

H.R. 5012 is, in form, an amendment of section 22, title V, United States Code. The bill does not in terms amend section 3 of the Administrative Procedure Act. Section 2, however, provides that "all laws or parts of laws" inconsistent with the bill "are hereby repealed." While the term "all laws or parts of laws" is presumably designed to include section 3 of the Administrative Procedure Act, it is far from clear how much of that section would in fact be repealed and how much of it would be left intact. If section 3 of the Administrative Procedure Act is to be amended or repealed, which would appear to be necessary if the bill is to have any significance, this should be done specifically, rather than inferentially or indirectly, as provided in H.R. 5012. If this is not done, the bill can only result in even greater confusion and uncertainty than already exists.

While, the beneficial purposes of the bill should certainly be kept firmly in mind, the foregoing serious deficiencies should be corrected before the bill is forwarded to the House of Representatives. It is suggested that the following amendments would take care of the more egregious deficiencies in H.R. 5012.

1. Amend clause (4) to read as follows:

"(4) Trade secrets and information obtained from the public in confidence or customarily privileged or confidential or information acquired during mediation or conciliation of labor disputes."

2. Amend clause (5) to read as follows:

"(5) Interagency or intraagency memorandums or letters."

Alternatively, this clause might be amended to read as follows:

"(5) Interagency or intraagency memorandums or letters dealing with matters of fact, law, or policy".

3. Amend clause (7) to read as follows:

"(7) investigatory files."

Alternatively, it is suggested that the rule enunciated in the *Jencks* case might well be written into the bill. This could be done by amending clause (7) to read as above, by inserting a new clause (8), and by renumbering the present clause (8) as clause (9). The new clause (8) would read as follows:

"(8) Statements of agency witnesses until such witnesses are called to testify in an action or proceeding and request is timely made by a private party for the production of relevant parts of such statements for purposes of cross examination."

Enactment of legislation along the lines of H.R. 5012 is sought principally by the American Bar Association and the American Newspaper Publishers Association, which claim that it is necessary to correct certain interpretations of section 22, title V, United States Code, and section 3 of the Administrative Procedure Act. They claim that these provisions have been relied upon by executive departments and agencies to withhold information to which parties to actions or proceedings before such departments or agencies or the public are entitled. They claim, the provisions in question, and particularly section 3 of the Administrative Procedure Act, which were designed as disclosure statutes, have in fact become principal bulwarks of nondisclosure.

As I said at the beginning of this statement, we support the principle underlying this H.R. 5012, the principle that the full disclosure of the operations of the agencies of Government is in the public interest, but we also insist that another important principle be maintained, the principle of maintaining the integrity of purpose of Government agencies and avoiding adverse effects resulting from disclosure of confidential information.

We believe disclosure of information that jeopardize the purpose of a Government agency, and particularly the purposes of those Government agencies with which we are most familiar, is wrong and contrary to the intent of the Congress in setting up those agencies.

Therefore, we urge this subcommittee to give very serious attention to the points we have made in this statement and to the changes we have recommended.

STATEMENT OF KERMIT OVERBY, DIRECTOR, LEGISLATION AND RESEARCH DEPARTMENT, RURAL ELECTRIC COOPERATIVE ASSOCIATION, WASHINGTON, D.C.

Hon. JOHN E. MOSS,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN MOSS: As the national trade and service organization of nearly 1,000 rural electric cooperatives which depend for their financial well-