

Do you assume there will be no plan established? Is that what your assumption is?

Mr. DENENBERG. The problem is that it mentions a FAIR Plan but does not prescribe any procedures for developing it or does not even describe it. It simply uses the term "FAIR Plan". Unlike other legislation it fails to spell out what a FAIR Plan is.

Mr. GARBER. Is a FAIR Plan described in the National Act?

Mr. DENENBERG. The basic essentials are described, yes.

Mr. GARBER. If a FAIR Plan were described would that be adequate?

Mr. DENENBERG. It mentions a FAIR Plan and then it says inspection is provided for. That is all it does.

According to this the FAIR Plan would be simply the inspection but there is a lot more to the FAIR Plan that is not spelled out in this legislation at all.

This legislation would give you a FAIR Plan which would not meet the national requirements and that is in fact not a FAIR Plan at all.

Mr. GARBER. You are saying in effect that any FAIR Plan here which was developed would not be adequate to enable the insurers to cooperate on the basis of the National Act?

Mr. DENENBERG. That is correct. The FAIR Plan called for in this bill is not even a FAIR Plan. It is inconsistent with the Hughes Panel report and inconsistent with the national legislation.

Mr. GARBER. If a FAIR Plan pursuant to the purposes of this Act is developed in accordance with the provisions of the National Act, does that serve the purpose?

Mr. DENENBERG. You are saying you can ignore this legislation and develop one on a voluntary basis or under the Federal legislation? The idea of the local legislation is to spell out the particular problems of the local jurisdiction and how they will be solved. That is what the Diggs bill does and that is what the Patten bill does and what Title 11 does.

18541 mentions a FAIR Plan. It does not spell out the appropriate procedure for the FAIR Plan. What it spells out is inadequate in terms of the national legislation and is contrary to the Hughes Panel report.

Mr. GARBER. Suppose this bill were an Act and a FAIR Plan were proposed. Would not the Commissioner and the Superintendent of Insurance have the discretion in this case to see that the FAIR Plan was adequate?

Mr. DENENBERG. Not under this bill. It simply does not have the authority in H.R. 18541.

Mr. GARBER. The Subcommittee Chairman pointed out that he has the authority either to permit them to do business in accordance with that approved plan or not to do business.

Mr. DENENBERG. No, actually he does not under 18541. This fails to give him the authority.

The whole idea of the legislation is to create a national bill and then to permit each local jurisdiction to spell out what it wants done on the local level.

The problem with 18541 is that it does not spell this out. It would be a useless act to pass this bill if it does not provide for the things that have to be provided contemplated by the National Act.