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APPROVED

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THE WHITE HOUSE
WASHINGTON

January 2, 1975

MEMORANDUM FOR: THE PRESIDENT
FROM: KEN COLE
SUBJECT: H.R. 10701 - Deepwater Port Act

Attached for your consideration is H.R. 10701, sponsored by Representative Breaux and 19 others which:

- Authorizes the Secretary of Transportation to license the construction and operation of offshore oil ports located beyond U.S. territorial limits;
- establishes a special fund to cover oil spill damage claims and cleanup costs exceeding those paid by vessel owners or port licensees.

OMB recommends approval and provides additional background information in its enrolled bill report (Tab A).

Transportation, FEA, Max Friedersdorf (Loen) and Phil Areeda recommend approval and issuance of the proposed signing statement which has been approved by Paul Theis.

RECOMMENDATION

That you sign H.R. 10701 (Tab C).

Signing Statement

Approve _____
(Tab B)

Disapprove _____





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 29 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 10701 - "Deepwater Port Act
of 1974"
Sponsor - Rep. Breaux (D) Louisiana and 19 others

Last Day for Action

January 4, 1975 - Saturday

Purpose

Authorizes the Secretary of Transportation to license the construction and operation of offshore oil ports located beyond U.S. territorial limits; establishes a special fund to cover oil spill damage claims and cleanup costs exceeding those paid by vessel owners or port licensees.

Agency Recommendations

Office of Management and Budget	Approval (Signing Statement Attached)
Department of Transportation	Approval
Federal Energy Administration	Approval
Environmental Protection Agency	Approval (Informally)
Council on Environmental Quality	Approval
Department of Commerce	Approval
Federal Maritime Commission	Approval
Department of the Interior	No objection
Department of State	No objection
Department of Justice	No objection
Department of the Treasury	No objection
Department of Labor	No objection
Department of the Navy	No objection
Administrative Conference of the United States	Cites concerns
Advisory Council on Intergovernmental Relations	No recommendation



Discussion

Supertankers having four to twelve times the capacity of conventional tankers have been in use around the world for several years, and half the tankers now under construction are of this type. But no U.S. ports are capable of handling these vessels, some of which are 1,200 feet long and require 90 to 100 feet of water to maneuver safely. While existing channels and ports might be dredged, a less expensive and more environmentally acceptable alternative is to build mooring facilities in naturally deep water offshore so that oil can be pumped through underwater pipelines to onshore refineries. A number of industry groups and State governments have developed plans to build such ports, but the most logical locations are several miles beyond U.S. territorial limits, where a legal framework for their establishment and operation is lacking. The enrolled bill would provide that framework by authorizing the Secretary of Transportation to license their construction and operation.

Major Features of the Bill

Criteria and Procedures for Obtaining a License: The Secretary's decision to issue or renew a license would be based on a number of criteria set forth in the bill. The license could be issued only if:

- the applicant is a U.S. citizen, a State, or a U.S.-based corporation having a majority of U.S. citizens on its board of directors;
- the proposed port met environmental review criteria established by the Environmental Protection Agency and the National Oceanic and Atmospheric Administration and conformed with Federal air and water pollution control laws;
- the Attorney General and the Federal Trade Commission prepared opinions for the Secretary assessing the effects on competition that would result from issuance of a license;
- the Governors of coastal States adjacent to the proposed port approved, as further explained below; and,
- the State directly connected to the proposed port by pipeline is making progress toward developing a program to manage the onshore environmental impact pursuant to the Coastal Zone Management Act of 1972.

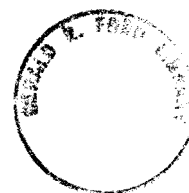


The procedures and deadlines specified in H.R. 10701 lead to a final decision by the Secretary in a maximum of one year, and provide that a request for judicial review of the decision be made within 60 days. In addition to the type of coordination with Federal agencies and with State governments described above, these procedures call on the Secretary to prepare a single detailed environmental impact statement for all applications in one geographical area, to compare the deepwater port plans with any plans for dredging an existing port, and to give preference to States and to applicants not controlled by oil companies.

Fees and Charges: H.R. 10701 would authorize the appropriation of \$2.5 million to DOT for each of fiscal years 1975, 1976 and 1977 to administer the program. Applicants would pay a fee to cover the costs of processing the application, and those awarded licenses would rent the seabed on which the port was located and the right-of-way needed for the pipeline. In addition, States could charge fees approved by the Secretary, but only in the amounts needed to recover any costs resulting from the presence of the port and onshore facilities that could not otherwise be recovered through taxes.

State Veto: A license could not be issued unless each of the Governors of adjacent coastal States has given his approval. An adjacent State is defined as one which:

- (1) would be directly connected to a proposed port;
- (2) would be located within 15 miles of the port; or,
- (3) would have, in the judgment of the Secretary, a risk of damage its coastal environment equal to or greater than the risk posed to a State directly connected by pipeline to the proposed port. To be considered for this third category, a State must apply to the Secretary within 14 days after DOT publishes the applicant's plans in the Federal Register. The bill specifies that the Secretary's determination is to be made on the basis of advice from NOAA.



Oil Spill Liability: The enrolled bill includes procedures for reporting and cleaning up oil spills from the port itself or from vessels in the safety zone around the port; these are generally patterned after the existing system established by the Federal Water Pollution Control Act. Owners and operators of vessels responsible for a spill would be liable for cleanup costs and damages up to a limit of \$150/gross ton or \$20 million, whichever is lesser, and port licensees would be liable for discharges from the port up to a limit of \$50 million. In both cases, liability would be without regard to fault and subject to only a few defenses.

Damages exceeding those amounts would be met from a \$100 million fund financed by a 2¢ fee on each barrel of oil transported through any deepwater port. The fund, an independent corporate entity, would be liable without limit for all damages not actually paid by the vessel owner or licensee and could borrow from the Treasury if needed. The fund could be sued by the Secretary of Transportation to recover sums needed by Federal and State governments to restore damaged public resources such as fisheries or estuaries.

Relationship to Other Laws: As far as can be determined, a U.S. deepwater port in international waters would be the first such facility located outside a nation's territorial limits anywhere in the world, although State and others testified that deepwater port operations would constitute a "reasonable use" of the high seas permitted under international law. H.R. 10701 provides that the Constitution and other Federal laws would apply as if the port were an area of exclusive Federal jurisdiction within a State, and that the laws of the nearest adjacent coastal State would also apply where these were not inconsistent with Federal law.

Administration Position

A number of proposals placing jurisdiction in various agencies (EPA, NOAA, DOT, Army, Interior) were introduced early in the 93rd Congress and referred to the appropriate committees in each House. The enrolled bill is basically the product of a special joint subcommittee composed of members of the Senate Commerce, Interior and Public Works Committees, and differs almost entirely from House proposals and a bill submitted by the Administration.



By the time the House and Senate versions went into conference, only one major issue of concern to the Administration remained -- the role of the States in approving port applications. Speaking for the Administration in its letter to the conferees, Interior repeated its earlier objections to the strong State veto provisions of the Senate bill, particularly a requirement directed at expanding the number of States eligible to disapprove of a particular port, based on potential environmental damage that could result from an accident or spill. A modified version of that requirement remains in the bill, as described above, and is subject to many of the objections raised in Interior's letter to the conferees.

Agency Views

Citing your November 17 Message to the Congress in which you instructed the Secretaries of Interior and Transportation to work with the conferees to develop a bill that you could approve, DOT points to several amendments made in conference, especially the change in the State veto provision, and concludes that "the enrolled bill is responsive to the request of the President." DOT thus recommends enactment, stating that the agency "is capable of performing the responsibilities assigned to it under this legislation."

In its enrolled bill letter, the Federal Energy Administration "strongly recommends" approval, stating that if deepwater ports legislation is not signed this year, the two oil company consortiums that now plan to build off the shores of Texas and Louisiana may abandon those plans in favor of less efficient transshipment facilities in the Caribbean and the Canadian maritime provinces. FEA points out that, once completed, these two ports would process 55% of all oil imported into the United States, and half of that would find its way to refineries in the Midwest to offset planned reductions in oil exports from Canada.

The Department of the Interior, in its enrolled bill letter, explains why it does not fully endorse the bill:

"Our greatest concern...is the effect [the State veto provisions] could have on planning the location and development of not only deepwater ports but also refineries and



transportation systems the ports will foster. It appears very possible that because of the broad definition of "adjacent coastal State", H.R. 10701 will permit the construction of deepwater ports only in the western half of the Gulf of Mexico. It is not in the national interest to concentrate deepwater ports in one area. They should be geographically dispersed so that they are near the petroleum consuming areas and so that the impact of the development of refineries and transportation systems will be minimal.

"We are also very concerned that the State veto provisions in H.R. 10701 will establish a precedent for amending other legislation governing outer continental shelf development. Similar veto provisions in the Outer Continental Lands Act could seriously hinder our program to encourage the exploration and development of offshore deposits of oil and gas.

"Because of the need to move forward with programs to assist our energy policy development we are not objecting to the approval of this enrolled bill."

The Federal Maritime Commission describes its concern that the liability provisions will conflict with those already in effect under the Federal Water Pollution Control Act, and that "even more troublesome is the fact that the \$20 million liability limit for vessels is in all likelihood prohibitive or unobtainable on the world marine insurance market. Thus the very purpose of H.R. 10701...will suffer when the carriers and operators of vessels dare not venture near the deepwater ports." But "recogniz[ing] the challenge for our country to have an adequate energy supply," the Commission recommends approval and states that it will work closely with DOT and Justice to reconcile the differences between the enrolled bill and the F.W.P.C.A.

In their enrolled bill letters, Treasury, Labor, the Administrative Conference and other agencies either recommend approval or offer no objection while noting various comparatively minor deficiencies in the legislation.



OMB Comment

We share Interior's concern about the State veto provisions. The Administration was willing to accept veto by States connected by, or extremely close to, a deepwater port pipeline because of the impact of shoreside facilities and because States would, in any event, have a veto over pipelines which ran through their territorial waters. By allowing additional States which may suffer damage from oil spills equal to or greater than that which would be experienced by truly adjacent States, H.R. 10701 alters the rationale for State veto and expands the number of States that may be able to prevent construction of particular deepwater ports. Moreover, as Interior notes, this concept could have even more far-reaching implications if it were applied to drilling on the Outer Continental Shelf.

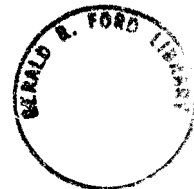
Nevertheless, we join with the other agencies in recommending approval because of the great future importance of deepwater ports in meeting our energy needs and because it appears that as a practical matter, State vetoes will not be asserted in the vital Gulf area. With respect to other areas, we share the Interior view that corrective legislation can be offered "...if it becomes evident that [H.R. 10701] is either impeding development of deepwater port facilities or preventing geographically balanced development." As for the Outer Continental Shelf precedent, we intend to work closely with Interior to do everything possible to avoid adoption of similar restrictions on our activities there.

With respect to the comments of the FMC regarding oil spill liability, it should be noted that the Administration is already engaged in preparing comprehensive legislation on this subject, and appropriate amendments to H.R. 10701 can be considered in that context. Moreover, this ongoing Administration effort should provide a head start for the study which the bill requires the Attorney General to make with respect to comprehensive liability.

A proposed signing statement is attached for your consideration.


Director

Enclosures





OFFICE OF THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

DEC 20 1974

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Ash:

Reference is made to your request for the comments of the Department of Transportation concerning H.R. 10701, an enrolled bill

"To regulate commerce, promote efficiency in transportation, and protect the environment, by establishing procedures for the location, construction, and operation of deepwater ports off the coasts of the United States, and for other purposes."

The enrolled bill establishes a system of licenses, to be administered by this Department, for the construction and operation of deepwater ports off the coasts of the United States. Utilization of a deepwater port for the transshipment of commodities or materials to the United States, other than oil, is prohibited. The bill imposes a civil penalty for the discharge of oil into the marine environment, and establishes limits of liability for damages and cleanup costs that may be assessed against a vessel owner or operator and against the licensee of a deepwater port. The bill also establishes a Deepwater Port Liability Fund, limited to \$100,000,000, as a nonprofit corporate entity. The Fund is liable, without regard to fault, for all damages and cleanup costs in excess of those actually compensated for under other provisions of the bill. Financing of the Fund is accomplished by assessing a 2 cents per barrel fee for all oil loaded or unloaded at a deepwater port.

In the President's message to Congress on legislative priorities, dated November 17, 1974, he urged the Senate and House conferees on this legislation to develop a bill he could sign. In our view, the enrolled bill is responsive to the request of the President. The conferees made several amendments, two of which are responsive to the major concerns

of the Executive Branch:

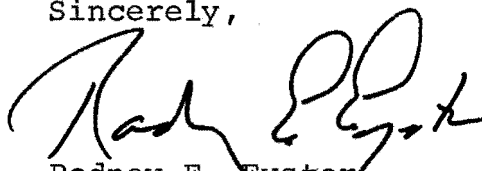
Section 4(d) (port evaluation) has been amended to require the Secretary to examine and compare the economic, social, and environmental effects of a proposed deep draft port versus those of a proposed deepwater port, only when the deep draft port is located in the State which will be directly connected by pipeline with the deepwater port.

Section 9 (adjacent coastal States) has been amended to limit the States which can be designated as adjacent coastal States if not connected by pipeline or within 15 miles of the proposed deepwater port, by requiring the Secretary to determine, on the request of a State for that designation, that there is a risk of damage to the coastal environment of the requesting State equal to or greater than the risk posed to a State directly connected by pipeline to the proposed deepwater port. This amendment in turn limits the ability of States to prevent the issuance of a license, for under section 4(c) (9) of the bill only the Governors of adjacent coast States must approve of its issuance.

The enrolled bill contains a number of technical errors, primarily contained in provisions incorporated from the House passed version of the bill. In light of the legislative history of the bill, we do not consider any of these errors to be consequential. When the opportunity arises, this Department will take appropriate action to initiate the necessary legislative amendments to correct these minor errors.

The Department of Transportation is capable of performing the responsibilities assigned to it under this legislation. We recommend that the President sign the enrolled bill, H.R. 10701.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney E. Eyster". The signature is fluid and cursive, with a large initial "R" and "E".

Rodney E. Eyster
General Counsel

FEDERAL ENERGY ADMINISTRATION

WASHINGTON, D.C. 20461

December 20, 1974

MEMORANDUM TO: Wilfred H. Rommel
Assistant Director for
Legislative Reference

FROM: Robert E. Montgomery, Jr. *REM*
General Counsel

ATTN: Jim McCullough

SUBJECT: Enrolled Bill Report - H.R. 10701, the "Deep-
water Port Act of 1974"

This responds to your request for the views of the Federal Energy Administration on the "Deepwater Port Act of 1974."

FEA strongly recommends that the President sign H.R. 10701 into law.

FEA has always supported the concept of deepwater ports. The construction of such ports will vastly improve our ability to meet the nation's energy needs, greatly reduce the risk of oil spills and make oil transported by supertankers available to the consumer at the most economic rate possible.

Oil is currently delivered to the U.S. in small tankers with an average size of 30,000 dead weight tons (DWT). Much larger tankers -- ranging from 100,000 to 300,000 DWT -- are currently in use elsewhere, and now represent approximately forty percent of total oil tanker capacity. This percentage will increase greatly since approximately one-half of the tankers under construction are in the 200,000 to 500,000 DWT class. No ports in the United States are presently capable of handling these large ships; consequently, the United States is unable to benefit directly from the significant advantages gained from the use of supertankers.

It is estimated that present oil transportation costs could be reduced by nearly 30% if the United States had the ability to utilize supertankers efficiently. The construction of deepwater ports would give the United States this capability. The major environmental advantage of deepwater ports is that they reduce the risks of tanker collisions and groundings in

crowded harbors and minimize the probability that spilled oil will reach beaches or wildlife estuaries. Thus, deepwater ports are urgently needed to accommodate the changing technology of oil transportation and to better protect the environment.

FEA is also convinced that the timing of deepwater port legislation is of critical importance. If present plans for constructing deepwater ports are delayed another year, a distinct possibility exists that the plans will be abandoned in favor of constructing less efficient transshipment facilities in the Caribbean and the Canadian maritime provinces. If this occurs, the United States will have to continue to rely on service from small and medium sized vessels, thus increasing the risk of environmental damage and maintaining the high cost of transporting foreign oil.

Plans have been developed by two oil company consortiums, Seadock, Inc. and LOOP, Inc., to construct deepwater ports off the coasts of Texas and Louisiana respectively. Substantial investments of capital and manpower have been made, environmental impact studies completed, and appropriate applications for licenses prepared. States which would be affected by the two ports have already endorsed the projects and support their construction. Once completed, these two ports will process approximately 55% of all oil imported into the United States. Fifty percent of this oil will find its way to mid-west and northern tier refineries, and will serve to offset the impact on these refineries of planned reductions in oil exports from Canada.

If a deepwater ports bill is not signed this year, many of the companies which make up the Seadock and LOOP consortiums may withdraw their support and begin exploring the possibility of investing in transshipment facilities. The upshot would be that the consortiums would collapse and plans to construct needed deepwater ports would fall by the wayside.

There is no guarantee that Congress will act on deepwater ports next session should H.R. 10701 be vetoed. Jurisdictional disputes between the House Public Works and Merchant Marine Committees may again hamper timely passage of an acceptable deepwater ports bill on the House side. Uncertainty also exists with regard to Senate reaction to a veto.

Although H.R. 10701 is not a perfect bill, FEA believes it is a workable one and will permit the construction of

Seadock and LOOP to proceed in a timely fashion. It will also permit plans for additional deepwater ports to be developed.

One provision of H.R. 10701 which has been of concern to the Administration, because of the precedent it might set, is the provision which allows certain designated states to veto the construction of deepwater ports. Section 9 of the bill permits states which will be directly connected by pipeline to a proposed port, which lie within fifteen miles of the proposed facility, or which face a risk of damage to their coastal environments equal to or greater than the risk faced by states connected to the port by pipeline, to veto construction of the deepwater facility.

Although FEA shares this concern, we do not believe it warrants disapproval of H.R. 10701. First, the state veto provision will not affect the construction of Seadock and LOOP, the only deepwater ports projects for which plans have crystallized. Second, given the history of negotiations between the Administration and the Congress, we see little, if any, possibility of a further compromise on the scope of the state veto provision in a deepwater ports bill next Congress. Third, on the merits, a formulation such as that adopted in H.R. 10701 which permits those states directly affected by deepwater port development to participate in the licensing of individual ports is defensible and appropriate. Fourth, differences over the appropriateness of including similar provisions in other energy related legislation can and should be addressed separately.



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006


DEC 23 1974

MEMORANDUM FOR W.H. ROMMEL
OFFICE OF MANAGEMENT AND BUDGET

ATTN: Ms. Mohr

SUBJECT: H.R. 10701

This is in response to your request of December 19
for our views on the subject enrolled bill. The
Council recommends the approval and enactment of
this bill.


Steven D. Jellinek
Staff Director



THE UNDER SECRETARY OF COMMERCE
Washington, D.C. 20230

DEC 20 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Ash:

This is in reply to your request for the views of this Department concerning H.R. 10701, an enrolled enactment

"To regulate commerce, promote efficiency in transportation, and protect the environment, by establishing procedures for the location, construction, and operation of deepwater ports off the coasts of the United States, and for other purposes,"

to be cited as the "Deepwater Port Act of 1974."

This Department recommends approval by the President of H.R. 10701.

Enactment of this legislation would not require any increase in the budgetary requirements of this Department.

Sincerely,

A handwritten signature in black ink, reading "John K. Tabor". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke extending to the right.

John K. Tabor





Federal Maritime Commission

Washington, D. C. 20573

December 23, 1974

Office of the Chairman

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Ash:

This refers to your request for the views of the Federal Maritime Commission on the enrolled bill, H.R. 10701, a bill

To regulate commerce, promote efficiency in transportation, and protect the environment, by establishing procedures for the location, construction, and operation of deepwater ports off the coasts of the United States, and for other purposes.

This legislation would provide for the licensing and regulation of the construction and operation of deepwater port facilities. The primary responsibility for carrying out the programs and maintaining the surveillance over the programs contemplated by H.R. 10701 is vested in the Secretary of Transportation.

Section 311 of the Federal Water Pollution Control Act (Public Law 92-500) imposes upon certain vessels causing the discharge of oil or hazardous substances, the liability for the cost of removal of such oil or hazardous substances discharged into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the water of the contiguous zone. Section 311(p) of that Act, which is administered by the Federal Maritime Commission, requires vessels over 300 gross tons which use any port or place in the United States or the navigable waters of the United States to establish and maintain evidence of financial responsibility to meet such liability. It is our understanding that Section 18(d) of H.R. 10701 would extend liability under Section 311 of the Federal Water Pollution Control Act to vessels using deepwater port facilities within 12 miles from our shores. The owner and operator of a vessel would be jointly and severally liable, without regard to fault for cleanup costs and damages that result from a discharge of oil from the vessel within the "safety zone" of the deepwater port -- except when the vessel is moored at the port. Such vessels, even though not

otherwise using United States waters, if over 300 gross tons, therefore would be required to establish financial responsibility with this Commission under subsection 311(p). In this respect it is pointed out that Section 311 limits liability of the vessel owner or operator to the United States for costs of cleanup of spilt oil to \$100.00 per gross ton of vessel or \$14,000,000.00 whichever is lesser. However, Section 18(d) of H.R. 10701 imposes a different standard of liability (\$150.00 per gross ton or \$20,000,000.00) on vessels using the deepwater port. Additionally, Section 18(b) requires the Secretary to insure the vessels using the deepwater ports carry insurance or give evidence of other financial responsibility to meet the liability of H.R. 10701.

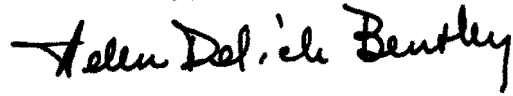
A clear conflict with the responsibilities of this Commission is thereby presented: Section 311(p) of the Federal Water Pollution Control Act's evidence of financial responsibility function will be duplicated by H.R. 10701. What is even more troublesome is the fact that the \$20,000,000.00 liability limit for vessels is in all likelihood prohibitive or unobtainable on the world marine insurance market. Thus the very purpose of H.R. 10701 (providing our country with facilities located away from our shores that can safely receive needed petroleum products from vessels) will suffer when the carriers and operators of vessels dare not venture near the deepwater ports. Ironically, enactment of H.R. 10701 could diminish the energy supply it was intended to replenish. We note that Section 18(n) would direct the Attorney General to study methods and procedures for implementing a uniform law providing liability standards for cleanup and damages from oil spills, yet even this activity may be futile. Chaos among vessel owners and operators will in all likelihood result regarding their liability limits should H.R. 10701 become law. The troubling issue of the costs of removing "hazardous substances," which a vessel violating Section 18(d) could also be carrying, remains unaddressed by this bill. The Federal Water Pollution Control Act at present adequately deals with this entire area and it would seem that H.R. 10701 ignores this issue completely. Furthermore, deepwater port liability funds should not encompass vessels. The requirement of Section 18 that the vessels using deepwater port facilities evidence financial responsibility with the Secretary of Transportation would result in duplicity of effort and place an undue administrative burden on vessel owners and operators. It would appear to us a more appropriate approach to extend the financial responsibility requirements of Section 311 to vessels using the deepwater ports.

This Commission recognizes the challenge for our country to have an adequate energy supply and that H.R. 10701 represents a serious effort on the part of the Congress to meet that challenge. Presidential approval of H.R. 10701 is respectfully urged in light of these serious energy needs, however we would urge that the above concerns we have expressed regarding Section 18 will be duly recognized. Should the



President sign this bill, the Commission will work closely with the Department of Transportation and the Attorney General to reconcile the differences between H.R. 10701 and the Federal Water Pollution Control Act.

Sincerely,

A handwritten signature in black ink that reads "Helen Delich Bentley". The signature is written in a cursive style with a prominent initial "H".

Helen Delich Bentley
Chairman



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 23 1974

Dear Mr. Ash:

This responds to your request for the views of this Department on H.R. 10701, an enrolled bill "To regulate commerce, promote efficiency in transportation, and protect the environment, by establishing procedures for the location, construction, and operation of deepwater ports off the coasts of the United States, and for other purposes."

We would have no objection to the President's approval of the enrolled bill.

DESCRIPTION OF ENROLLED BILL

H.R. 10701, as enrolled, authorizes the Secretary of Transportation to issue renewable 20-year licenses for the ownership, construction and operation of deepwater ports in return for an application fee and annual rentals if he determines that the applicant is qualified, that the proposed port would meet established environmental standards, that it would not interfere with navigation, and that it would otherwise be in the national interest. The bill requires the Secretary in certain instances to determine whether the dredging of a channel and harbor would better serve the national interest. The Secretary's decision on whether to issue a license would be based on regulations he develops and "environmental review criteria" developed with the assistance of EPA and NOAA.

The bill contains very specific procedures for issuing licenses. If more than one application is submitted for an "application area", the Secretary shall give a preference first to adjacent coastal States, second to persons not part of the petroleum industry, and last to any other person. There is a rigid time schedule within which the Secretary must review an application for completeness, publish a summary of the applicant's plans and a description of the "application area", call for and receive other applications for the same "application area", and hold public hearings in each adjacent coastal State. The Attorney General must inform the Secretary within a specified time whether issuance of a license would adversely affect competition.

Similarly, adjacent coastal States must inform the Secretary within a specified time whether they approve of issuance of a license. Notice of disapproval would prohibit the Secretary from issuing a license. An adjacent coastal State is defined as a State to which the deepwater port would be connected, a State located

within 15 miles of a deepwater port, or a State designated by the Secretary as a State that would incur a risk of damage to its coastal environment that is equal to or greater than the risk that would be incurred by the State to which the deepwater port would be connected. Other interested States shall be given an opportunity to make their views known and the Secretary would be prohibited from issuing a license unless the State to which the facility would be connected is developing a coastal zone management program.

The bill contains other provisions relating to the suspension and termination of licenses, inspections, record-keeping, public access to information, penalties for violations, citizen's actions, applicable Federal and State laws, and pipeline safety.

H.R. 10701 provides for liabilities for cleanup costs and damages resulting from an oil spill without regard to fault and subject to only a few defenses. The owner and operator of a vessel shall be jointly liable up to \$150 per gross ton or \$20 million, whichever is lesser, and the licensee of a deepwater port shall be liable up to \$50 million. A Deepwater Port Liability Fund will be created and it will be liable for all damages and cleanup costs in excess of those compensated for by owners and operators of vessels and licensees of deepwater ports. The Attorney General, in cooperation with other Departments, is directed to study and report on a uniform law to provide for liability for cleanup costs and damages resulting from oil spills from ocean-related sources.

REASONS FOR NO OBJECTION

The Department has long advocated the enactment of legislation to authorize the construction and operation of deepwater ports because they would provide the safest, most efficient and most inexpensive means for transporting oil by tanker. We have offered Congress our suggestions during the development of the legislation many times. Congress has disregarded most of the suggestions and has made only minor modifications in the one section of the bill that we find most troublesome. For this reason we do not fully endorse the bill.

Section 9(a) allows "adjacent coastal States" to veto a proposed deepwater port without submitting any reason for its position. As explained above, "adjacent coastal States" include, among others, any State which the Secretary of Transportation determines will run a risk of damage equal to or greater than the State to which the deep water port is to be connected. One problem with the definition of "adjacent coastal State" is that it is not logical. It is based on "risk" of damage alone and does not take

into consideration any degree of damage. A State hundreds of miles from the deepwater port may experience the same "risk" of damage as the State to be connected to the port, but the distant State may run the risk of only the slightest degree of damage from a spill as compared to the connected State. While every effort should be made to protect the distant State, and all closer States for that matter, it makes little sense to give the distant State the right to veto the proposed port.

A greater problem with the definition of "adjacent coastal State" is that it is so vague that it will be very difficult to determine whether a State qualifies as one. If in any instance the Secretary determines that only one or two States qualify, he is apt to be sued because any remotely affected States which will not receive a direct financial benefit from a proposed port will probably demand a right to exercise a veto.

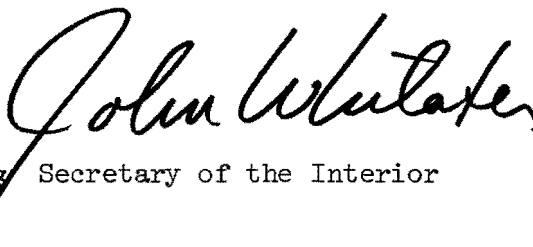
Our greatest concern with the definition of "adjacent coastal State" is the effect it could have on planning the location and development of not only deepwater ports but also refineries and transportation systems the ports will foster. It appears very possible that because of the broad definition of "adjacent coastal State", H.R. 10701 will permit the construction of deepwater ports only in the western half of the Gulf of Mexico. It is not in the national interest to concentrate deepwater ports in one area. They should be geographically dispersed so that they are near the petroleum consuming areas and so that the impact of the development of refineries and transportation systems will be minimal.

We are also very concerned that the State veto provisions in H.R. 10701 will establish a precedent for amending other legislation governing outer continental shelf development. Similar veto provisions in the Outer Continental Lands Act could seriously hinder our program to encourage the exploration and development of offshore deposits of oil and gas.

Because of the need to move forward with programs to assist our energy policy development we are not objecting to the approval of this enrolled bill. We recommend that the signing statement should note the deficiencies of this legislation and indicate we will propose amendments to the next Congress if it becomes evident that the legislation is either impeding development of deepwater port facilities or preventing geographically balanced development.

Naturally, we had hoped Congress would pass legislation without obvious flaws because the enactment of corrective legislation takes time and the planning and construction of deepwater ports and supporting onshore facilities takes even longer. We cannot afford unnecessarily long-term solutions to our energy problems.

Sincerely yours,

A handwritten signature in cursive script that reads "John Whitaker". The signature is written in dark ink and is positioned to the right of the typed name.

Acting Secretary of the Interior

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C. 20503



DEPARTMENT OF STATE

Washington, D.C. 20520

DEC 20 1974

The Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D.C.

Dear Mr. Ash:

This is in response to Mr. Rommel's communication of December 19 concerning the views of the Department of State on H.R. 10701. This Bill authorizes and regulates the location, construction and operation of deepwater ports in waters off the United States coast beyond the territorial sea.

The Department is of the view that construction and operation of deepwater ports in a manner which will not interfere with high seas freedoms can be undertaken as a reasonable use of the high seas under international law. We have some concern that the prohibition in Section 4(a) against the construction and operation of deepwater ports by any person, including foreign nationals, and that the liability provisions in Section 18 as applied to vessels merely transiting the safety zone and not actually using the deepwater port might be regarded as an unwarranted exercise of United States jurisdiction. However, we believe sufficient safeguards are included to allow actual regulation in a manner consistent with international law. Accordingly, the Department of State does not object to favorable action on the Bill.

Cordially,

A handwritten signature in black ink, appearing to read "Linwood Holton".

Linwood Holton
Assistant Secretary
for Congressional Relations

Department of Justice
Washington, D.C. 20530

DEC 23 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill H.R. 10701, "To regulate commerce,..by establishing procedures for the location, construction, and operation of deepwater ports off the coasts of the United States, and for other purposes."

After such review, I am authorized to relate to you that the Department of Justice has no objection to Executive approval of this bill.

Sincerely,



W. Vincent Rakestraw
Assistant Attorney General



THE UNDER SECRETARY OF THE TREASURY

WASHINGTON, D.C. 20220

DEC 27 1974

Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for Legislative
Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of H.R. 10701, "To regulate commerce, promote efficiency in transportation, and protect the environment, by establishing procedures for the location, construction, and operation of deepwater ports off the coasts of the United States, and for other purposes."

The enrolled enactment would create a licensing procedure by the Secretary of Transportation for the construction and operation of deepwater port facilities. It would clarify the existing overlapping and sometimes inconsistent State approaches, and authorize construction approval and licensing under Federal law.

From an energy standpoint, the most significant difficulties with the enrolled enactment arise because section 9(b) states:

"* * * The Secretary shall not issue a license without the approval of the Governor of each adjacent coastal State. * * *"

If widely used by the States, the veto authority thus created could seriously inhibit the development of deepwater port facilities. We do note, however, that the potential impact of this authority is somewhat diminished by succeeding language, which provides that where a State objects to a proposed facility on the ground that it is inconsistent with State environmental or coastal zone management programs, the license may nonetheless be granted, conditioned upon compliance with such programs. Many State objections may thus be subject to accommodation and compliance by the licensee under his Federal license, and in fact a facility

may not be halted on that ground alone. Finally, if a State does not disapprove a facility within 45 days after completion of public hearings, its approval is conclusively presumed.

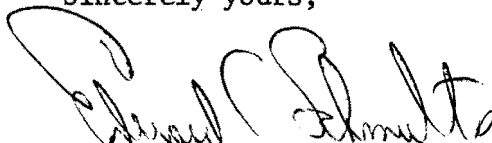
It is anticipated that this veto authority will not be exercised by the Gulf Coast States, who are familiar with oil transshipment facilities, but that it will likely be exercised by East Coast States. In any event, the possibility of such exercise will in our judgment preclude industry from undertaking at this time the extensive studies needed to support an application for a facility off the East Coast. Should this prove to be the case, amendments will be required to be submitted to the 94th Congress, but in the interim Gulf Coast facilities will be able to proceed.

In view of the foregoing, the Department would have no objection to a recommendation that the enrolled enactment be approved by the President.

The provisions of the Deepwater Port Liability Fund which would be established by section 18(f) of the enrolled enactment are deficient for the following reasons: (1) it is not clearly stated whether the fund is to be established as a Government corporation operating as a revolving fund; (2) the provision on borrowing from the U.S. Treasury does not specify the source authority for such borrowing, or the method by which the Secretary of the Treasury shall compute the applicable interest; (3) the investment provision does not contain the customary language authorizing the Secretary of the Treasury, at the request of the Secretary of Transportation, to invest excess moneys of the fund in U.S. obligations, or in obligations guaranteed by the United States -- income from such investments to be "credited and become a part of the fund"; and (4) the enrolled enactment does not expressly require that the costs of administering the fund shall be paid only from amounts appropriated to the fund for that purpose, although this appears to be the intent of the drafters.

If, as we anticipate, it is necessary to submit amendments to the enrolled enactment during the 94th Congress, the Department would appreciate being given the opportunity to assist in drafting amendments to correct the foregoing problems relating to the Fund.

Sincerely yours,



Edward C. Schmults

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

DEC 26 1974

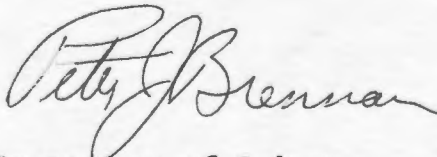
Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Ash:

This letter is to volunteer the views of the Department of Labor on enrolled enactment H.R. 10701, the "Deep-water Ports Act."

I note that the conferees did not include provisions which would place job related injuries under the worker compensation provisions of the Longshoremen's and Harbor Worker's Compensation Act. This provision was included in the House passed version of the bill but deleted by the conferees. This deletion means that the American workers affected by the bill will have to rely on the more time consuming provisions of the Jones Act and the Death on the High Seas Act. This is clearly a harsh and unnecessary burden on the workers performing under the Deepwater Ports Act. For this reason, I would urge that if the President approves this Act, his statement approving this bill should indicate that the President will request legislation in the next session of Congress placing these workers under the provisions of the Longshoremen's and Harbor Worker's Compensation Act.

Sincerely,



Secretary of Labor

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY

DEC 28 1974 3:28

RECEIVED



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20350

24 December 1974

Dear Mr. Ash:

Your transmittal sheet dated 19 December 1974, enclosing a facsimile of an enrolled bill of Congress, H.R. 10701, "To amend the Act of October 27, 1965, relating to public works on rivers and harbors to provide for construction and operation of certain port facilities," and requesting comment of the Department of Defense, has been received. The Department of the Navy has been assigned the responsibility for the preparation of a report thereon expressing the views of the Department of Defense.

The purpose of this act is to authorize and regulate the location, ownership, construction and operation of deepwater ports in waters beyond the territorial limits of the United States; to provide for protection of the marine and coastal environment to prevent or minimize any adverse ports; to protect the interests of the United States and those of adjacent coastal states in the location, construction, and operation of deepwater ports; and to protect the rights and responsibilities of states and communities to regulate growth, determine land use, and otherwise protect the environment in accordance with law.

The Department of the Navy, on behalf of the Department of Defense interposes no objection to the approval of H.R. 10701.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "D. S. Potter", is written above the typed name.

D. S. Potter
Under Secretary of the Navy

Honorable Roy L. Ash
Director, Office of Management and Budget
Washington, D. C. 20350

VMD BUDGET
OFFICE OF MANAGEMENT
24 DEC 31 PM 4:18
RECEIVED

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

2120 L STREET, N.W., SUITE 500
WASHINGTON, D.C. 20037

December 20, 1974

OFFICE OF
THE CHAIRMAN

Mr. W. H. Rommel
Assistant Director
for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Rommel:

This is in response to your memorandum of December 19 requesting our comments on enrolled bill H.R. 10701, The Deepwater Port Act of 1974.

In the short time available we have been unable to examine and consider in detail the regulatory structure set up by the bill, but we do have the following (hurriedly assembled) comments on particular procedural provisions:

1. Section 5(g) provides that the Secretary of Transportation may issue a license after following certain procedures including at least one public hearing (presumably a legislative-type hearing) in each adjacent costal State and "at least one adjudicatory hearing * * * in accordance with the provisions of " 5 U.S.C. §554 where the Secretary determines that there exists one or more specific and material factual issues. The language of this subsection appears to assume that the provisions of section 554, (as well as of sections 556 and 557 which are automatically brought into play) apply to a hearing made in the course of an agency determination, whereas they apply to the entire procedure leading up to the agency determination. In other words, it seems a contradiction in terms to talk of two kinds of hearing, one governed by section 554 and one not so governed, in the course of the proceeding leading to a given determination. This anomaly is likely to lead to some practical problems, e.g., what weight the agency is entitled to give to evidence developed in the informal hearing in deciding whether to hold a formal hearing or in rebutting evidence presented at the formal hearing. However, it seems probable that the subsection as a whole can be given a common sense interpretation, i.e. that basically subsection (g) contains the conventional requirement for a determination on the record with opportunity for a hearing plus a requirement that the agency conduct one or more legislative-type hearings as part of its pre-trial procedure for formulating the factual issues.

Such a procedure may be awkward, but it is probably workable and may not be disproportionate to the significance of the issues involved.

In view of the peculiar features of disputes over environmental impact, however, one must assume that it will not be difficult for opponents of a license to raise specific and material factual issues which necessitate an adjudicatory hearing. See Cramton and Berg, On Leading a Horse to Water: NEPA and the Federal Bureaucracy, 71 Mich. L.R. 511, 526-27 (1973).

2. In section 15, dealing with remedies, subsection (b)(3) seems to require that the Government seek equitable relief or a civil penalty, but not both. It may be "or" is intended to be conjunctive and not disjunctive, but this is not clear. One would think that the more serious the violation the greater the need for both equitable relief and an appropriate penalty.

3. Section 16 raises some general problems regarding the desirability of citizens' suits. The provision seems very broad, and it is hard to judge its impact without greater familiarity with the bill. It seems, however, to raise a question as to whether the Government has discretion to overlook or waive minor violations of the Act, regulations, or license conditions. Section 16(b)(1)(B) authorizes a citizen complainant to intervene as of right in a criminal action. Such a right is unknown to Federal criminal procedure, so far as we are aware.

4. Section 17 is extremely confusing. It provides for judicial review by one suffering legal wrong, adversely affected, or aggrieved by the Secretary's licensing decision. To be "aggrieved" one must have participated in the agency proceeding, but this is not required for one adversely affected or suffering legal wrong. Yet these terms are generally considered synonymous, and are not otherwise distinguished in the bill. The practical question is can one seek judicial review if he did not participate in the agency proceeding? Section 17 seems to point both ways at once.

5. Section 18 is extremely confusing. It purports to set up a system for compensating victims of oil spills and determining liability, but says very little about the forums for making the necessary determinations. Subsection (j)(3) suggests that claims are to be resolved administratively (under what procedures?) subject to judicial review. Subsection (i) strongly implies de novo litigation, although it is not clear whether such suits are to be brought against the Liability Fund or those responsible for the spill. The role of the Attorney General in all this litigation is confusing. His representation of the class of damaged citizens under Subsection (i) is likely to conflict with his duties toward the Secretary and the Fund, who are not authorized to represent themselves and, therefore, must look to the Department of Justice for legal representation. It is also not entirely clear what courts are to have jurisdiction over litigation arising under the section. Is section 19(e) intended to encompass all litigation over liability for oil spills arising unde:


In short section 18, in its present form, seems literally incomprehensible.

6. Section 24 authorizes the Secretary to issue administrative subpoenas, but contains no provision for judicial enforcement of such subpoenas. Such specific authority is customary, see e.g., 49 U.S.C. §1484, and probably necessary, see Senate Select Committee v. Nixon, 366 F. Supp. 51, 55-61 (D.D.C. 1973).

We are not, of course, in a position to judge whether the problems considered above are sufficiently serious to justify a veto. Some may be resolved by common sense interpretation, although section 18, as we have said, may be impossible of application.

These comments have been compiled hastily. We would be glad to discuss them further with your staff.

Sincerely yours,

A handwritten signature in cursive script that reads "Richard K. Berg". The signature is written in dark ink and is positioned above the typed name and title.

Richard K. Berg
Executive Secretary



ADVISORY
COMMISSION ON INTERGOVERNMENTAL RELATIONS

WASHINGTON, D.C. 20575

December 23, 1974

Mr. W. H. Rommel
Assistant Director for
Legislative Reference
Executive Office of the President
Office of Management and Budget
Washington, D.C. 20575

Dear Mr. Rommel:

This is in response to your request for the views of the Advisory Commission on Intergovernmental Relations with respect to an act: "To regulate commerce, promote efficiency in transportation, and protect the environment, by establishing procedures for the location, construction, and operation of deepwater ports off the coasts of the United States, and for other purposes."

The Commission has not examined the specific issues involved in this legislation. The staff has no comment concerning its intergovernmental effects.

Thank you for the opportunity to review and comment on this proposed measure.

Sincerely,

David B. Walker
Assistant Director

DBW:bh

770 0000
QUEST. INT. RELATIONS
14 DEC 31 11:18
RECEIVED

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 901

Date: December 29, 1974

Time: 7:00 p.m.

FOR ACTION:

Norm Ross
Max Friedersdorf *oh*
Phil Areeda *sign*
Paul Theis *oh*

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Monday, December 30

Time: 1:00 p.m.

SUBJECT:

Enrolled Bill H.R. 10701 - Deepwater Port Act of 1974

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

o/c/CHP

Statement by the President on Signing
the Deepwater Ports Act

I have ~~been~~ approved H. R. 10701, the Deepwater Ports Act of 1974.

On several occasions since taking office, I have urged that the Congress give high priority to ~~the~~ ^{our} Executive Branch request for legislation dealing with deepwater ports ~~which is~~ ^{it is considered this} an important step in our national effort to provide an adequate supply of energy at reasonable prices, ^{and therefore,} I commend the 93rd Congress for completing work on the measure before adjournment.

Deepwater Ports can provide the safest, most efficient and least expensive means for transporting ~~the portion of our~~ petroleum supplies that we obtain from foreign sources.

This Act establishes the necessary legal framework for licensing the construction and operation of port facilities in naturally deep water distant from our coastlines where supertankers can unload their cargo into underwater pipelines.

Because of their immense capacity supertankers can reduce by nearly one-third the cost of ~~ocean transportation~~ ^{hauling} of a barrel of oil. The use of deepwater ports will also reduce the danger of oil spills since fewer conventional tankers would be required to deliver oil to our crowded inshore harbors. Our existing ports are not deep enough to handle

supertankers safely and dredging existing ports can be very expensive as well as environmentally undesirable.

The Deepwater Ports Act is a significant addition to our program for supplying the Nation's energy needs. I am pleased to be able to sign it into law as one of my first acts of the new year.

Date: December 29, 1974

Time: 7:00 p.m.

FOR ACTION:

Norm Ross
Max Friedersdorf
Phil Areeda
Paul Theis *gc 12/29/74*

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Monday, December 30

Time: 1:00 p.m.

SUBJECT:

Enrolled Bill H.R. 10701 - Deepwater Port Act of 1974

ACTION REQUESTED:

- | | |
|---|---|
| <input type="checkbox"/> For Necessary Action | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

1974 DEC 30 AM 8 45

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

STATEMENT BY THE PRESIDENT

I have today approved H.R. 10701, the Deepwater Port Act of 1974.

I commend the Congress for its enactment of this important legislation, ~~which is~~ one of my major legislative priorities ~~among the measures we need to take~~ to meet our pressing energy needs.

This Act ~~will~~ establish the necessary legal framework for licensing facilities in ~~the~~ deep water ^{distant} ~~away~~ from our coastlines where supertankers can unload their cargo into underwater pipelines. Because of their immense capacity, ~~one~~ of these huge tankers can reduce by ^{nearly} one-third the cost of hauling a barrel of oil. ~~But~~ our existing ports are not deep enough to handle these ^{supertankers} ~~giants~~ safely, ~~and~~ dredging existing ports can be very expensive as well as ~~environmentally~~ undesirable. By building offshore ports in the waters beyond our territorial limits, we ~~will be~~ ^{can} able to benefit from the lower transportation costs associated with supertankers.

At the same time, we ~~will~~ ^{the} reduce ~~the~~ danger to our environment by ~~cutting down the number of~~ ^{having fewer} conventional tankers ~~that now~~ deliver oil to our crowded inshore harbors. ^{We also} ~~and by~~ move ^{farther away from our coasts} the point at which a potential oil spill could occur. ~~farther away from our coasts.~~ In the event that an oil spill or accident does ^{result} ~~occur~~ at a deepwater port, cleanup costs and claims for damages would be paid under the liability provisions of this Act.

H.R. 10701 gives a strong voice to coastal States which would be affected by a deepwater port. ~~While~~ I believe that State views should carry great weight, ^{but} we cannot overlook the broader national interest at stake here, ~~also~~. We must be sure that this broader national interest is fully recognized, and, if experience under the legislation shows that it must be amended to achieve this purpose, I will not hesitate to seek such amendments from the Congress.

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR: WARREN HENDRIKS
FROM: *Max L. Friedersdorf* MAX L. FRIEDERSDORF
SUBJECT: Action Memorandum - Log No. 901
Enrolled Bill H. R. 10701

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 901

Date: December 29, 1974

Time: 7:00 p.m.

FOR ACTION:

Norm Ross
Max Friedersdorf
Phil Areeda
Paul Theis

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Monday, December 30

Time: 1:00 p.m.

SUBJECT:

Enrolled Bill H.R. 10701 - Deepwater Port Act of 1974

ACTION REQUESTED:

- | | |
|---|---|
| <input type="checkbox"/> For Necessary Action | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Sign the bill.
P. Areeda _____ *nc*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 901

Date: December 29, 1974

Time: 7:00 p.m.

FOR ACTION:

Norm Ross
Max Friedersdorf
Phil Areeda
Paul Theis

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Monday, December 30

Time: 1:00 p.m.

SUBJECT:

Enrolled Bill H.R. 10701 - Deepwater Port Act of 1974

ACTION REQUESTED:

___ For Necessary Action

___ For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

___ For Your Comments

___ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

*OK Make final
Revised Statement, approved by
Paul Theis, is attached.*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

STATEMENT BY THE PRESIDENT

I have today approved H.R. 10701, the Deepwater Port Act of 1974.

I commend the Congress for its enactment of this important legislation, which is one of my major legislative priorities among the measures we need to take to meet our pressing energy needs.

This Act will establish the necessary legal framework for licensing facilities in the deep water away from our coastlines where supertankers can unload their cargo into underwater pipelines. Because of their immense capacity, use of these huge tankers can reduce by one-third the cost of hauling a barrel of oil. But our existing ports are not deep enough to handle these giants safely, and dredging existing ports can be very expensive as well as environmentally undesirable. By building offshore ports in the waters beyond our territorial limits, we will be able to benefit from the lower transportation costs associated with supertankers.

At the same time, we will reduce the dangers to our environment by cutting down the number of conventional tankers that now deliver oil to our crowded inshore harbors and by moving the point at which a potential oil spill could occur further away from our coasts. In the event that an oil spill or accident does occur at a deepwater port, cleanup costs and claims for damages would be paid under the liability provisions of this Act.

H.R. 10701 gives a strong voice to coastal States which would be affected by a deepwater port. While I believe that State views should carry great weight, we cannot overlook the broader national interest at stake here also. We must be sure that this broader national interest is fully recognized, and, if experience under the legislation shows that it must be amended to achieve this purpose, I will not hesitate to seek such amendments from the Congress.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

DEC 29 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 10701 - "Deepwater Port Act
of 1974"

Sponsor - Rep. Breaux (D) Louisiana and 19 others

Last Day for Action

January 4, 1975 - Saturday

Purpose

Authorizes the Secretary of Transportation to license the construction and operation of offshore oil ports located beyond U.S. territorial limits; establishes a special fund to cover oil spill damage claims and cleanup costs exceeding those paid by vessel owners or port licensees.

Agency Recommendations

Office of Management and Budget

Approval (Signing Statement Attached)

Department of Transportation

Approval

Federal Energy Administration

Approval

Environmental Protection Agency

Approval (Informally)

Council on Environmental Quality

Approval

Department of Commerce

Approval

Federal Maritime Commission

Approval

Department of the Interior

No objection

Department of State

No objection

Department of Justice

No objection

Department of the Treasury

No objection

Department of Labor

No objection

Department of the Navy

No objection

Administrative Conference of
the United States

Cites concerns

Advisory Council on Intergovernmental
Relations

No recommendation



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 30 1974

OFFICE OF THE
ADMINISTRATOR

Dear Mr. Ash:

This is in response to your December 20, 1974 request for the Environmental Protection Agency's views and comments on H. R. 10701, an enrolled bill to be cited as the "Deepwater Port Act of 1974." The purpose of this legislation is to "regulate commerce, promote efficiency in transportation, and protect the environment, by establishing procedures for the location, construction, and operation of deepwater ports off the coast of the United States, and for other purposes."

The bill authorizes the Secretary of Transportation to issue licenses to own, construct and operate deepwater ports. This authority is to be exercised in consultation with other Federal agencies having jurisdiction or expertise over various aspects of deepwater port development. Before a license is issued, the Secretary must provide an opportunity for all interested Federal agencies including the Departments of State, Interior, Defense, and the Environmental Protection Agency to comment on the effect issuance of a license would have on the law and programs they administer.

In addition, the Administrator of EPA may "veto" the issuance of a license if he finds that deepwater port development, as proposed in the application, would result in violation of the Clean Air Act, the Federal Water Pollution Control Act or the Marine Protection, Research, and Sanctuaries Act.

The Secretary, in accordance with the recommendations of the Administrators of EPA and NOAA and after consultation with any other Federal agencies having jurisdiction over any aspect of deepwater port construction or operation, shall establish environmental review criteria consistent with the National Environmental Policy Act. Further, the Secretary

must also prepare a detailed environmental impact statement to satisfy the requirements of section 102(2)(C) of the National Environmental Policy Act.

Section 5(d) of the bill requires the Secretary to establish a geographic application area encompassing the site of a deepwater port as proposed in the application and to publish a description of the area, giving time for competing applications to be filed. Unless one application within an application area clearly "best serves the national interest" a license will be issued according to the priorities set out in section 5(i)(2) and (3).

The bill prevents the Secretary from issuing a license unless the Governor of the coastal States adjacent to the proposed deepwater port site approves or is presumed to approve the issuance of a license. According to section 9 of the bill, the Secretary must forward a copy of an application to any State designated as an adjacent coastal State with respect to the deepwater port proposed in the application. The Governor of the State must notify the Secretary if he approves or disapproves the application within 45 days after the last public hearing on the application. If the Governor fails to notify the Secretary within that period the Governor's approval is presumed. The Secretary must incorporate as conditions of the license, provisions to ensure that the deepwater port construction will be consistent with the State's environmental programs.

Provisions are also made for establishing levels of liability for damages if oil is discharged from a deepwater port or a vessel operating in a port's safety zone.

The procedure for reporting and cleaning up discharges of oil, and the civil and criminal penalties for violations thereof, are patterned after the Federal Water Pollution Control Act, as amended.

The bill also establishes a \$100,000,000 Deepwater Port Liability Fund. The Fund receives moneys from a two cents per barrel charge on each barrel of oil (or its metric volume equivalent of natural gas in a liquefied state) flowing through any deepwater port licensed under the Act. The Fund will be administered by the Secretary and is liable to pay all damages, including clean-up and third party damages, in

excess of the limits of liability of the licensee or the vessel owner or operator.

In addition the bill directs a study by Executive Agencies, including EPA, of the issues and alternatives for designing a comprehensive liability system to aid in the establishment of a single inclusive system of liability for all ocean-related operations.

Finally, the bill makes provision for: antitrust review by the Federal Trade Commission and the Attorney General; recordkeeping and inspection; public access to information; international agreements; suspension and termination of licenses. The bill subjects deepwater ports to common carrier status and directs the Secretary to establish regulations and procedures for marine environmental protection and navigational safety.

The Environmental Protection Agency views with approval the "Deepwater Port Act of 1974." Such facilities, if properly designed, constructed and regulated can play a key role in minimizing environmental hazards inherent in the water transport of oil in addition to helping to meet the demands of this country for increased fuel supplies.

Onshore port facilities have become increasingly congested and are incapable of servicing the supertankers now being built. With few exceptions, the largest fully loaded vessels able to enter East and Gulf coast ports today weigh about 65 thousand dead weight tons.

The use of larger, more efficient tankers at specially designed off-shore terminals would mean that fewer vessels would be needed to carry the increased volume of U. S. ocean-borne crude oil imports projected for the future. It has also been projected that the propensity for collision and the attendant risk of oil pollution damage would be less than with the movement of the same volume of oil via more numerous and smaller tankers using existing terminals and port channels.

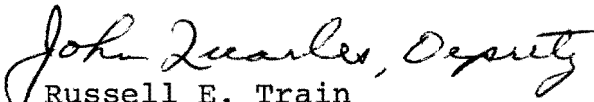
We are pleased to note the care and consideration which the bill gives to environmental concerns and the programs of this Agency, particularly, with regard to the establishment of environmental review criteria and the evaluation to be made

by the Administrator of each proposed license for conformity with requirements of the Clean Air Act, the Federal Water Pollution Control Act and the Marine Protection, Research, and Sanctuaries Act. We would have liked to see the inclusion of EPA in consultations relating to site evaluation and pre-construction testing. Section 5(b) of the bill requires that the Secretary confer only with the Secretary of the Interior and the Administrator of NOAA. We are confident however that with proper implementation and management the views of the Environmental Protection Agency will be appropriately reflected.

We recommend approval of the "Deepwater Port Act of 1974" and its submission to the President for signature.

We appreciate the opportunity to comment on the bill.

Sincerely yours,


Russell E. Train
for Administrator

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C. 20503

o/c/CTR

Draft Statement by the President on Signing
the Deepwater Ports Act

I have today approved H. R. 10701, the Deepwater Ports Act of 1974.

On several occasions since taking office, I have urged that the Congress give high priority to ^{our} the Executive Branch request for legislation dealing with deepwater ports ^{It is considered this} ~~which is~~ an important step in our national effort to provide an adequate supply of energy at reasonable prices, ^{and therefore,} I commend the 93rd Congress for completing work on the measure before adjournment.

Deepwater Ports can provide the safest, most efficient and least expensive means for transporting ~~the portion of our~~ petroleum supplies that we obtain from foreign sources.

This Act establishes the necessary legal framework for licensing the construction and operation of port facilities in naturally deep water distant from our coastlines where supertankers can unload their cargo into underwater pipelines.

Because of their immense capacity supertankers can reduce by nearly one-third the cost of ^{hauling} ~~ocean transportation~~ of a barrel of oil. The use of deepwater ports ~~will~~ ^{reduces} also reduce the danger of oil spills since fewer conventional tankers would be required to deliver oil to our crowded inshore harbors. Our existing ports are not deep enough to handle

STATEMENT BY THE PRESIDENT

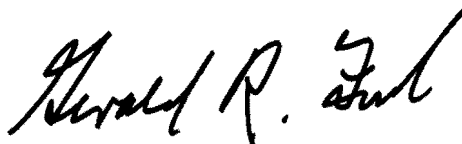
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Because of their immense capacity supertankers can reduce by nearly one-third the cost of hauling a barrel of oil. The use of deepwater ports also reduces the danger of oil spills since fewer conventional tankers would be required to deliver oil to our crowded inshore harbors. Our existing ports are not deep enough to handle supertankers safely and dredging existing ports can be very expensive as well as environmentally undesirable.

The Deepwater Ports Act is a significant addition to our program for supplying the Nation's energy needs. I am pleased to be able to sign it into law as one of my first acts of the new year.

A handwritten signature in black ink, reading "Gerald R. Ford". The signature is written in a cursive style with a large, sweeping "G" and "F".