875

70TH CONGRESS
2D SESSION

S. 2378

[Report No. 1839]

A BILL

To amend the First War Powers Act, 1941.

By Mr. McCARRAN

JUNE 27 (legislative day, MARCH 5), 1946
Read twice and referred to the Committee on the Judiciary

JULY 26 (legislative day, JULY 5), 1946
Reported with amendments

AMENDMENT OF FIRST WAR POWERS ACT, 1941

The bill (S. 2378) to amend the First War Powers Act, 1941, was announced as next in order.

The PRESIDENT pro tempore. There is on the calendar an identical House bill, which will be stated.

The CHIEF CLERK. A bill (H. R. 6890) to amend the First War Powers Act, 1941.

Mr. WALSH. Mr. President, I ask the Senator from Ohio, does the House bill change my amendment?

Mr. HUFFMAN. The House bill is identical with the Senate bill.

Mr. WALSH. The House bill excludes the section I want excluded?

Mr. HUFFMAN. Yes; section 33.

Mr. WALSH. So that it is not necessary for me to renew my amendment.

Mr. FERGUSON. Mr. President, the committee struck out section 33, which was the section objectionable to the Senator from Massachusetts.

The House included language on page 11, line 25, and I think to make it clear we should add after the word "a" the words "interest or proceeds in respect of which a suit or" and the words "a suit" should be inserted.

Then on page 12, at the foot of the page, the words "or return of just compensation" should be stricken out.

Mr. HUFFMAN. Mr. President, will the Senator yield?

Mr. FERGUSON. I am glad to yield.

Mr. HUFFMAN. Is the Senator referring to the House bill or the Senate bill? Are we not considering the House bill instead of the Senate bill?

The PRESIDENT pro tempore. The House bill is before the Senate.

Mr. HUFFMAN. I shall refer to the lines in the House bill. The same amendment may be inserted in the House bill in line 25, page 4, to strike out the words "or for just compensation."

Mr. FERGUSON. On page 17, lines 15 and 16, it is proposed to strike out the words "or for just compensation in respect thereof."

The PRESIDENT pro tempore. Will the Senator refer to that in the House bill?

Mr. HUFFMAN. That is in lines 15 and 16 on page 10 of the House bill.

Mr. FERGUSON. And on page 9 of the Senate bill, line 8, the words "a suit or", after the word "pending", should be inserted.

Mr. HUFFMAN. I do not have the corresponding place in the House bill, but it may be inserted at the appropriate place in the bill.

Mr. FERGUSON. In our report on page 6, lines, 1, 2, 3, 7 and 10, the words "just compensation" are mentioned. These references are I am sure inadvertent, and should be treated as eliminated from the report. They had reference to section 33 of the committee form of the bill, and section 33 was eliminated by an amendment.

Mr. HUFFMAN. Mr. President, with the former section 33 deleted, those words have no meaning, and they may be eliminated.

Mr. FERGUSON. I thank the Senator.

Mr. HUFFMAN. This I believe, makes the bill a clean bill.

The PRESIDENT pro tempore. Does the Senator offer the amendments?

Mr. HUFFMAN. I should like to have the clerk state the amendments of the committee.

The PRESIDENT pro tempore. The clerk has not the amendments before him.

Mr. BARKLEY. Mr. President, I suggest that we pass the bill over until Senators can get together on the amendments.

The PRESIDENT pro tempore. The bill will be passed over temporarily.

ments offered by the Senator from Michigan.

The amendments were agreed to.

Mr. TAFT. Mr. President, objection was made originally to consideration of the Senate bill. I want to be sure that the amendments take care of the situation. Under the measure as now amended an alien could bring no suit whatever, even though he were not an enemy alien, but were a resident of Great Britain, for example?

Mr. FERGUSON. That section has been stricken out.

Mr. TAFT. That section has been stricken out entirely?

Mr. FERGUSON. Yes.

The PRESIDENT pro tempore. The question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill (H. R. 6890) was read the third time and passed.

AMENDMENT OF FIRST WAR POWERS ACT

Mr. FERGUSON. Mr. President, I should like at this time to refer back to Calendar No. 1875, Senate bill 2378. I think we could pass the bill if the Senate were to agree to certain amendments to a similar House bill and pass that bill.

I ask unanimous consent that the Senate proceed to the consideration of House bill 6893, which is No. 1892 on the calendar and is similar to the Senate bill.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill (H. R. 6890) to amend the First War Powers Act, 1941.

Mr. FERGUSON. Mr. President, I offer the following amendments, and ask for their adoption:

On page 2, line 13, after the article "a" to insert "suit or."

On page 4, line 24, after the article "a" to insert "suit or."

On page 4, line 25, after the word "return", to strike out "or for just compensation."

And on page 10, line 15, after the word "thereof" to strike out "or for just compensation in respect thereof."

The PRESIDENT pro tempore. The question is on agreeing to the amend-

MESSAGE FROM THE SENATE

H. R. 6890. An act to amend the First War Powers Act, 1941; and

The message also announced that the Senate had passed, with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

AMENDMENT OF FIRST WAR POWERS ACT, 1941

Mr. SUMNERS of Texas. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H. R. 6890) to amend the First War Powers Act, 1941, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 2, line 13, after "a", insert "suit or."

Page 4, line 24, after "a", insert "suit or."

Page 4, line 25, strike out "or for just compensation."

Page 10, lines 15 and 16, strike out "or for just compensation in respect thereof."

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mr. MICHENER. Reserving the right to object, Mr. Speaker, will the gentleman tell us briefly the effect of the Senate amendments?

Mr. SUMNERS of Texas. Mr. Speaker, the Senate amendment on page 2 simply inserts the words "suit or" so that it will read "pending a suit or claim." I must confess I cannot appreciate the necessity for that language, but the Senate seemed to consider it of sufficient importance to include it. The administrative agencies find no objection to it, and I cannot see any. I believe my colleague has the same attitude toward it.

On page 4 there is a similar amendment in line 24. The words "suit or" are added.

In line 25, the words "or for just compensation" are stricken out. In other words, that will not be sought under the provisions of this bill, but, of course, the gentleman appreciates there are other provisions of the law under which just compensation can be sought. A similar amendment is provided on page 10. This language was stricken by the Senate and the purpose of the last amendment is the same as the previous one.

Mr. MICHENER. This bill is the one in which the Alien Property Custodian is primarily interested and it is agreed to by all of the departments of government?

Mr. SUMNERS of Texas. That is correct.

Mr. MICHENER. It was explained on the floor within the last couple of days.

Mr. SUMNERS of Texas. I thank my colleague for his observations.

Mr. MICHENER. The Senate has made these changes which may seem minor. But the Alien Property Custodian and his counsel, the very able Mr. Berger, have surveyed the whole situation. While they would prefer to have the amendments eliminated, they know that there will be no bill without the amendments. Therefore, they are in favor of the bill with the amendments.

Mr. SUMNERS of Texas. That is correct.

Mr. MICHENER. Mr. Speaker, I ask unanimous consent at this point to include a copy of a letter addressed to the chairman of the committee, the gentleman from Texas [Mr. SUMNERS], by the Alien Property Custodian, concerning these particular amendments.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

Mr. SUMNERS of Texas. I thank my colleague. I was just going to make the same request.

(The letter referred to is as follows:)

JULY 30, 1946.

Hon. HATTON W. SUMNERS,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D. C.

DEAR MR. SUMNERS: You have requested a statement of my views as to the effect of the Senate amendments to H. R. 6890 upon the administration of this office.

I am able to advise you that, in my opinion, the bill, if finally passed with the Senate amendments, will be workable. In view of the shortness of time before the end of the session and other circumstances, I recommend that the House concur in the Senate amendments without asking for a conference, in order to insure final passage of the legislation at this time.

The amendments, with my specific comments, are as follows:

1. On page 2, line 13, insert after the article "a" the words "suit or."

Comment: I am not sure that I appreciate the purpose of this amendment and I think it tends to create confusion but it is not of sufficient importance to warrant making an issue. I would greatly appreciate, however, your making a statement on the floor to the following effect:

(a) that this amendment is not to be regarded as implying that there is judicial review under section 32; and

(b) that this amendment is not intended to interfere with or alter the doctrine of res judicata as applied to suits under section 9 (a).

2. On page 4, line 24, insert after the article "a" the words "suit or."

Comment: This is an entirely harmless amendment.

3. On page 4, line 25, strike out the words "or for just compensation."

Comment: This is, in my opinion, a justifiable amendment in view of the deletion from the bill of section 33 which expressly provided for suits for just compensation. While I do not contest the amendment, it must be recognized that the courts may still hold in pending litigation that an implied remedy of just compensation exists, although (in the absence of section 33) this would be under the Tucker Act rather than under the Trading with the Enemy Act.

4. On page 10, lines 15–16, strike out the words "or for just compensation in respect thereof."

Comment: My comment on this is the same as my comment on the last preceding amendment.

Sincerely yours,

JAMES E. MARKHAM,
Alien Property Custodian.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Senate amendments were concurred in.

A motion to reconsider was laid on the table.

The message further announced that the House had severally agreed to the amendments of the Senate to the following bills of the House:

H. R. 6890. An act to amend the First War Powers Act, 1941; and

MESSAGE FROM THE HOUSE

[PUBLIC LAW 671—79TH CONGRESS]

[CHAPTER 878—2D SESSION]

[H. R. 6890]

AN ACT

To amend the First War Powers Act, 1941.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the First War Powers Act, 1941 (55 Stat. 838), as amended, is hereby further amended by adding at the end of title III thereof the following:

"SEC. 305. The Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, is hereby further amended by inserting after section 32 thereof, and before the section added by Public Law 382, Seventy-ninth Congress, the following sections:

"'SEC. 33. No return may be made pursuant to section 9 (a) or 32 (a) unless notice of claim for return has been filed within two years from the seizure by or vesting in the Alien Property Custodian, as the case may be, of the property or interest in respect of which the claim is made or within two years from the date of enactment of this section, whichever is later. No suit pursuant to section 9 (a) may be instituted after the expiration of two years from the date of seizure by or vesting in the Alien Property Custodian, as the case may be, of the property or interest in respect of which relief is sought or from the date of enactment of this section, whichever is later, but in computing such two years there shall be excluded any period during which there was pending a suit or claim for return pursuant to section 9 (a) or 32 hereof.

"'SEC. 34. (a) Any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, shall be equitably applied by the Custodian in accordance with the provisions of this section to the payment of debts owed by the person who owned such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian. No debt claim shall be allowed under this section if it was not due and owing at the time of such vesting or transfer, or if it arose from any action or transactions prohibited by or pursuant to this Act and not licensed or otherwise authorized pursuant thereto, or (except in the case of debt claims acquired by the Custodian) if it was at the time of such vesting or transfer due and owing to any person who has since the beginning of the war been convicted of violation of this Act, as amended, sections 1–6 of the Criminal Code (18 U. S. C. 1–6), title I of the Act of June 15, 1917 (ch. 30, 40 Stat. 217), as amended; the Act of April 20, 1918 (ch. 59, 40 Stat. 534), as amended; the Act of June 8, 1934 (ch. 327, 52 Stat. 631), as amended; the Act of January 12, 1938 (ch. 2, 52 Stat. 3); title I, Alien Registration Act, 1940 (ch. 439, 54 Stat. 670); the Act of October 17, 1940 (ch. 897, 54 Stat. 1201); or the Act of June 25, 1942 (ch. 447, 56 Stat. 390). Any defense to the payment of such claims which would have been available to the debtor shall be available to the Custodian, except that the period from and after the beginning of the war shall not be included for the purpose

of determining the application of any statute of limitations. Debt claims allowable hereunder shall include only those of citizens of the United States or of the Philippine Islands; those of corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia or the Philippine Islands; those of other natural persons who are and have been since the beginning of the war residents of the United States and who have not during the war been interned or paroled pursuant to the Alien Enemy Act (50 U. S. C. 21); and those acquired by the Custodian. Legal representatives (whether or not appointed by a court in the United States) or successors in interest by inheritance, devise, bequest, or operation of law of debt claimants, other than persons who would themselves be disqualified hereunder from allowance of a debt claim, shall be eligible for payment to the same extent as their principals or predecessors would have been.

"'(b) The Custodian shall fix a date or dates after which the filing of debt claims in respect of any or all debtors shall be barred, and may extend the time so fixed, and shall give at least sixty days' notice thereof by publication in the Federal Register. In no event shall the time extend beyond the expiration of two years from the date of the last vesting in or transfer to the Custodian of any property or interest of a debtor in respect of whose debts the date is fixed, or from the date of enactment of this section, whichever is later. No debt shall be paid prior to the expiration of one hundred and twenty days after publication of the first such notice in respect of the debtor, nor in any event shall any payment of a debt claim be made out of any property or interest or proceeds in respect of which a suit or proceeding pursuant to this Act for return is pending and was instituted prior to the expiration of such one hundred and twenty days.

"'(c) The Custodian shall examine the claims, and such evidence in respect thereof as may be presented to him or as he may introduce into the record, and shall make a determination, with respect to each claim, of allowance or disallowance, in whole or in part.

"'(d) Payment of debt claims shall be made only out of such money included in, or received as net proceeds from the sale, use, or other disposition of, any property or interest owned by the debtor immediately prior to its vesting in or transfer to the Alien Property Custodian, as shall remain after deduction of (1) the amount of the expenses of the Office of Alien Property Custodian (including both expenses in connection with such property or interest or proceeds thereof, and such portion as the Custodian shall fix of the other expenses of the Office of Alien Property Custodian), and of taxes, as defined in section 36 hereof, paid by the Custodian in respect of such property or interest or proceeds, and (2) such amount, if any, as the Custodian may establish as a cash reserve for the future payment of such expenses and taxes. If the money available hereunder for the payment of debt claims against the debtor is insufficient for the satisfaction of all claims allowed by the Custodian, ratable payments shall be made in accordance with subsection (g) hereof to the extent permitted by the money available and additional payments shall be made whenever the Custodian shall determine that substantial further money has become available, through liquidation of any such property or interest or otherwise. The Custodian shall

not be required through any judgment of any court, levy of execution, or otherwise to sell or liquidate any property or interest vested in or transferred to him, for the purpose of paying or satisfying any debt claim.

"'(e) If the aggregate of debt claims filed as prescribed does not exceed the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall pay each claim to the extent allowed, and shall serve by registered mail, on each claimant whose claim is disallowed in whole or in part, a notice of such disallowance. Within sixty days after the date of mailing of the Custodian's determination, any debt claimant whose claim has been disallowed in whole or in part may file in the District Court of the United States for the District of Columbia a complaint for review of such disallowance naming the Custodian as defendant. Such complaint shall be served on the Custodian. The Custodian, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to the claim in question. Upon good cause shown such time may be extended by the court. Such record shall include the claim as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, and the determination of the Custodian with respect thereto, including any findings made by him. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian, or could not reasonably have been adduced before him or was not available to him. The court shall enter judgment affirming, modifying, or reversing the Custodian's determination, and directing payment in the amount, if any, which it finds due.

"'(f) If the aggregate of debt claims filed as prescribed exceeds the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall prepare and serve by registered mail on all claimants a schedule of all debt claims allowed and the proposed payment to each claimant. In preparing such schedule, the Custodian shall assign priorities in accordance with the provisions of subsection (g) hereof. Within sixty days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Custodian as defendant. A copy of such complaint shall be served upon the Custodian and on each claimant named in the schedule. The Custodian, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to such schedule. Upon good cause shown such time may be extended by the court. Such record shall include the claims in question as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, any findings or other determinations made by the Custodian with respect thereto, and the schedule prepared by the Custodian. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian or could not reasonably have been adduced before him or was not available to him. Any interested debt claimant who has filed a claim with the Custodian pursuant to this section, upon timely application to the

court, shall be permitted to intervene in such review proceedings. The court shall enter judgment affirming or modifying the schedule as prepared by the Custodian and directing payment, if any be found due, pursuant to the schedule as affirmed or modified and to the extent of the money from which, in accordance with subsection (d) hereof, payment may be made. Pending the decision of the court on such complaint for review, and pending final determination of any appeal from such decision, payment may be made only to an extent, if any, consistent with the contentions of all claimants for review.

"'(g) Debt claims shall be paid in the following order of priority: (1) Wage and salary claims, not to exceed $600; (2) claims entitled to priority under sections 191 and 193 of title 31 of the United States Code, except as provided in subsection (h) hereof; (3) all other claims for services rendered, for expenses incurred in connection with such services, for rent, for goods and materials delivered to the debtor, and for payments made to the debtor for goods or services not received by the claimant; (4) all other debt claims. No payment shall be made to claimants within a subordinate class unless the money from which, in accordance with subsection (d) hereof, payment may be made permits payment in full of all allowed claims in every prior class.

"'(h) No debt of any kind shall be entitled to priority under any law of the United States or any State, Territory, or possession thereof, or the District of Columbia, solely by reason of becoming a debt due or owing to the United States as a result of its acquisition by the Alien Property Custodian.

"'(i) The sole relief and remedy available to any person seeking satisfaction of a debt claim out of any property or interest which shall have been vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the proceeds thereof, shall be the relief and remedy provided in this section, and suits for the satisfaction of debt claims shall not be instituted, prosecuted, or further maintained except in conformity with this section: *Provided*, That no person asserting any interest, right, or title in any property or interest or proceeds acquired by the Alien Property Custodian, shall be barred from proceeding pursuant to this Act for the return thereof, by reason of any proceeding which he may have brought pursuant to this section; nor shall any security interest asserted by the creditor in any such property or interest or proceeds be deemed to have been waived solely by reason of such proceeding. The Alien Property Custodian shall treat all debt claims now filed with him as claims filed pursuant to this section. Nothing contained in this section shall bar any person from the prosecution of any suit at law or in equity against the original debtor or against any other person who may be liable for the payment of any debt for which a claim might have been filed hereunder. No purchaser, lessee, licensee, or other transferee of any property or interest from the Alien Property Custodian shall, solely by reason of such purchase, lease, license, or transfer, become liable for the payment of any debt owed by the person who owned such property or interest prior to its vesting in or transfer to the Alien Property Custodian. Payment by the Alien Property Custodian to any debt claimant shall constitute, to the

extent of payment, a discharge of the indebtedness represented by the claim.

"'SEC. 35. The officer or agency empowered to entertain claims under sections 9 (a), 32, and 34 hereof shall have power to hold such hearings as may be deemed necessary; to prescribe rules and regulations governing the form and contents of claims, the proof thereof, and all other matters related to proceedings on such claims; and in connection with such proceedings to issue subpenas, administer oaths, and examine witnesses. Such powers, and any other powers conferred upon such officer or agency by sections 9 (a), 32, and 34 hereof may be exercised through subordinate officers designated by such officer or agency.

"'SEC. 36. (a) The vesting in or transfer to the Alien Property Custodian of any property or interest (other than any property or interest acquired by the United States prior to December 18, 1941), or the receipt by him of any earnings, increment, or proceeds thereof shall not render inapplicable any Federal, State, Territorial, or local tax for any period prior or subsequent to the date of such vesting or transfer, nor render applicable the exemptions provided in title II of the Social Security Act with respect to service performed in the employ of the United States Government or of any instrumentality of the United States.

"'(b) The Alien Property Custodian shall, notwithstanding the filing of any claim or the institution of any suit under this Act, pay any tax incident to any such property or interest, or the earnings, increment, or proceeds thereof, at the earliest time appearing to him to be not contrary to the interest of the United States. The former owner shall not be liable for any such tax accruing while such property, interest, earnings, increment, or proceeds are held by the Alien Property Custodian, unless they are returned pursuant to this Act without payment of such tax by the Alien Property Custodian. Every such tax shall be paid by the Alien Property Custodian to the same extent, as nearly as may be deemed practicable, as though the property or interest had not been vested in or transferred to the Alien Property Custodian, and shall be paid only out of the property or interest, or earnings, increment, or proceeds thereof, to which they are incident or out of other property or interests acquired from the same former owner, or earnings, increment, or proceeds thereof. No tax liability may be enforced from any property or interest or the earnings, increment, or proceeds thereof while held by the Alien Property Custodian except with his consent. Where any property or interest is transferred, otherwise than pursuant to section 9 (a) or 32 hereof, the Alien Property Custodian may transfer the property or interest free and clear of any tax, except to the extent of any lien for a tax existing and perfected at the date of vesting, and the proceeds of such transfer shall, for tax purposes, replace the property or interest in the hands of the Alien Property Custodian.

"'(c) Subject to the provisions of subsection (b) hereof, the manner of computing any Federal taxes, including without limitation by reason of this enumeration, the applicability in such computation of credits, deductions, and exemptions to which the former owner is or would be entitled, and the time and manner of any payment of such taxes and the extent of any compliance by the Custodian with provisions of Federal law and regulations applicable with respect to

Federal taxes, shall be in accordance with regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury to effectuate this section. Statutes of limitations on assessment, collection, refund, or credit of Federal taxes shall be suspended, with respect to any vested property or interest, or the earnings, increment or proceeds thereof, while vested and for six months thereafter; but no interest shall be paid upon any refund with respect to any period during which the statute of limitations is so suspended.

"'(d) The word "tax" as used in this section shall include, without limitation by reason of this enumeration, any property, income, excess-profits, war-profits, excise, estate and employment tax, import duty, and special assessment; and also any interest, penalty, additional amount, or addition thereto not arising from any act, omission, neglect, failure, or delay on the part of the Custodian.

"'(e) Any tax exemption accorded to the Alien Property Custodian by specific provision of existing law shall not be affected by this section.

"'SEC. 37. The Alien Property Custodian may procure insurance in such amounts, and from such insurers, as he believes will adequately protect him against loss in connection with property or interest or proceeds held by him.'"

SEC. 2. Subdivisions (C) and (D) of section 32 (a) (2) of the Trading With the Enemy Act are hereby amended to read as follows:

"(C) an individual voluntarily resident at any time since December 7, 1941, within the territory of such nation, other than a citizen of the United States or a diplomatic or consular officer of a nation with which the United States has not at any time since December 7, 1941, been at war: *Provided*, That an individual who, while in the territory of a nation with which the United States has at any time since December 7, 1941, been at war, was deprived of life or substantially deprived of liberty pursuant to any law, decree or regulation of such nation discriminating against political, racial or religious groups, shall not be deemed to have voluntarily resided in such territory; or

"(D) an individual who was at any time after December 7, 1941, a citizen or subject of a nation with which the United States has at any time since December 7, 1941, been at war, and who on or after December 7, 1941, and prior to the date of the enactment of this section, was present (other than in the service of the United States) in the territory of such nation or in any territory occupied by the military or naval forces thereof or engaged in any business in any such territory: *Provided*, That notwithstanding the provisions of this subdivision (D), return may be made to an individual who, as a consequence of any law, decree or regulation of the nation of which he was then a citizen or subject, discriminating against political, racial or religious groups, has at no time between December 7, 1941, and the time when such law, decree or regulation was abrogated, enjoyed full rights of citizenship under the law of such nation; or".

SEC. 3. The section added to The Trading With the Enemy Act by Public Law 382, Seventy-ninth Congress, is hereby amended by inserting "38" after "SEC.".

Approved August 8, 1946.

LISTING OF REFERENCE MATERIALS

U.S. Congress. House. Committee on the Judiciary. *Administration of Alien Property. Hearings . . . 79th Congress, 2d session, on H.R. 5089.*

U.S. Congress. Senate. Committee on the Judiciary. *Administration of Alien Property (First War Powers Act, 1941). Hearings . . . 79th Congress, 2d session, on S. 2378.*