The original documents are located in Box 54, folder "1975/12/03 - Economic Policy Board" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

December 1, 1975

MEMORANDUM FOR: L. WILLIAM SEIDMAN
JOHN O. MARSH, JR.
PAUL O'NEILL

There are attached three documents dealing with Common Situs Picketing: (1) a memorandum on the legislative status of the Common Situs Picketing legislation which describes each of the major amendments and their status; (2) an analysis of the key votes on Situs Picketing in the Senate and a copy of the voting record in the House; and (3) a copy of my letter dated November 17, 1975 to Senator Javits dealing with the merits of the legislation. These memoranda are designed to be informational. They do not seek to appraise analytically the pros and cons of the legislation.

Attachments

John T. Dunlop

STATUS OF THE COMMON SITUS PICKETING LEGISLATION

I. BACKGROUND

The proposed construction common situs picketing legislation would permit a construction union to engage in otherwise lawful picketing at a construction site even though it may have a dispute with only one of the contractors. The impetus for this legislation can be traced back to the decision in NLRB v. Denver Building Trades Council, 341 U. S. 675 (1951). In that case, it was held that the contractors and subcontractors on a construction project are separate legal entities for the purposes of the secondary boycott provisions of the National Labor Relations Act. Therefore, picketing against one contractor or subcontractor was held unlawful when the effect was to induce the employees of other contractors or subcontractors to refuse to work at the site. Rules have been subsequently developed that have allowed a separate or reserved gate to be established for the employees and suppliers of the employer with whom there is a labor dispute. In such a case, the union must restrict its picketing at the construction site to that gate. Where there is no reserved gate, broader picketing would be allowed.

In philosophical terms construction workers and their unions look at a single construction project - building or factory - and regard it as an entity regardless of the fact they may work for several different contractors. The

project goes up together; it is an entity when finished; the wages, hours and working conditions of one craft influence closely those of another. On one project two crafts may work for one contractor; or on another part of the same project they may work for two different contractors. The workers and unions see a project as an industrial relations whole. Contractors on a single job in this view are not true neutrals; the unions urge that contractors in construction be regarded as interdependent as contracting in the garment industry is regarded by law.

In contrast, contractors see a project as comprised of a number of different business enterprises, each with their own balance sheet. In the contractor view each contractor, after a contract has been let to perform a portion of the project, is free to perform work as it sees fit and hence needs to be protected from union conduct directed toward other contractors on the same site.

II. SUMMARY OF THE LEGISLATION

H.R. 5900 (on which Secretary Dunlop testified on June 5, 1975) would amend the secondary boycott provisions of the National Labor Relations Act (section 8(b)(4)) to make it clear that common situs picketing would be permitted even though it has an effect on secondary employers who are jointly engaged as joint venturers or who are in the relationship of contractor and subcontractors with the primary employer on a construction project. The bill contained a special requirement of a 10-day notice on Defense and NASA projects. The bill would not permit:

(1) activities otherwise unlawful under the NLRA;

(2) activities in violation of an existing collective bargaining contract (e.g., a no-strike clause);

(3) activities when the issues in the dispute involve a union which represents employees of an employer not primarily engaged in the construction industry; and

(4) picketing for the purpose of excluding an employee because of race, creed, color, or national origin.

III. TESTIMONY OF SECRETARY DUNLOP

Secretary Dunlop appeared before the House Labor Subcommittee on June 5, 1975 and before the Senate Labor Subcommittee on July 10, 1975 to discuss the pending common situs picketing legislation. He stated that over the past 25 years, four Presidents, their Secretaries of Labor, and many Members of Congress from both parties have supported enactment of legislation similar in purpose to H.R. 5900 and S. 1479. He referred to former Secretary of Labor George P. Shultz's testimony which outlined five recommended principles or safeguards to be incorporated into the legislation. These were: (1) other than common situs picketing, no presently unlawful activity should be transformed into lawful activity; (2) the legislation should not apply to general contractors and subcontractors operating under State laws requiring direct and separate contracts on State or municipal projects; (3) the interests of industrial and independent unions must be protected; (4) the legislation should include language to permit enforceability of no-strike clauses of contracts by injunction; and (5) the legislation should encourage the private settlement of disputes which could lead to the total shutting down of a construction project by such means as a requirement for giving notice prior to picketing and limiting the duration of picketing. As Secretary Dunlop indicated, most of these

principles had been incorporated into the bills then pending or have been the subject of subsequent developments in case law or can be dealt with by appropriate legislative history.

In his testimony, Secretary Dunlop expanded Secretary Shultz's fifth point. He suggested the requirement of 10-days notice of intent to picket to the standard national labor and management organizations engaged in collective bargaining in the industry whose local unions or member contractors are involved in or affected by the dispute. He also suggested the requirement that before a local union may engage in picketing, such picketing should be authorized by the local's national union or in the alternative, consideration be given to authorization through a tripartite arbitration process. Further, he suggested that the national union should not be held liable for any damages arising out of such authorization. These three suggestions have been incorporated into the legislation (see discussion below). The union authorization rather than the arbitration approach was selected. Lastly, he suggested a 30-day limit on duration of picketing. This provision was not incorporated.

It should also be noted that during the course of his testimony before the Subcommittees, Secretary Dunlop stated that his experience has lead him to the conclusion that the legal framework surrounding collective bargaining in the construction industry is in need of revision. He concluded

by saying that he would like to reappear before the Sub-committees to discuss detailed suggestions and proposed legislation dealing generally with this matter. He did return to discuss the Construction Industry Collective Bargaining Act of 1975 which has passed the House as H.R. 9500 and the Senate as Title II of H.R. 5900.

IV. AMENDMENTS TO THE BILL

As the bill progressed through the House and Senate, several amendments were added to the bills as introduced. Discussed below are the amendments of the House Committee on Education and Labor, those adopted on the floor of the House, those made by the Senate Committee on Labor and Public Welfare, and those adopted during the debate on the Senate floor. The last section of this part discusses the Construction Industry Collective Bargaining Bill which, as previously mentioned, was passed as a separate bill (H.R. 9500) in the House and as a separate title to H.R. 5900 in the Senate.

A. AMENDMENTS OF THE HOUSE COMMITTEE ON EDUCATION AND LABOR

The four amendments adopted by the House Committee are not likely to be eliminated in conference since the Senate Committee used the House reported bill as a basis for its action. Nothing in the House reported bill was dropped by the Senate Committee.

The following amendments were accepted by the House Committee during its deliberations of H.R. 5900.

(1) Ten-Day Notice and National Union Authorization

By Congressman Esch:

> Provided further, That a labor organization before engaging in activity permitted by the above proviso shall provide prior written notice of intent to strike or to

refuse to perform services, of not less than ten days to all unions and the employer and the general contractor at the site and to any national or international labor organization of which the labor organization involved is an affiliate and to the Collective Bargaining Committee in Construction: Provided further, That at any time after the expiration of ten days from the transmittal of such notice, the labor organization may engage in activities permitted by the above provisos if the national or international labor organization of which the labor organization involved is an affiliate gives notice in writing authorizing such action: Provided further, That authorization of such action by the national or international labor organization shall not render it subject to any criminal or civil liability arising from activities notice of which was given pursuant to the above provisos.

This amendment incorporated three of Secretary Dunlop's suggestions: 10-days notice of intent to picket and authorization by the national or international labor organization of its local union's picketing. It further states that the national or international shall not be subject to civil or criminal liability as a result of any activities of which it has been given notice. The Senate passed identical language but added it to different provisions of the bill (see discussions below).

The amendment was accepted without objection.

(2) Sex Discrimination Picketing

By Congressman Thompson:

Add the underlined word: Provided further, That nothing in the above provisos shall be construed to authorize picketing, threatening to picket, or causing to be picketed, any employer where an object thereof is the removal or exclusion from the site of any employee on the ground of sex, race, creed, color, or national origin:

This amendment makes it clear that the bill does not authorize picketing for an objective of sex discrimination.

The amendment was approved without objection.

(3) Protection of Independent Unions

By Congressmen Esch and Quie:

> Provided further, That nothing in the above provisos shall be construed to permit any attempt by a labor organization to require an employer to recognize or bargain with any labor organization if another labor organization is lawfully recognized as the representative of his employees:

As explained in the House Committee report, this amendment was designed to prevent common situs picketing as a means of driving out the so-called "independent unions" which were not affiliated with the AFL-CIO.

The report does not indicate if any opposition was voiced to the amendment. It was adopted.

(4) Otherwise Unlawful Activities

By Congressman Esch:

> Provided further, Except as provided in the above proviso nothing herein shall be construed to permit any act or conduct which was or may have been an unfair labor practice under this subsection:

As originally drafted, H.R. 5900 authorized common situs picketing only when the labor dispute was "not unlawful" under the Labor Act. The amendment was introduced to clarify that except for those activities permitted by the first proviso of the bill, no other act or conduct which heretofore was or may have been an unfair labor practice was authorized.

The House report does not indicate if opposition was voiced to the amendment. It was adopted.

B. AMENDMENTS TO H.R. 5900 WHICH WERE ACCEPTED DURING CONSIDERATION ON THE FLOOR OF THE HOUSE REPRESENTATIVES

(1) State Bidding Laws.

By Congressman Esch:

> Provided further, That nothing in the above proviso shall be construed to permit any picketing of a common situs by a labor organization where a State law requires that separate bids and direct awards to an employer in conformity with the requirements of applicable State law, and such State and employer are not to be considered joint venturers, contractors and subcontractors in relationship with each other or with any other employer at the common site:

As explained by Congressman Esch, some States have laws requiring public agencies to advertise for bids on the component parts in the construction of public facilities. The contracts to each are to be awarded on the basis of the lowest responsible bidder. As a result, the successful contractors are not in the relation of contractors, subcontractors, or joint venturers.

This was one of Secretary Shultz's "five points."

Chairman Thompson opposed the amendment on the Floor on the basis that the legislative history, embodied in the House Committee report, made it clear "that the bill, H.R. 5900, does not apply in the circumstances, as the various employees would not be jointly engaged in the project because the State law would in effect nullify other

consequences which would flow otherwise from the commonality of purpose and operations." He stated that the amendment was therefore redundant.

The amendment was accepted on a recorded vote of 229-175. It is expected that a provision similar to this will be retained by the Conferees since it is substantially similar to a proposed new section 8(h) added by the Senate Committee and present in the Senate-passed bill. (See IV:C.1)

(2) Union Membership Discrimination

By Congressman Esch:

> Provided further, That nothing in the above proviso shall be construed to authorize picketing, threatening to picket, or causing to be picketed, any employer where an object thereof is to cause or attempt to cause an employer to discriminate against any employee, or to discriminate against an employee with respect to whom membership in a labor organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership:

Congressman Esch explained that the amendment was intended to clarify the point that there is an inherent right of individuals not to join labor organizations. He conceded that sections 8(a)(3) and 8(b)(2) (which prohibit discrimination against any employee because of union membership or non-membership) protect the individual in this regard, but the amendment was offered to make it clear that Congress by permitting a common situs picketing was not allowing it for reasons that would "interfere with an individual's right to join or right not to join a labor organization."

The amendment was agreed to without a vote.

It is expected that the Senate Conferees will not accept this language. However, the Senate Committee added language that would achieve a similar objective. (Discussed below at IV.C.3)

(3) Product Boycotts

By Congressman Esch:

> Provided further, That nothing in the above proviso shall be construed to permit any picketing of a common situs by a labor organization to force, require or persuade any person to cease or refrain from using, selling, purchasing, handling, transporting, specifying, installing, or otherwise dealing in the products or systems of any other producer, processor or manufacturer:

Congressman Esch explained that the purpose of the amendment was one of clarification. Under existing law, where there is an otherwise lawful product boycott involving prefabricated products, labor organizations may picket at a separate gate. The amendment is aimed at insuring that such a product boycott cannot be extended to the entire construction site.

The amendment was accepted on a recorded vote of 204-188.

It is expected that this language will be retained by the Conferees since it is identical to an amendment proposed by Senator Randolph and adopted 93-0.

(4) Employers Primarily Engaged in the Construction Industry

By Congressman Ashbrook:

Amends the language of the first proviso to change the language from "employed by any person" to "employed by any employer primarily engaged in the construction industry".

The Committee report stated that H.R. 5900 is limited to individuals employed by "persons in the construction industry." The purpose of the amendment was to clarify this to insure that the common situs picketing could not be directed against employees who are employed in other industries, State government employees or employees covered by the Railway Labor Act.

The amendment was accepted without opposition.

It is expected that the Senate Conferees will not accept this language.

C. AMENDMENTS ADOPTED BY THE SENATE LABOR COMMITTEE DURING ITS DELIBERATIONS

(1) State Laws

By Senator Taft:

Notwithstanding the provisions of this or any other Act, where a State law requires separate bids and direct awards to employers for construction, the various contractors awarded contracts in accordance with such applicable State law shall not, for the purposes of the third proviso at the end of paragraph (4) of subsection (b) of this section, be considered joint ventures or in the relationship of contractors and subcontractors with each other or with the State or local authority awarding such contracts at the common site of the construction.

This amendment is substantially the same as a provision in the House bill. As explained in the Senate report, under the terms of the amendment, contractors awarded separate contracts for those portions of the construction project required by the law of the State would be exempted from the application of the common situs doctrine established by the legislation.

The amendment was accepted by unanimous vote.

(2) No-Strike Clause

By Senator Taft:

> Notwithstanding the provisions of this or any other act, any employer at a common construction site may bring an action for injunctive relief under section 301 of the Labor Management Relations Act (29 U.S.C. 141) to enjoin any strike or picketing at a common situs in breach of a no-strike clause of a collective-bargaining agreement relating to an issue which is subject to final and binding arbitration or other method of final settlement of disputes as provided in the agreement.

This amendment codifies for the construction industry the Supreme Court's Boy's Market case decision authorizing District Courts to grant injunctions for strikes or lockouts over a grievance in violation of a no-strike clause when both parties are contractually bound to arbitrate. The salient points of the amendment are that there must be a "no-strike" clause and the issue in dispute must be subject to final and binding arbitration or other method of final settlement.

The amendment was adopted by unanimous vote.

(3) Removal of Employee on the Grounds of Union Membership and Protection of Independent Unions

By Senator Taft:

Add the underlined words: Provided further, That nothing in the above provisos shall be construed to authorize picketing, threatening to picket, or causing to be picketed, any employer where an object thereof is the removal or exclusion from the site of any employee on the ground of sex, race, creed, color, or national origin, or because of the membership or non-membership of any employee in any labor organization. Provided further, That nothing in the above proviso shall be construed to permit any attempt by a labor organization to require an employer to recognize or bargain with any labor organization if another labor organization is lawfully recognized as the representative of his employees or to exclude any such labor organization on the ground that such labor organization is not affiliated with a national or international labor organization which represents employees of an employer at the common site:

The amendment prohibits common situs picketing on the grounds that an employee on the site does, or does not, belong to a union or because picketing directed at excluding a union from the site because it is not affiliated with a national or international labor organization (i.e., an independent).

The amendment was adopted by a vote of 11-3.

D. AMENDMENTS TO H.R. 5900 WHICH WERE ACCEPTED DURING CONSIDERATION ON THE SENATE FLOOR

(1) Recognition Picketing

By Senator Hathaway:

Strike the underlined words, "Provided further, That nothing in the above proviso shall be construed to permit any attempt by a labor organization to require an employer to recognize or bargain with any labor organization if another labor organization is lawfully recognized as the representative of his employees" and insert in lieu thereof the following: "presently prohibited by paragraph 7 of subsection (b): And provided further, That if a labor organization engages in picketing for an object described in paragraph 7 of subsection (b) and there has been filed a petition under subsection (c) of section 9, and a charge under subsection (b) of section 10, the Board shall conduct an election and certify the results thereof within fourteen calendar days from the filing of the later of the petition and the charge."

The present section 8(b)(7) of the NLRA prohibits recognitional or organizational picketing if there has been a representation election within 12 months or another union is lawfully recognized and a representation question cannot be raised under the Act. In other circumstances, a union may engage in recognitional or organizational picketing for a reasonable period not to exceed 30 days without filing an election petition.

This amendment deletes the language prohibiting recognitional picketing at a common situs if another union is lawfully recognized. However it incorporates by reference the limitations of section 8(b)(7) and that is one of the prohibitions in that subsection. It neither liberalizes

nor changes the restrictions on recognitional picketing. Picketing which was unlawful under 8(b)(7) continues to be unlawful. Additionally, the amendment provides for an expedited representation election in the case of recognitional picketing at a common situs. It provides that when a petition for an election is filed by either the employer or a union, and an unfair labor practice charge is filed under 8(b)(7) alleging that organizational or recognitional picketing is taking place, the NLRB must hold an election and certify the results within 14 days from the later of the two filings.

The amendment was accepted on a recorded vote of 60-17.

It is expected that this language will be retained by the Conferees.

(2) Residential Construction

By Senator Beall:

Add the underlined language: "at the site of the construction, alteration, painting, or repair of a building, structure, or other work involving other than residential structures of three stories, or less, without an elevator".

The amendment exempts from the bills provisions residential structures of three stories or less without an elevator.

The amendment was agreed to on a recorded vote of 79-16.

At the end of debate, there was a colloquy between Senator Allen and others, most notably Senator Javits, in which Senator Allen stated firmly that he hoped the Senate Conferees would insist upon this amendment during their deliberations with the House Conferees. No promise was made. However, it is our understanding that a compromise will result which will limit the amendment to single family units.

It should be noted that a similar amendment was proposed by Mr. Anderson of Illinois during the debate in the House of Representatives but was defeated.

(3) Product Boycotts

By Senator Randolph:

> Provided further, That nothing in the above proviso shall be construed to permit any picketing of a common situs by a labor organization to force, require, or persuade any person to cease or refrain from using, selling, purchasing, handling, transporting, specifying, installing, or otherwise dealing in the products or systems of any other producer, processor, or manufacturer".

This language is identical to the Esch product boycott amendment which was accepted on the floor of the House of Representatives.

The amendment was accepted on a recorded vote of 93-0.

It is expected that the language will be retained by the Conferees.

(4) Existing Construction

By Senator Allen:

> Provided further, That the provisions of the Act shall not be applicable as to construction work contracted for and on which work had actually started on November 15, 1975.

The amendment was accepted on a recorded vote of 78-19.

It is expected that the amendment will not be retained by the Conferees.

(5) Notice and Authorization Amendment

By Senator Williams:

> This amendment places the following provisions under section 8(g) rather than 8(b)(4): Required notice; Authorization of picketing by the national or international labor organization; Nonliability of national or international labor organization from activities of which it has notice; and Picketing on Army, Navy, or Air Force installations at which munitions, weapons, missiles, and space vehicles are producted, tested, developed, fired, or launched.

The amendment takes identical language previously in a proviso to section 8(b)(4) and places it in a new section 8(g)(ii). The present section 8(g) contains the requirements for notices involving health care institutions.

Accordingly, the effect of the amendment would be to make failure to comply with the notice and national union authorization requirements enforceable in the same way that the health care institution notices are enforced. Under section 10(j), health care notices are enforced in the same manner as unfair labor practice cases generally except

violations of section 8(b)(4) and section 8(b)(7) which will be discussed further below.

The NLRB has the discretionary authority under section 10(j) to seek an injunction in cases involving unfair labor practices. After a complaint has been issued, the Board may seek an injunction pending the adjudication of the case by the NLRB and the issuance, if appropriate, of a cease and desist order.

On the other hand, section 10(l) governs injunctions involving violations of section 8(b)(4) (secondary boycotts) and section 8(b)(7) (recognition picketing). Section 10(l) provides that the NLRB must:

1. give priority to these cases;
2. conduct a preliminary investigation forthwith; and
3. seek an injunction if the investigation indicates reasonable cause that a violation occurred and that a complaint should issue.

Further, section 303 of the Labor Management Relations Act authorizes private damage actions for secondary boycotts which violate section 8(b)(4).

This amendment was proposed by the AFL-CIO, introduced by Senator Williams and supported by Senator Javits. Secretary Dunlop wrote Chairman Williams on November 12, 1975 endorsing this amendment as a useful clarification of his intentions. It was accepted without a recorded vote.

It is expected that this amendment will be retained by the Conferees.

(6) Immunity Clarification

By Senator Williams:

Add the underlined words: Provided further, That authorization of such action by the national or international labor organization shall not render it subject to any criminal or civil liability arising from activities, notice of which was given pursuant to the above proviso unless such authorization is given with actual knowledge that the picketing is to be willfully used to achieve an unlawful purpose.

It was feared by some that the original language would provide immunity for nationals or internations for participation in or authorization of activities they knew to be unlawful. The amendment provides that there will be no immunity if they actually know that the picketing is to be willfully used to achieve an unlawful purpose.

The amendment was accepted without a recorded vote.

It is expected that the Conferees will retain this language.

(7) Technical Amendment

By Senator Williams:

The amendment takes the language: "and there is a labor dispute, not unlawful under this Act or in violation of an existing collective bargaining contract, relating to the wages, hours, or working conditions of employees employed at such site by any of such employers and the issues in the dispute do not involve a labor organization which is representing the employees of an employer at the site who is not engaged primarily in the construction industry:" and makes it a proviso.

This language was previously part of the first proviso of the bill. The purpose appears to be to shorten the formerly lengthy and complex first proviso. However, the amendment makes no substantive change in language.

The amendment was accepted without a recorded vote.

It is expected that the amendment will be retained by the Conferees.

E. CONSTRUCTION INDUSTRY COLLECTIVE BARGAINING LEGISLATION

As previously mentioned, both Houses have passed amended versions of the Administration's Construction Industry Collective Bargaining Act of 1975. The Act is designed to work by bringing a wider focus to the negotiation of local collective bargaining contracts by providing an enhanced role for the standard national construction unions and the national construction contractor associations. It is intended to bring about a lessening of "whipsawing" and "leapfrogging" negotiations in the highly fragmented construction industry, which result in distortions in appropriate wage and benefit levels. The legislation was passed by the House as H.R. 9500 and by the Senate as title II to H.R. 5900.

(1) Administration Bill

As proposed by Secretary Dunlop, this legislation would, in brief:

(a) establish a tripartate Construction Industry Collective Bargaining Committee (CICBC) to deal with labor disputes in the construction industry;

(b) require advance notice to national labor and management organizations and to the CICBC of upcoming contract renewal negotiations;

(c) empower the CICBC to take jurisdiction of a matter and take various actions aimed at assisting the parties to reach an appropriate settlement;

(d) provide for a "cooling off" period of up to 30 days beyond the expiration of an existing contract upon taking of jurisdiction by the CICBC;

(e) permit the CICBC to request participation in local negotiations by the appropriate national labor and management organizations, in which case the national union must approve any new contract; and

(f) expire in about 5 years.

(2) Congressional Action

The House and Senate versions of this legislation differ from the Administration proposal in the following significant ways:

(a) The Senate bill permits the CICBC to suspend or revoke the national union approval requirement at any time after it has requested national participation

in negotiations. Neither the Administration bill nor the House bill gives the CICBC such authority;

(b) The House bill includes exemptions from both the rulemaking and hearing requirements of the Administrative Procedure Act (APA) which was supported by the Labor Department, although not contained in the Administration bill. The Senate bill only provides an exemption from the APA's hearing requirements;

(c) The Administration bill contains the following immunity provision for national organizations participating in negotiations under the Act:

> No standard national construction labor organization or national construction contractor association shall have any criminal or civil liability arising out of a request by the [CICBC] for its participation in collective bargaining negotiations, participation in collective bargaining negotiations or the approval or refusal to approve a collective bargaining agreement. Nor shall any of the foregoing constitute a basis for the imposition of civil or criminal liability on a standard national construction labor organization or national construction contractor association.

The House bill substitutes "because of" for "arising out of" in the first sentence, deletes the second sentence, and adds the following two provisos:

> Provided, That this immunity shall not insulate from civil or criminal liability standard national construction labor organizations or national construction contractor associations when the performance of acts under this statute are willfully used to achieve a purpose which they know to be unlawful: Provided further, That a standard labor organization shall not by virtue of the performance of its duties under this Act be deemed the representative of any affected employees within the meaning of section 9(a) of the National Labor Relations Act or become a party to or bear any liability under any agreement it approves pursuant to its responsibilities under this Act.

The Senate bill changes the first sentence of the Administration bill by substituting "directly or indirectly for actions or omissions pursuant to" for "arising out of" in the first sentence. Like the House bill, the Senate bill deletes the second sentence of the Administration's version and adds two provisos very similar to those contained in the House bill. However, the language of the first proviso is changed somewhat so as not to insulate a national organization from liability "when it performs an act under this statute to willfully achieve a purpose which it knows to be unlawful." Both the House bill and the Senate bill provide for narrower grants of immunity than the Administration bill.

(d) The House bill specifies the quorum required for CICBC action, whereas the Administration bill and the Senate bill leaves this as well as other procedural matters to CICBC regulations;

(e) The Senate bill permits Labor Department attorneys to represent the CICBC in courts (except the Supreme Court) subject to the supervision and control of the Justice Department. Such authority is not contained in either the Administration bill or the House bill.

In addition, there are a number of more technical differences which also have to be resolved in Conference.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

November 20, 1975

KEY VOTES ON SITUS PICKETING BILL (H.R. 5900) IN THE SENATE

FINAL PASSAGE: 52 - 45 (vote record attached)

FOR: 42 Democrats
10 Republicans

AGAINST: 20 Democrats
25 Republicans

November 18 Cloture Vote: 62 - 37 (vote record attached)

FOR: 47 Democrats
15 Republicans

AGAINST: 22 Democrats
15 Republicans

Beall Amendment: 79-16 (vote record attached)

FOR: 48 Democrats
31 Republicans

AGAINST: 11 Democrats
5 Republicans

Javits-Williams Amendment
(to incorporate Dunlop bill): 61 - 22 (vote record attached)

FOR: 43 Democrats
18 Republicans

AGAINST: 7 Democrats
15 Republicans

The following Senators voted in favor of cloture 3 times and voted NO on final passage:

BENTSEN
BUMPERS
GLENN
McINTYRE
NELSON
HUGH SCOTT

Senator Pearson voted in favor of cloture twice and vote NO on final passage.

Senator Long voted for cloture November 11, against cloture Nov. 14, for cloture Nov. 18, and for final passage.

The following Senators did not vote on final passage:

BAYH
BUCKLEY
ROTH

* * *

N - Nay
A - Absent

KEY VOTES ON H.R. 5900

	Cloture November 11	Cloture November 14	Cloture November 18	Final Passage	Beall Amend	Jav- Am
Abourezk	Y	Y	Y	Y	Y	Y
Allen	N	N	N	N	Y	N
Baker	N	N	N	N	Y	Y
Bartlett	N	N	N	N	Y	N
Bayh	Y	Y	Y	A	A	A
Beall	Y	Y	Y	N	Y	Y
Bellmon	Y	N	N	N	Y	Y
Bentsen	Y	Y	Y	N	Y	A
Bider	Y	Y	Y	Y	Y	A
Brock	Y	N	N	N	Y	Y
Brooke	Y	Y	Y	Y	N	Y
Buckley	Y	N	N	A	Y	Y
Bumpers	Y	Y	Y	N	Y	Y
Burdick	Y	Y	Y	Y	Y	Y
Byrd, Harry	A	N	N	N	Y	N
Byrd, Robert	Y	Y	Y	Y	Y	Y
Cannon	N	N	N	N	Y	Y
Case	Y	Y	Y	Y	N	Y
Chiles	Y	N	N	N	Y	Y
Church	Y	Y	Y	Y	Y	Y
Clark	Y	Y	Y	Y	N	Y
Cranston	Y	Y	Y	Y	N	Y
Culver	Y	Y	Y	Y	A	Y
Curtis	N	A	N	N	Y	N
Dole	N	N	N	N	Y	Y
Domenici	N	A	N	N	Y	N
Durkin	Y	Y	Y	Y	Y	Y
Eagleton	Y	Y	Y	Y	Y	Y
Eastland	N	N	N	N	Y	N
Fannin	N	N	N	N	Y	N
Fong	N	N	N	N	Y	Y
Ford	Y	A	Y	Y	Y	A
Garn	N	A	A	N	Y	N
Glenn	Y	Y	Y	N	Y	Y
Goldwater	N	N	N	N	Y	Y
Gravel	Y	Y	Y	Y	N	Y
Griffin	N	N	N	N	Y	Y
Hansen	N	A	N	N	Y	Y
Hart, Gary	Y	Y	Y	Y	Y	Y
Hart, Philip	A	Y	Y	Y	A	Y
Hartke	Y	Y	Y	Y	N	Y
Haskell	Y	Y	Y	Y	Y	Y

	Cloture November 11	Cloture November 14	Cloture November 18	Final Passage	Beall Amend	Jav-W Amen
Hatfield	Y	Y	Y	N	Y	N
Hathaway	Y	Y	Y	Y	Y	Y
Helms	N	A	N	N	Y	N
Hollings	N	N	N	N	Y	Y
Hruska	N	A	N	N	Y	N
Huddleston	Y	N	N	N	Y	Y
Humphrey	Y	Y	Y	Y	Y	Y
Inouye	Y	Y	Y	Y	Y	Y
Jackson	Y	Y	Y	Y	N	Y
Javits	Y	Y	Y	Y	N	Y
Johnston	N	N	N	N	Y	N
Kennedy	Y	Y	Y	Y	N	Y
Laxalt	N	N	N	N	Y	N
Leahy	Y	Y	Y	Y	Y	Y
Long	Y	N	Y	Y	Y	Y
McClellan	N	N	N	N	Y	N
McClure	N	A	N	N	Y	N
McGee	Y	Y	Y	Y	Y	Y
McGovern	Y	Y	Y	Y	Y	Y
McIntyre	Y	Y	Y	N	Y	A
Magnuson	Y	Y	Y	Y	Y	Y
Mansfield	Y	Y	Y	Y	Y	Y
Mathias	Y	Y	Y	Y	Y	A
Metcalf	Y	Y	Y	Y	N	Y
Mondale	Y	Y	Y	Y	Y	Y
Montoya	Y	A	Y	Y	N	Y
Morgan	N	A	N	N	A	N
Moss	Y	Y	Y	Y	Y	Y
Muskie	Y	Y	Y	Y	Y	Y
Nelson	Y	Y	Y	N	Y	Y
Nunn	N	N	N	N	Y	Y
Packwood	Y	Y	Y	Y	N	Y
Pastore	Y	Y	Y	Y	Y	A
Pearson	A	Y	Y	N	Y	A
Pell	A	Y	Y	Y	Y	Y
Percy	Y	Y	Y	Y	Y	Y
Proxmire	Y	Y	Y	Y	Y	Y
Randolph	Y	Y	Y	Y	Y	A
Ribicoff	Y	Y	Y	Y	N	Y
Roth	Y	N	N	A	A	A
Schweiker	Y	Y	Y	Y	N	Y
Scott, Hugh	Y	A	Y	N	Y	Y
Scott, William	N	N	N	N	Y	N
Sparkman	N	N	N	N	Y	Y
Stafford	Y	Y	Y	Y	Y	Y
Stennis	N	N	N	N	Y	A
Stevens	Y	Y	Y	Y	Y	Y
Stevenson	Y	Y	Y	Y	Y	Y

	November 11	Cloture November 14	Cloture November 18	Final Passage	Beall Amend	Jav-Ha Amend
Stone	Y	N	N	N	Y	N
Symington	Y	Y	Y	Y	Y	A
Taft	Y	Y	Y	Y	Y	Y
Talmadge	N	N	N	N	Y	Y
Thurmond	N	N	N	N	Y	N
Tower	N	N	N	N	Y	N
Tunney	Y	Y	Y	Y	N	Y
Weicker	Y	Y	Y	Y	Y	Y
Williams	Y	Y	Y	Y	N	Y
Young	N	N	N	N	Y	A

Roll Call Vote in House on Final Passage of H.R. 5...

July 25, 1975

[Roll No. 437]

YEAS—230

Abzug	Guda	Patman, Tex.
Adams	Hall	Patten, N.J.
Addabbo	Hamilton	Patterson,
Ambro	Hanley	Calif.
Anderson,	Hannaford	Pepper
Calif.	Harrington	Perkins
Annunzio	Harris	Peyser
Ashley	Hawkins	Pike
Aspin	Hayes, Ind.	Pressler
AuCoin	Hays, Ohio	Price
Barrett	Hechler, W. Va.	Pritchard
Baucus	Heckler, Mass.	Quie
Beard, R.I.	Heinz	Railsback
Bennett	Helstoski	Randall
Bergland	Hicks	Rangel
Biester	Hillis	Rees
Bingham	Holtzman	Reuss
Blanchard	Howard	Richmond
Blouin	Howe	Riegle
Boggs	Ichord	Rinaldo
Boland	Jacobs	Risenhoover
Bolling	Johnson, Calif.	Rodino
Bonker	Jones, Ala.	Roe
Brademas	Jones, Okla.	Roncalio
Breaux	Jordan	Rooney
Brodhead	Karth	Rosenthal
Brooks	Kastenmeier	Rostenkowski
Brown, Calif.	Kemp	Roush
Burke, Calif.	Ketchum	Roybal
Burke, Mass.	Koch	Runnels
Burlison, Mo.	LaFalce	Russo
Burton, John	Lagomarsino	Ryan
Burton, Phillip	Lehman	St Germain
Carney	Litton	Santini
Carr	Lloyd, Calif.	Sarasin
Chisholm	Long, La.	Sarbanes
Clausen,	McCormack	Scheuer
Don H.	McDade	Schroeder
Clay	McFall	Seiberling
Collins, Ill.	McHugh	Sharp
Conte	McKinney	Shipley
Corman	Macdonald	Simon
Cornell	Madden	Sisk
Cotter	Maguire	Slack
Daniels, N.J.	Matsunaga	Smith, Iowa
Davis	Mazzoli	Solarz
Delaney	Meeds	Spellman
Dellums	Melcher	Stanton,
Dent	Metcalfe	James V.
Diggs	Meyner	Stark
Dingell	Mezvinsky	Stokes
Dodd	Mikva	Stratton
Downey, N.Y.	Miller, Calif.	Studds
Drinan	Mills	Sullivan
Duncan, Oreg.	Mineta	Symington
Early	Minish	Talcott
Eckhardt	Mink	Thompson
Edgar	Mitchell, Md.	Traxler
Edwards, Calif.	Moakley	Tsongas
Ellberg	Moffett	Udall
Evans, Ind.	Mollohan	Ullman
Fary	Moorhead, Pa.	Van Deerlin
Fascell	Morgan	Vander Veen
Fish	Moss	Vanik
Fisher	Mottl	Vigorito
Fithian	Murphy, Ill.	Walsh
Flood	Murtha	Waxman
Florio	Myers, Ind.	Weaver
Ford, Mich.	Natcher	Whalen
Ford, Tenn.	Nedzi	Wilson, C. H.
Fraser	Nix	Wilson, Tex.
Fulton	Nolan	Wolff
Gaydos	Nowak	Wright
Giaimo	Oberstar	Yates
Gilman	Obey	Yatron
Goldwater	O'Hara	Young, Ga.
Gonzalez	O'Neill	Zablocki
Green	Ottinger	Zeferetti

NAYS—173

Abdnor	Archer	Bedell
Alexander	Armstrong	Bevill
Anderson, Ill.	Ashbrook	Bowen
Andrews, N.C.	Baafalis	Breckinridge
Andrews,	Bauman	Brinkley
N. Dak.	Beard, Tenn.	Broomfield
Brown, Ohio	Hansen	Petris
Broyhill	Harkin	Pickle
Buchanan	Harsha	Poage
Burgener	Hastings	Preyer
Burke, Fla.	Hebert	Regula
Burleson, Tex.	Hefner	Rhodes
Butler	Henderson	Roberts
Byron	Hightower	Robinson
Carter	Hinshaw	Rogers
Casey	Holland	Rose
Cederberg	Holt	Rousselot
Chappell	Hubbard	Ruppe
Clawson, Del	Hungate	Satterfield
Cleveland	Hutchinson	Schneebeli
Cochran	Hyde	Schulze
Cohen	Jarman	Sebelius
Collins, Tex.	Johnson, Colo.	Shriver
Conable	Jones, N.C.	Shuster
Coughlin	Jones, Tenn.	Sikes
Crane	Kasten	Skubitz
D'Amours	Kazen	Smith, Nebr.
Daniel, Dan	Kelly	Snyder
Daniel, R. W.	Kindness	Spence
de la Garza	Krebs	Stanton,
Derrick	Krueger	J. William
Derwinski	Latta	Steed
Devine	Lent	Steelman
Dickinson	Levitas	Steiger, Ariz.
Downing, Va.	Lloyd, Tenn.	Steiger, Wis.
Duncan, Tenn.	Long, Md.	Stephens
du Pont	Lott	Stuckey
Edwards, Ala.	Lujan	Symms
Emery	McCollister	Taylor, Mo.
English	McDonald	Taylor, N.C.
Erlenborn	McEwen	Teague
Esch	McKay	Thone
Evans, Colo.	Madigan	Thornton
Evins, Tenn.	Mahon	Treen
Fenwick	Mann	Vander Jagt
Findley	Martin	Waggonner
Flowers	Mathis	Wampler
Flynt	Michel	White
Fountain	Milford	Whitehurst
Frenzel	Miller, Ohio	Whitten
Frey	Mitchell, N.Y.	Wiggins
Fuqua	Montgomery	Wilson, Bob
Gibbons	Moore	Winn
Ginn	Moorhead,	Wydler
Goodling	Calif.	Wylie
Gradison	Mosher	Young, Alaska
Grassley	Myers, Pa.	Young, Fla.
Guyer	Neal	Young, Tex.
Hagedorn	Nichols	
Haley	O'Brien	
Hammer-	Passman	
schmidt	Pattison, N.Y.	

NOT VOTING—28

Badillo	Eshleman	Landrum
Baldus	Foley	Leggett
Bell	Forsythe	McClory
Biaggi	Horton	McCloskey
Brown, Mich.	Hughes	Murphy, N.Y.
Clancy	Jeffords	Quillen
Conlan	Jenrette	Staggers
Conyers	Johnson, Pa.	Wirth
Danielson	Keys	

So the bill was passed.

The Clerk announced the following pairs:

On this vote:

Mrs. Keys for, with Mr. Landrum against.

Mr. Conyers for, with Mr. McClory against.

Mr. McCloskey for, with Mr. Conlan against.

Mr. Bell for, with Mr. Quillen against.

Mr. Danielson for, with Mr. Eshleman against.

Mr. Biaggi for, with Mr. Johnson of Pennsylvania against.

Until further notice:

Mr. Murphy of New York with Mr. Brown of Michigan.

Mr. Badillo with Mr. Jeffords.

Mr. Baldus with Mr. Clancy.

Mr. Staggers with Mr. Jenrette.

Mr. Hughes with Mr. Foley.

Mr. Leggett with Mr. Wirth.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

November 17, 1975

Honorable Jacob Javits
United States Senate
Washington, D.C. 20510

Dear Senator Javits:

In response to your request, I am writing to summarize briefly the reasons why I support S. 1479, the Common Situs Picketing Bill, currently before the Senate.

As you know, my personal experience as a mediator and arbitrator in the construction industry consists of more than 30 years of continuous involvement. Over that time, I have observed and resolved a great variety of disputes in this highly complex and fragmented industry, many of them bitter and emotional. And over that time, I have seen the issue of common situs picketing develop since its beginning in 1949. That broad overview has led me to a number of conclusions upon which I base my support of this bill.

In general, mixing labor policy (union and non-union) on any single job is not conducive to sound labor relations, to cooperation on a job, nor to increased productivity. Rather, mixing labor policies tends more to stimulate disputes between workers operating under different wages and benefits doing the same or similar work, who must necessarily interface with each other for practical purposes. A single, consistent labor policy (union or non-union) enhances overall labor relations and, in the long run, results in beneficial gains for both the employers and employees, and the public.

Much of the criticism of the legislation has been based on the erroneous assumption that the legislation would legalize picketing for purposes now unlawful under

Yeltow

existing statutes -- racial discrimination, picketing directed at non-construction industrial employers or work operations other than construction, product boycott, etc. This is not the case as the legislation clearly provides.

Nor is the bill inflationary. Construction wages and fringe benefits are negotiated typically at intervals of two or three years on an area-wide basis, while issues related to common situs picketing arise on individual projects during the term of the agreement.

In my considered judgment, the passage of the common situs picketing legislation is not likely to produce major disruptive effects in the industry as often charged.

Past legislative proposals have incorporated many amendments and a number of restraints to protect the rights of employers, employees, and neutral third parties. Among those proposed for example by Secretary George P. Shultz in 1969 and included in the current legislation are: (1) the prohibition against racial picketing, (2) the enforceability of no-strike clauses, and (3) protections for industrial and independent unions.

There are, in addition, two new provisions which this Administration proposed in both S. 1479 and H.R. 5900, which I believe strengthen the worthiness of this bill. These provisions set forth the requirement of (1) a ten day period of notice of intent to picket that must be given to various interested parties and to the standard national labor organizations engaged in collective bargaining in the industry, and (2) authorization of such picketing by the appropriate national union.

These requirements should contribute substantially to the peaceful resoltuion of disputes. They would, I am convinced, contribute greatly to responsible behavior by labor organizations and contractors and should mitigate the concerns of those opposed to the legislation.

As you are aware, there currently is another bill before the Congress dealing with the construction industry--the Construction Industry Collective Bargaining Bill. It

stands, I believe, on its own merit in providing a much needed mechanism by which the sector of industry engaged in collective bargaining could work cooperatively toward solving many of its problems.

In closing, I hope these comments are helpful to you in the Senate's consideration of S. 1479. If I can be of any future assistance, please let me know.

Sincerely,

John T. Dunlop

EYES ONLY

MINUTES OF THE
ECONOMIC POLICY BOARD
EXECUTIVE COMMITTEE MEETING

December 2, 1975

ATTENDEES: Messrs. Seidman, Greenspan, Dunlop, Gardner, O'Neill, Baker, Cannon, Malkiel, Penner, Venneman, Porter, Cardwell, Morrill, Hormats, Bell, Hinton, Quern, Arena, Kasputys.

1. State of the Union Preparation

The Executive Committee briefly discussed the preparations for the State of the Union.

Decision

Messrs. Porter and Quern will coordinate the subject areas to be covered and the schedule for decision making.

2. Special Session on Economic Assumptions for the 1977 Budget

Mr. Seidman reported that in view of the recent announcement by Secretary Coleman of the President's position on the railroad legislation there is no need to hold the special session on railroad legislation originally scheduled for 4:30 p.m. today.

A paper on "Economic Assumptions for Short- and Long-Run Budget Estimates" was distributed for review at the special session on assumptions for the 1977 budget's economic forecast which will be held at 4:30 p.m. today in Room 208 EOB.

3. Common Situs Picketing Legislation

Mr. Seidman indicated he found very useful a memorandum prepared by Secretary Dunlop outlining the legislative history, including a detailed description of each of the amendments, of the current common situs picketing legislation. Secretary Dunlop reported that the legislation will be considered at a conference committee meeting today. A copy of the memorandum will be sent to the Executive Committee members.

EYES ONLY

4. Social Security Financing

The Executive Committee reviewed a draft memorandum on Social Security financing prepared by the Domestic Council. The discussion focused on the short-term financing problem and the decision by the President last spring not to make a specific proposal at that time, the decoupling issue and the three options on decoupling outlined in the memorandum, and the relationship of Social Security to private pension plans and a possible initiative to broaden employee stock ownership.

Decision

Executive Committee members were requested to provide Mr. Quern with their comments by Friday, December 5. Mr. Quern will redraft the memorandum, which will be fully staffed.

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

December 2, 1975

MEMORANDUM TO: The Economic Policy Board Executive Committee

FROM: Charles M. Walker
Assistant Secretary of Treasury for Tax Policy

SUBJECT: Republican Legislative Agenda
Public Debt Limitation

Attached is a copy of a paper entitled "Summary of Treasury Paper on Debt Limit and Related Matters. Statutory Public Debt Limitation". This was prepared by Treasury Department Assistant Secretary David Mosso. It summarizes and supplements the paper on the above subject that was transmitted with my memorandum dated November 3, 1975.

SUMMARY OF TREASURY PAPER ON
DEBT LIMIT AND RELATED MATTERS

STATUTORY PUBLIC DEBT LIMITATION

Current Problems

The legal debt ceiling is set by the Congress in a manner calling for increasingly frequent reconsideration. Customarily, the resetting of the limit has been taken down to the last minute and frequently has been tied in with controversial riders. The continuity of Government operations has been threatened repeatedly.

Proposed Solution(s)

The Congressional Budget and Impoundment Act of 1974, requires the Congress to approve a debt limit provision which is consistent with its targets for receipts, outlays, and deficit. It is not clear that such a provision is binding on the committees having jurisdiction over the Second Liberty Bond Act which contains the debt limit that is binding on the Executive Branch.

Solution A: Amend the debt limit provisions of the Second Liberty Bond Act to accept the debt limit provided in the Budget resolution.

Solution B: Do away with the specific debt limit in the Second Liberty Bond Act, and treat the debt provision of the Budget resolution as a binding target--not to be exceeded unless the underlying receipt and outlay (budget and off-budget) targets change because of congressional action or variance from assumptions adopted for purposes of the resolution.

Related Matters

1. Definition of the debt subject to limit. The draft legislative agenda suggested the exclusion of trust fund investments from the definition. Although desirable as a simplification of concept, this would have no substantive impact. A more significant and desirable change in the definition of the debt would be its expansion to include Federal agency debt and Federally guaranteed debt of many varieties. The total Federal claim on the available limited supply of capital would thus be highlighted.

2. Debt restructuring. The Treasury currently must finance the massive Federal deficit with securities of no more than seven years maturity. This has serious implications

for the short to intermediate term financial markets as private demands for funds accompany the economic recovery, and have to compete with unprecedented Treasury requirements. It is essential that the Republican leadership be squarely behind the Treasury's proposals to increase its authority to issue long-term bonds and to redefine Treasury notes to include issues of up to 10 years from the current 7 years.

3. Debt reduction. Systematic debt reductions as called for in the draft legislative agenda can only be accomplished through systematic budget surpluses. A balanced budget, over a cycle, might be a more realistic goal.

UNITED STATES GOVERNMENT

Department of the Treasury
Washington, D.C. 20220

Memorandum

TO : Economic Policy Board Executive Committee DATE: December 2, 1975

FROM : Charles M. Walker

SUBJECT: Proposed Regulations under Code Section 103(a)(1) - "On Behalf Of" - Municipal Power Pools

On October 8, 1975, the EPB directed that the Treasury Department, in preparing the above proposed regulations, take the most restrictive possible position consistent with the statute, court decisions, and past regulations. In cooperation with the Internal Revenue Service, we have prepared proposed regulations which are ready to be noticed in the Federal Register following compliance with OMB Circular A-85 pertaining to consultation with heads of State and local governments in the development of Federal regulations.

Code section 103(a)(1) exempts from taxation "interest on the obligations of a State...," etc. Notwithstanding this language, the regulations for many many years have provided that this exemption also extends to obligations "issued on behalf of" a State, etc. The new proposed regulations detail the requirements which must be satisfied in order that an obligation qualify as "issued on behalf of" a State or local governmental unit.

At the outset, the regulations define the term "State or local governmental unit" as well as the included term "political subdivision." In order to qualify as a political subdivision, the unit in question must have delegated to it the right to exercise part of the sovereign power of a State, territory, or possesion. It is also specified that a political subdivision may result from a combination of more than one governmental unit if such combined entity has the requisite sovereign powers - e.g., the Port of New York Authority.

The proposed regulations then provide a seven part test, each of which must be satisfied in order for an agency or instrumentality to be considered as issuing obligations on behalf of a governmental unit. The elements of such test are as follows:

(i) The governmental unit must be specifically authorized under State law to utilize an agency or instrumentality to issue obligations on its behalf to accomplish a particular public purpose of such unit.

(ii) The unit must control the agency or instrumentality. Such control is established through the prescription of the qualifications or status of the members of the governing board of the agency or instrumentality.

(iii) The unit must have supervisory authority over the activities of the agency or instrumentality. Such authority is defined to include approval of charter, bylaws, and the issuance of obligations as well as the review of financial records and statements.

(iv) The unit must agree, in conjunction with the issuance of the obligations in question, to accept title to any tangible personal or real property financed by such obligations upon the retirement of such obligations.

(v) The agency or instrumentality must be either a trust or a not-for-profit corporation created pursuant to the authorizing legislation, the earnings of which may not inure to the benefit of any person other than the unit.

(vi) In the event of default with respect to obligations issued to finance the acquisition of property, the unit must have the first option to purchase such property.

(vii) Upon dissolution of the agency or instrumentality, title to all of its property must vest in the unit.

Under the foregoing rules, it will be seen that a very close relationship between the agency or instrumentality and the governmental unit is required. In addition, the State legislature in question must focus directly upon the public purpose involved at the time of enactment of the enabling legislation. Finally, the proposed regulations do not permit a single agency or instrumentality to act "on behalf of" more than one governmental unit; this is consistent with the reference in both the Code and past regulations to "obligations issued by or on behalf of a State, a territory or a possession ... or any political subdivision of any of the foregoing." (emphasis supplied) It will be noted, however, that a State legislature could create a political

subdivision which itself included several municipalities and that such new subdivision, if appropriately authorized, could create an agency or instrumentality to issue obligations on its behalf.

In addition to the foregoing, it is proposed that the regulations under section 103(c) of the Code, which pertains to industrial development bonds, also be amended by new proposed regulations insofar as they relate to the proceeds of bond offerings used to finance the acquisition by a governmental unit, or by its agency or instrumentality, of an undivided interest in a facility which is used in a trade or business of nonexempt taxpayers. Such amended regulations would provide that, unless exempt persons own at least 50 percent of the facility in question, such facility will be treated as being used in the trade or business of a nonexempt person. In such circumstances, the bonds in question would generally be considered to be "industrial development bonds" the interest on which would be taxable unless they otherwise fell within an exception provided by section 103(c) - e.g., the exception pertaining to small issues or to facilities for the local furnishing of electric energy (not more than two counties).

In summary, if the proposed regulations just described become final regulations and withstand any possible court challenges, the municipal power pool projects which are presently under consideration could be financed through the issuance of tax-exempt bonds only if: (a) the relevant State legislatures focus directly on the projects in question and approve their financing through tax-exempt bonds; (b) the municipalities in question remain directly involved with such projects on a continuing basis; (c) in the usual case involving more than one municipality, either (i) the legislatures in question create new subdivisions which include several municipalities (and obtain approval of interstate compacts if more than one State is involved) or (ii) the proceeds of many small bond issues are aggregated; and (d) the governmental instrumentalities own at least one-half of the facilities in question.

We believe that the regulations just described go as far as possible in implementing the intent of the EPB. It should be noted that the proposed amendment to the regulations under section 103(c) may arouse some opposition from

State and local governments with regard to projects other than municipal power pools and that the supporters of the latter projects will undoubtedly protest many of the proposed amendments. Furthermore, it should be noted that certain prior Treasury correspondence with members of Congress may have to be amplified to reconcile the proposed regulations with certain statements made therein.

ECONOMIC POLICY BOARD
EXECUTIVE COMMITTEE MEETING

Agenda

December 3, 1975
8:30 a.m.
Roosevelt Room

1.	Tax Exempt Financing for Regional Municipal Power Systems	Treasury
2.	Public Debt Limitation	Treasury
3.	Report of Task Force on Taxation of International Investment	Jones
4.	Prospective U.K. Import Controls	Malkiel