

AMENDING THE SOCIAL SECURITY ACT—PROVIDING FOR  
AN INVESTIGATION OF THE TENNESSEE UNEM-  
PLOYMENT COMPENSATION DIVISION OF  
THE SOCIAL SECURITY BOARD

---

---

HEARING

BEFORE A

SUBCOMMITTEE OF THE  
COMMITTEE ON FINANCE  
UNITED STATES SENATE

SEVENTY-FIFTH CONGRESS

THIRD SESSION

ON

**S. Res. 226**

A RESOLUTION PROVIDING FOR AN INVESTIGATION OF  
THE TENNESSEE UNEMPLOYMENT COMPENSA-  
TION DIVISION OF THE SOCIAL SECURITY  
BOARD

**S. 3235**

A BILL TO AMEND THE SOCIAL SECURITY ACT SO AS TO  
PROVIDE FOR THE SELECTION ON A MERIT BASIS  
OF CERTAIN PERSONNEL FOR WHOSE COM-  
PENSATION APPROPRIATIONS ARE  
MADE BY THE FEDERAL  
GOVERNMENT

**S. 3370**

A BILL TO AMEND THE SOCIAL SECURITY ACT TO PRO-  
VIDE FOR THE ESTABLISHMENT AND MAINTEN-  
ANCE OF CERTAIN PERSONNEL STANDARDS  
ON A MERIT BASIS, AND FOR OTHER  
PURPOSES

---

FEBRUARY 15, 1938

---

Printed for the use of the Committee on Finance

---

UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON: 1938

## COMMITTEE ON FINANCE

PAT HARRISON, *Mississippi, Chairman*

WILLIAM H. KING, Utah	ROBERT M. LA FOLLETTE, Jr., Wisconsin
WALTER F. GEORGE, Georgia	ARTHUR CAPPER, Kansas
DAVID I. WALSH, Massachusetts	ARTHUR H. VANDENBERG, Michigan
ALBEN W. BARKLEY, Kentucky	JOHN G. TOWNSEND, Jr., Delaware
TOM CONNALLY, Texas	JAMES J. DAVIS, Pennsylvania
JOSIAH W. BAILEY, North Carolina	
BENNETT CHAMP CLARK, Missouri	
HARRY FLOOD BYRD, Virginia	
AUGUSTINE LONERGAN, Connecticut	
PETER G. GERRY, Rhode Island	
JOSEPH F. GUFFEY, Pennsylvania	
ROBERT J. BULKLEY, Ohio	
PRENTISS M. BROWN, Michigan	
CLYDE L. HERRING, Iowa	
EDWIN C. JOHNSON, Colorado	

FELTON M. JOHNSTON, *Clerk*

### SUBCOMMITTEE ON SENATE RESOLUTION 226, S. 3235, AND S. 3370

DAVID I. WALSH, *Chairman*

EDWIN C. JOHNSON

JOHN G. TOWNSEND, Jr.

# AMENDING THE SOCIAL SECURITY ACT—PROVIDING FOR AN INVESTIGATION OF THE TENNESSEE UNEMPLOYMENT COMPENSATION DIVISION OF THE SOCIAL SECURITY BOARD

TUESDAY, FEBRUARY 15, 1938

UNITED STATES SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON FINANCE,  
*Washington, D. C.*

The subcommittee met, pursuant to call, at 10:30 a. m. in the Senate Finance Committee room, Senate Office Building, Senator David I. Walsh (chairman), presiding.

Present: Senators Walsh (chairman), Edwin C. Johnson, and John G. Townsend, Jr.

Also present: Senator James F. Byrnes, of South Carolina; Senator Kenneth McKellar, of Tennessee; Senator George L. Berry, of Tennessee; Arthur J. Altmeyer, Chairman, Social Security Board; Frank Bane, Executive Director, Social Security Board.

Senator WALSH. A subcommittee of the Committee on Finance of the Senate is meeting this morning for the purpose of hearing evidence and considering what action should be taken on Senate Resolution 226, S. 3235, both of which were introduced by Senator McKellar, and S. 3370, introduced by Senator Byrnes.

S. 3235 and S. 3370 seek to amend the Social Security Act, so as to provide for the establishment and maintenance of certain personnel standards on a merit basis. They both limit the personnel standards to those receiving compensation from appropriations by the Federal Government.

Senate Resolution 226, briefly stated, requests the creation of a special committee composed of five Senators to make an investigation into the administration, activities, and operations of the Tennessee Unemployment Compensation Division of the Social Security Board. Both the resolution and the two bills relate to provisions in Public, No. 271, Seventy-fourth Congress, the Social Security Act, which provisions are as follows:

#### Section 2 (a) (5):

Provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan.

#### Section 303 (a) (1):

Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due.

#### Section 402 (a) (5):

Provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan.

**Section 503 (a) (3):**

Provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are necessary for the efficient operation of the plan.

**Section 513 (a) (3):**

Provide for such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are necessary for the efficient operation of the plan.

**Section 1002 (a) (5):**

Provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan.

[S. Res. 226, 75th Cong. 3d sess.]

**RESOLUTION**

*Resolved*, That there is hereby created a special committee, to be composed of five Senators, to be appointed by the President of the Senate, which committee is hereby authorized and directed to make a full and complete investigation into the administration, activities, and operations of the Tennessee Unemployment Compensation Division of the Social Security Board. The said committee shall report to the Senate as early as practicable the results of its investigation, together with recommendations as to the advisability or necessity of amending the Social Security Act so as to provide for the appointment of personnel on a merit basis.

For the purposes of this resolution the committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings, to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Senate in the Seventy-fifth Congress, to employ such clerical and other assistants, to require by subpoena or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, and to make such expenditures, as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 25 cents per hundred words. The expenses of the committee, which shall not exceed \$2,500, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman.

[S. 3235, 75th Cong., 3d sess.]

**A BILL** To amend the Social Security Act so as to provide for the selection on a merit basis of certain personnel for whose compensation appropriations are made by the Federal Government

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That clause (5) of section 2 (a) of the Social Security Act is amended by striking out "(other than those relating to selection, tenure of office, and compensation of personnel)" and inserting in lieu thereof "(including methods for the selection of personnel on a merit basis)".

**SEC. 2.** That subdivision (1) of section 303 (a) of the Social Security Act is amended by striking out "(other than those relating to selection, tenure of office, and compensation of personnel)" and inserting in lieu thereof "(including methods for the selection of personnel on a merit basis)".

[S. 3370, 75th Cong. 3d sess.]

**A BILL** To amend the Social Security Act to provide for the establishment and maintenance of certain personnel standards on a merit basis, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That clause (5) of section 2 (a) of the Social Security Act is amended to read as follows: "(6) provide such methods of administration, including methods relating to the establishment and maintenance of personnel standards on a merit basis, as are found by the Board to be necessary for the efficient operation of the plan;"

**SEC. 2.** Section 303 (a) (1) of such Act is amended to read as follows:

"(1) Such methods of administration, including methods relating to the establishment and maintenance of personnel standards on a merit basis, as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; and"

SEC. 3. Clause (5) of section 402 (a) of such Act is amended to read as follows: "(5) provide such methods of administration, including methods relating to the establishment and maintenance of personnel standards on a merit basis, as are found by the Board to be necessary for the efficient operation of the plan; and"

SEC. 4. Clause (3) of section 503 (a) of such Act is amended to read as follows: "(3) provide such methods of administration, including methods relating to the establishment and maintenance of personnel standards on a merit basis, as are necessary for the efficient operation of the plan;"

SEC. 5. Clause (3) of section 513 (a) of such Act is amended to read as follows: "(3) provide such methods of administration, including methods relating to the establishment and maintenance of personnel standards on a merit basis, as are necessary for the efficient operation of the plan;"

SEC. 6. Section 903 (a) (2) of such Act is amended by striking out the words "two years" and inserting in lieu thereof the words "one year".

SEC. 7. Clause (5) of section 1002 (a) of such Act is amended to read as follows: "(5) provide such methods of administration, including methods relating to the establishment and maintenance of personnel standards on a merit basis, as are found by the Board to be necessary for the efficient operation of the plan;"

Senator WALSH. Now, I do not want to keep Senator McKellar, Senator Byrnes, and Senator Berry here any longer than necessary, but I think Senators, it would be of great help to me, and it would to you, if these gentlemen would explain to us the present law and how it operates. What would you say to that?

Senator McKELLAR. All right, sir.

Senator BYRNES. All right. If you give me 2 minutes I can tell you what it is.

Senator McKELLAR. Which one do you want to discuss?

Senator BYRNES. S. 3370. The principal purpose of my bill has no reference to this question of appointment. The thing which I am particularly interested in is the provision in the bill that would enable the States to pay unemployment insurance benefits at an earlier date than is now possible under the social-security law, and under the laws of the States.

There are a number of States which will not begin these payments until January 1. The funds are available, and the only way in which they can have these payments made on either July 1 or October 1 is by one sentence of the law now reading "Two years" being changed to "one year." If that is done then the legislature in the State of Ohio, for instance, the State which has communicated with us more than any other State, can change its law so as to make these benefits payable before January 1.

If we can see into the future at all we would know that it will at least provide a cushion in these States for their unemployed. While we may have to increase the relief expenditures, still the unemployment insurance benefits would be of great assistance.

It occurred to me that while that was being done, and while I am assured that if this bill is enacted special sessions of legislatures will be called in one or two States, we should at the same time provide that the State should use some merit system to be approved by the Social Security Board in the appointment of the administrators of the unemployment insurance law.

Senator WALSH. Your bill embraces what Senator McKellar's bill does, but it also embraces another aspect.

Senator BYRNES. Yes. Now this matter was called to our attention by the unemployment investigation we have been conducting. At that time a number of gentlemen who came before the committee presented to us the facts that prompted this amendment, and we had the representatives of the Board give to us a statement of the facts showing the States in which this change was necessary.

If you have a copy of S. 3370, it is section 6: "Section 903 (a) (2) of such act is amended by striking out the words 'two years' and inserting in lieu thereof the words 'one year.'"

Senator McKELLAR. What would be the effect of that, Senator Byrnes?

Senator BYRNES. I will ask you gentlemen to tell me in how many States this would affect the payment of unemployment insurance benefits.

Mr. ALTMAYER. There are 23 States, counting the District of Columbia as a State, that started paying benefits on January 1. In fact Wisconsin started a year and a half before that. There are five States that will start between now and July 1, and all of the rest of the States, with the exception of Illinois, Georgia, and Montana, start paying some time on or before July 1, 1939.

Now, as Senator Byrnes says, the effect of his proposal would be that certain States that are now precluded from starting payment of benefits sooner than 2 years after the first day of the period for which the contributions were required may now amend their laws. I mean if this becomes a law they may then amend their own State laws so as to advance the payment of benefits and pay any time after 1 year, after the first day of the period for which contributions were required.

Senator WALSH. Now, what is the provision in the Federal law that operates to make different periods of time for payment in different States?

Mr. ALTMAYER. The Federal law, as one of the requirements of the State law, reads as follows:

No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required.

Senator WALSH. So that some States require contributions to be commenced earlier than others?

Mr. ALTMAYER. Yes, sir.

Senator WALSH. And the result is that that general law precludes or operates to make the time of payment 2 years, makes the time of payment of unemployment compensation 2 years after the commencement of the payment of the tax.

Mr. ALTMAYER. Yes, sir.

Senator WALSH. Will that have any harmful effect, in a financial way, to advance these payments?

Senator BYRNES. I was just coming to that.

Senator WALSH. All right.

Senator BYRNES. The funds have been set aside in the Treasury to the credit, for instance, of the State of Ohio unemployment insurance fund. It will not affect the fund in anyway, but by reason of their delay in enacting their own laws, this 2-year provision will preclude them from making the payment before January 1 unless we make it 1 year.

Senator WALSH. And I suppose the 2-year provision which was originally fixed to give them that period of time to provide a State law that would operate in conjunction with the Federal law?

Senator BYRNES. That was the reason for it. It will not have any effect except to give to the State this opportunity. In other words, the Congress will have done its part, and if the State fails to legislate and fails to move up the date it will be the fault of the State legislature, the State government, and it cannot complain of the action of the Congress, but they cannot do it unless we make this change to 1 year.

Senator WALSH. Is there any objection to that change from the Social Security Board?

Mr. ALTMAYER. None at all.

Senator BYRNES. I may say, Mr. Chairman, before drawing the bill I discussed the matter with the chairman of the Board as to this feature and as to the other features of the bill.

Senator WALSH. With the Senator's usual caution and conservatism he has taken all the preliminary steps.

Senator BYRNES. Mr. Chairman, it may not always be justified, but in this particular instance I might say that my hope was that by doing that we might facilitate the consideration of it, because I know there are some legislatures in session and if we could act upon this with any promptness they might be able to do it now, and if not it would be of no service at all, because if they do not meet until next year it will just be an academic question.

Senator TOWNSEND. Do you know of any objection to it?

Senator BYRNES. Not at all. I am satisfied there will be no objection.

Now there is the other question, and that question was before our committee in investigating this matter.

Senator WALSH. And the other question is the one that is embraced also in the bill presented by Senator McKellar?

Senator BYRNES. I understand so. I have not read Senator McKellar's bill, but I will say during the investigation it was presented to us that in some States the employees were not selected by a merit system that would meet with approval judged by the tests that we think should be applied in the selection of men to administer this law.

Now, the Federal Government is providing the funds for administration and therefore it is proper, in my opinion, that we should have something to say about the manner in which the appointments shall be made within the States.

Senator WALSH. I think we are all agreed upon that. All administration funds are provided for by the Federal Government out of the Federal Treasury for unemployment insurance. Is that right, Mr. Altmeyer?

Mr. ALTMAYER. That is correct; out of the general fund of the Federal Treasury.

Senator WALSH. And none of the funds collected from employers or employees is applied for administration purposes.

Senator BYRNES. That is true. There is no question about that.

Senator WALSH. I want that clearly on the record so we will have a place to begin with.

Senator TOWNSEND. No money from the State is taken for that purpose?

Senator BYRNES. The unemployment insurance provision is different from the other features of the bill. Our appropriation bills carry appropriations for the administration of that law. Therefore, it seems to be proper for us to say who shall be appointed, and give to the Board the power to disapprove a system which does not provide a satisfactory merit system in these appointments. If we are to pay the money we ought to have that power. There is great danger in some sections of the country. Evidence has already been presented that the employees have not been selected by a satisfactory merit system, and I think with the handling of such a tremendous amount of money no man is going to disapprove of a merit system which receives the approval of the Board here.

Senator WALSH. Do you know, Senator, why the administration of the unemployment insurance law was treated differently from the other administrative features of this bill? Why was not the same system, the same method of the application of the general civil service under the Federal laws applied to all employees, including the unemployment insurance?

Senator BYRNES. The purpose at the time was to try to give complete power to the States. I remember the discussion, and I think you will recall it. We were endeavoring to place power in the State as to the administration of it, and the selection of appointees, and particularly as the State was making contribution in the other phases of the act, the other features of the act. Even now, under this proposal, we would not undertake to say that John Jones or Sam Brown should be appointed in the State of New York, but we say, if we are to appropriate money to administer the law you should adopt a merit system that will provide a test of merit for those who are to disburse this large amount of money. It will be the best thing for the unemployment insurance system to give to the people the feeling that is not to be made the football of politics in the States. It does not give to the Board the power of appointing the individual, but simply gives the power of approving a satisfactory merit system.

Senator TOWNSEND. Are you familiar with the bill of Senator McKellar?

Senator BYRNES. No, Senator; I am not. When I went into it I went into solely on the basis of the investigation made by the unemployment committee and I submitted the proposal that I had to Mr. Altmeyer, asking him to tell me of his experience in the States, and I think it would be of interest to you.

Senator WALSH. Will you state, Senator Byrnes, just what is the present provision of law on this subject and just what change you propose to make?

Senator BYRNES. If you have a copy of the law before you, on page 8, section 303 it says:

The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under title IX, includes provisions for—

(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due.

It is specifically excepting the questions of the method of the selection, tenure of office, and compensation of personnel. The bill that I have introduced provides:



That clause (5) of Section 2 (a) of the Social Security Act is amended to read as follows: "(5) provide such methods of administration, including methods relating to the establishment and maintenance of personnel standards on a merit basis, as are found by the Board to be necessary for the efficient operation of the plan;"

Senator JOHNSON. Senator Byrnes, what would happen in the States that do not have a merit system?

Senator BYRNES. Well, it would require a merit system in the State that has no merit system in making these appointments, when they are handling the money appropriated solely by the Federal Government.

Senator JOHNSON. We will not stand for that kind of a statement at all, because this money is all paid by the State.

Senator BYRNES. You were not here when we went into that. We have just gone into it. Not a dollar is paid by the State government for administration.

Senator JOHNSON. Oh, well, they collect it all and then the Federal Government gives back some of it to the State for administration.

Senator BYRNES. Forty-nine million dollars was the estimate for this purpose last year. You are thinking about other features of the law, but when it comes to the unemployment insurance the State of South Carolina and the State of Colorado do not contribute one dollar to administer the unemployment insurance. The money you voted for in the last independent office bill, and next week you will vote for it again, I suppose, includes this fund for administering unemployment insurance.

Senator JOHNSON. Where does it come from when it goes into the Federal Treasury? It comes right out of the State and you give back part of their own money to them.

Senator BYRNES. Of course, that would be true of taxes paid under any law.

Senator JOHNSON. No, it is practically earmarked. The State of Colorado pays in a certain amount, that is the people who employ persons in Colorado pay in a certain amount, and the money that they pay in goes into the Federal Treasury, and if they pass a State unemployment compensation act then 90 percent of their money is kept by them in the form of an offset.

Senator BYRNES. Yes, but this administration money is not deducted from that earmarked money.

Senator JOHNSON. It is 10 percent of that very money.

Senator BYRNES. I am sure I am right.

Senator JOHNSON. Does not it come out of the 10 percent, sir?

Mr. ALTMAYER. Both of you are right.

Senator JOHNSON. Of course it comes out of the 10 percent.

Mr. ALTMAYER. There is 90 percent offset against the Federal tax for the contributions made into the State unemployment compensation fund, but the remaining is a Federal tax, not earmarked for any such purpose. It is just as much a Federal tax as any other Federal tax.

Senator JOHNSON. But it is paid by the States in the first instance.

Mr. ALTMAYER. All taxes are paid by the people in the several States.

Senator JOHNSON. Ordinary taxes are paid by the individuals as citizens of States, but this is a different thing altogether. Now we will take a State. Suppose the State of Colorado has this tax placed upon it, this 100 percent tax by the Federal Government, the money

goes directly into the Federal Treasury. If they do not have any State law they get nothing, no offset at all; it goes right into the Federal Treasury, all of it, and is expended by the Congress, but if they will set up— and that was held out as an inducement to them— if they will enact an unemployment compensation law in their State, then they are given an offset of 90 percent, and the 10 percent retained by the Federal Government was supposed to take care of all the expenses, State and Federal. So it is not fair to say that this money is Federal money. Of course it all is Federal money, but this is special Federal money.

Senator BYRNES. Well, I repeat that it is not deducted from funds that are earmarked. It is true the 10 percent to which you refer is like all taxes paid into the Treasury. Now we might say that that 10 percent is used for the purpose of the assistance it has granted to the State of Colorado and State of South Carolina in regard to all of the other features of the bill, but certainly there is no deduction from any earmarked funds for the payment of administration of unemployment insurance in the States.

Senator JOHNSON. It was planned this way to get away from unfavorable Supreme Court decisions. Congress levied a tax—a tax which they had every right to do—that was one of their constitutional rights—they levied a tax and put all of it into the Federal Treasury.

Senator BYRNES. All right.

Senator JOHNSON. Then they said to the State, "Now if you folks will set up a plan we will give you an offset of 90 percent of that tax which you may keep in your States."

Senator TOWNSEND. Ninety percent of what?

Senator JOHNSON. Ninety percent of the total amount paid by the employers and employees of the State.

Senator BYRNES. And if you do not set it up you do not get anything.

Senator JOHNSON. If you do not set it up you get nothing.

Senator BYRNES. That is right.

Senator JOHNSON. You get none of these services. There are no employees, under the merit system or out of it, unless you pass the law. All right; they passed the law under that kind of compulsion. It was a way that the Congress had of compelling States—and getting around the Supreme Court difficulty— of compelling the States to come in and set up the machinery for the administration of this whole thing, and that is the way Congress planned it. Now they get 10 percent of their own money back for administration and other expenses.

Senator BYRNES. It is a tax levied not on a State, but levied on an individual, just as a tax levied upon gas or anything else, upon any person in any State. The people of any State contribute to all revenue of the United States Government. When it comes to this particular feature of the law the State does not contribute at all.

Senator WALSH. There must be some tax levied to pay the expenses of the Board here.

Senator JOHNSON. That comes out of the general fund and is part of the 10 percent.

Senator BYRNES. That tax to which the Senator from Colorado refers is levied just like the tax on gas or anything else, and the tax to pay the expenses of the Board, and of everything else, is paid out of the revenue of the Federal Government pooled. None of it is

earmarked. We have never levied a tax, and we could not levy it and say that this 10 percent is to be for this fund or that fund.

Senator WALSH. The point you are making is, from whatever source it comes, the same money that is paid to this class of employees comes from the same source that the money comes from that is paid to the Board in Washington?

Senator BYRNES. That is true.

Senator McKELLAR. And all other employees.

Senator BYRNES. In reference to this 10 percent that is laid apart and earmarked, as you say, the Board here in Washington requires a merit system for appointment, and the only purpose of the legislation would be that when this money is collected by the Federal Government, that is levied upon an individual and not upon a State, the Federal Government should have something to say about the approval of a merit system, not the approval of an individual, but the system by which employees are appointed. The Federal Government makes the appropriation and it has no right to make the appropriation to any State if the State is to have its officials make a political machine out of the expenditure of funds from the Federal Government.

Senator JOHNSON. Senator Byrnes, may I ask you this question?

Senator BYRNES. Yes.

Senator JOHNSON. Is the unemployment compensation self-supporting?

Senator BYRNES. In what way do you mean?

Senator JOHNSON. Is it self-supporting? Does it pay its way?

Senator BYRNES. I would find it difficult to answer for the reason that if you would take the expenses of the Board here—

Senator JOHNSON (interrupting). I mean the expenses of the Board and everything.

Senator BYRNES. It would not be fair to charge up to the unemployment-insurance fund all of the expenses of the Social Security Board when they do other things besides administer that fund, because they administer the other features of the law.

Senator JOHNSON. Yes.

Senator BYRNES. I would say, if you wanted to make an accurate answer to that statement, you would have to apportion it, and I really would not know without looking at the loss and taking the amount spent by the Board and adding it up. I would not be able to answer. Have you any idea, Mr. Altmeier?

Mr. ALTMAYER. Yes.

Senator JOHNSON. I can give you the answer. It is self-supporting.

Mr. ALTMAYER. It is now, but we do not know whether in the future that 10 percent will be sufficient to cover all the administrative expenses of the States. In the case of Great Britain, for example, the administrative expenses have gotten up as high as 12 percent. If it exceeds 10 percent here Congress will be asked to make grants in excess of 10 percent.

Senator JOHNSON. Is it not barely possible that whenever it exceeds 10 percent the Congress may change the law and make it self-supporting? In other words, it was the intention of Congress to make this thing self-supporting and put this whole burden upon the people who were the beneficiaries of it, the employers and employees. That was the whole purpose of it, and Congress, in order to take care of the difficulties of the administration of the whole matter, in order to get

away from what they were afraid of in the way of Supreme Court decisions, they fell upon this method of the Federal Government levying a tax, putting it into the Federal Treasury, letting the State set up a complete organization of administration, and permitting them to keep an offset of 90 percent within their State. Now that is the plain statement of the matter, and it does seem unreasonable now for the Federal Government to come in and say to the State, when the Federal Government was entirely dependent upon the State in the first place to set this thing up, it does seem unreasonable that we should become so dictatorial as to tell the State just how it should set up its administration.

Senator BYRNES. Mr. Chairman, of course I would agree that we should not become too dictatorial at any time in the administration of any one of these acts where we have contributions by the State and Nation in cooperation. There is no reason for it, and there should not be. This act provides in a number of places, in the various sections to which I have referred, for the approval by the Board of many things. The payment of unemployment compensation is to be made solely through public unemployment offices in the State, or such agencies as the Board may approve. If it does not approve of it, it would not pay.

All that I have proposed in this bill of mine is not that any individual shall be appointed by any official of the Social Security Board, but only that a merit system shall be followed in appointments in the State.

I submit to the Senator, even without involving the question that we have been discussing as to the contribution, that there can certainly be no harm done. If there is anything that we can agree upon today it is that this social-security fund involves the expenditure of the largest amount of money that we have ever had expended by any department in behalf of the people. It is destined to grow, and we should do everything in our power to remove any question as to this fund being used by anybody anywhere for purposes other than the object of the Congress. We should do everything in our power to remove any question as to this fund being used for political purposes, to have in a State some official appointed at the head of a labor department, or some other department who has political aspirations and who could build up a political organization out of this relief fund, out of this fund appropriated by the people, by the Congress and collected from the people to relieve unemployment and to help those who are in trouble. I can see possibilities of it, and whenever it occurs in the States it is going to bring this very praiseworthy act into disrepute among the people. We can avoid it. We can avoid it now at the beginning of the operation of the law by simply providing not for appointments, but for a system; for a merit system.

Now in every State, and I assume in Colorado, you have some kind of a merit system.

Senator JOHNSON. We have the best merit system of any State. It is a part of our constitution.

Senator BYRNES. Then it certainly could do no harm. They have got no merit system in the constitution of my State, but I am entirely willing that some system of merit should be applied in the appointment; not naming the individuals, but a system that will be approved here. I do not think you will find any State will object, unless somebody in the State has an idea that they might want to use it to help themselves.

Senator JOHNSON. May I point out to the Senators that the States have a remedy. If there is an intolerable situation developed there out of this the States have a remedy. They can repeal their law. This law is dependent on the States for their statutory enactment, and if an intolerable situation developed the State has its remedy at hand.

As far as the State of Colorado is concerned, and so far as my interest in this thing in behalf of the State of Colorado is concerned, I am entirely in accord with the Senator's viewpoint and his purposes, because we do have a merit system out there, and we want this set-up that way. That is Colorado's business, however; that is not the business of Congress.

Now when we come to politics and to functions of government, and all that sort of thing, the whole matter is in the same situation that you mentioned. It is not a peculiar thing to this thing, it is general. It is a general problem.

Senator BYRNES. The next section of the bill provides that the Board shall approve the character of employment office. We might say, in the same way, that that is South Carolina's business and the Board has nothing to do with it, but we determined that that would not do, that to administer it in a uniform way throughout the country we should give to the Board the right to lay down a rule by which those employment offices should be selected in the States.

I think the Chairman of the Board might call to the attention of the committee many things that must be approved. What else is there that must receive the approval of the Board?

Mr. ALTMAYER. The method of administration must be reasonably calculated to insure the full payment of unemployment compensation when due. So acting under that general mandate the Social Security Board requires each State to submit its plan of administration, so that it can be assured that the congressional mandate is observed and the purpose of the law accomplished.

Now I think the general proposition, Senator, is this: That in considering a Nation-wide plan of unemployment insurance Congress was confronted with two alternatives—one a straight Federal system of unemployment insurance financed and administered solely by the Federal Government; the other was a Federal-State system, administered by the States but coordinated by the Federal Government.

Senator JOHNSON. That is right.

Mr. ALTMAYER. In other words, the reason this problem came before Congress was that it was a national problem. Congress had been called upon to make huge appropriations for relief and work relief. Therefore, it desired to develop an alternative that seemed to be wiser than the past measures, and so to adopt this plan.

I am in full accord with Senator Byrnes' position that there should be standards laid down in the Federal act sufficient to assure a reasonable degree of uniformity and efficiency of administration throughout the country.

Senator WALSH. Mr. Altmeier, do you now control the number of employees that a State may designate for this work?

Mr. ALTMAYER. Yes, sir.

Senator WALSH. So you have that jurisdiction. Do you apportion the amount of salaries that they pay these employees?

Mr. ALTMAYER. Yes, sir.

Senator WALSH. The total amount?

Mr. ALTMAYER. The total amount; yes.

Senator WALSH. So you now have, in the administration of this law, without being specifically designated in the law, you have the general power to say to this State, "The total budget for the employees should be so much?"

Mr. ALTMAYER. That is right.

Senator WALSH. You have no right to say that the merit system of selection should be employed?

Mr. ALTMAYER. There is no specific provision that gives us such a right. That right may be derived from the Board's general authority to require efficient administration, but the amendment of Senator Byrnes would give the Board definite and specific right to require such system.

Senator WALSH. That is what this proposes to do; that is what he seeks to accomplish by this bill.

Mr. ALTMAYER. Yes, sir.

Senator WALSH. Do I state it correctly?

Mr. ALTMAYER. Yes.

Senator MCKELLAR. As I understand it, the difference is that part of the law which is in parentheses in these sections "(other than those relating to selection, tenure of office, and compensating of personnel)", and you think that that part ought to be out so that you would have the same right that you had before?

Mr. ALTMAYER. That is right.

Senator MCKELLAR. Now, as I understand it, Mr. Byrnes, your amendment here, the first is substantially the same as the amendment that I have offered. I had the investigating board prepare the amendment that I offered on January 13 to read this way:

Mat clause (5) of section 2 (a) of the Social Security Act is amended by striking out "(other than those relating to selection, tenure of office, and compensation of personnel)" and inserting in lieu thereof "(including methods for the selection of personnel on a merit basis)".

That is exactly what you are aiming at in this section.

Senator WALSH. In other words, you both have the same objective.

Senator BYRNES. We both have the same objective.

Senator MCKELLAR. Yes; we both have the same objective.

Senator WALSH. And it is for the committee to choose the best language.

Senator MCKELLAR. It would be satisfactory to me either way.

Senator BYRNES. The Social Security Board and the drafting office suggested to me that they should have the three sections, because the language appears in those several places in the act.

Senator MCKELLAR. That is true.

Mr. ALTMAYER. That is right.

Senator BYRNES. That is the explanation of the three sections, because if it is taken care of in one it should be taken care of in the other.

Senator WALSH. I understand.

Senator BYRNES. I particularly call the attention of the committee again to this amendment that I am really more interested in than anything else, and that is in changing the time from 2 years to 1 year, so as to make it possible for these States to pay earlier.

Senator WALSH. Senator Johnson, the Senator explained that before you came in.

Senator BYRNES. Yes. That is to enable the State to make their benefits payable not before January 1 because of the provision in the

statute of 2 years, but to change it to 1 year, so if they see fit to do so they can move it up and provide for the payment of these benefits on July 1 this year, or October 1, or whatever day they want. There are a number of States that have legislatures in session now and would like to have the opportunity to act upon that matter.

Senator JOHNSON. Thank you, Senator. I will be glad to read your remarks in the record. I am sorry I was late.

Senator BYRNES. That is all right.

Senator JOHNSON. I have one other question that I would like to ask Senator Byrnes before he goes.

Senator BYRNES. What is that?

Senator JOHNSON. I am glad that the Congress did accept the second plan that Mr. Altmeyer mentions, the plan of making this a cooperative enterprise between the States and the Federal Government. I have watched the operation of these matters of joint interest between the United States Government and the State governments, and in all cases where they have turned over the administration to these States I think they met with great success, and I think that is a splendid plan, instead of trying to direct everything from Washington, so I am very happy that you chose the plan that you did choose.

Now, the question that I want to direct to you, Senator Byrnes, is this: This has been a cooperative plan between the States and the Federal Government. The law was laid down. The States were induced to come in and do their part. They were told what the Federal law was, and they were told what their powers would be. They accepted those powers and they passed their laws. Now you are coming in, after this agreement has been made and after this contract has been entered into between the States and the Federal Government, and you are trying to change the conditions. Is it fair upon the part of Congress to do that now, after the States have accepted and have come in and are working under this plan? Is it fair now for the Federal Government, for the Congress, to begin encroaching upon the States and begin to lay down new rules, new laws, new regulations, compelling the States to do things that they did not know about when they entered into this contract?

Senator BYRNES. I think certainly the Congress would never say that the social-security law as it was passed, should never, through all time to come, be amended in any particular.

Senator WALSH. As a matter of fact there is a bill pending in the House, a very important bill, which contains a large number of amendments that the Department considers to be essential by reason of its discoveries made in the operation of the law. Is that correct?

Mr. ALTMAYER. Yes, sir; and before the Finance Committee, too.

Senator BYRNES. Before this committee, too.

Senator WALSH. How many amendments are proposed?

Mr. ALTMAYER. Oh, there must be two or three dozen.

Senator JOHNSON. May I ask if those amendments have to do with functions given to the State to perform or with functions retained by the Federal Government under this law?

Senator BYRNES. Some of them do.

Senator JOHNSON. Some of them change the status of these States?

Mr. ALTMAYER. It clarifies the language and some of the provisions ease up matters for the States. For instance, in the collection of sums of money from the estates of these aged persons who are receiving old-age assistance there has been some difficulty experienced by the

States in securing compliance with present provisions, and we suggest a modification to correct that.

Senator JOHNSON. Experience in the administration of any law, nearly always call for changes. You cannot get the thing perfect in the first instance. This, however, is a fundamental change affecting only the States.

Senator BYRNES. Of course, I do not think it is such a fundamental change.

Senator JOHNSON. It is one affecting the States.

Senator BYRNES. Every one of these will affect the States. If the Senator will take the trouble to read the amendment he will see that that is true. I have read a number of these amendments, and there will be many more.

Senator JOHNSON. Under it will there be any encroachment upon the States? Will they cut off the powers of the States?

Senator BYRNES. Undoubtedly some persons will argue that they will encroach upon the States. There will be a great many more changes, Senator. Senator Vandenberg, you know, has been taking quite an interest in the committee. There will be fundamental changes that will affect this law. Whenever we undertake in this country a system of this kind for the first time it will not be perfect and as the result of experience we must change it in order to make it serve the purpose that we want it to serve. I do not think any State is going to object, any more than the State of Colorado will.

Senator JOHNSON. Colorado will not object at all, because we have a merit system.

Senator BYRNES. Unless there are one or two States that will want to do what no one will ever desire to have them do. What Mr. Altmeier says I think is correct. If it ever breaks down in one State in the Union and this system is used as a political football it will break down in every State in the Union.

Senator MCKELLAR. Absolutely.

Senator WALSH. I would like to have you state for the record how this law is administered, so far as the merit system is concerned, in the District of Columbia. Is it administered entirely on the merit system?

Mr. ALTMAYER. No; it is not.

Senator WALSH. Who makes the appointments?

Mr. ALTMAYER. They have a commission and director under the Commission.

Senator WALSH. We will be affecting the District of Columbia by this act as well?

Mr. ALTMAYER. Yes.

Senator WALSH. Now, the Board itself, has that amendment in its law, and has limited the exceptions entirely to investigators and lawyers, has it not?

Mr. ALTMAYER. Lawyers and experts.

Senator WALSH. I remember great care was taken to have the general act and the administration by the Federal Government as strongly tied up with the merit system as it is possible to do so.

Mr. ALTMAYER. I might say as far as that one exception is concerned as to lawyers and experts, that the Civil Service Commission takes the position that it is no longer necessary for the Board to make appointments under that expert clause, inasmuch as they believe that if registers are not available they can be made available for all the



AMENDING THE SOCIAL SECURITY ACT—PROVIDING FOR  
AN INVESTIGATION OF THE TENNESSEE UNEM-  
PLOYMENT COMPENSATION DIVISION OF  
THE SOCIAL SECURITY BOARD

---

HEARING

BEFORE A

SUBCOMMITTEE OF THE  
COMMITTEE ON FINANCE  
UNITED STATES SENATE

SEVENTY-FIFTH CONGRESS

THIRD SESSION

ON

**S. Res. 226**

A RESOLUTION PROVIDING FOR AN INVESTIGATION OF  
THE TENNESSEE UNEMPLOYMENT COMPENSA-  
TION DIVISION OF THE SOCIAL SECURITY  
BOARD

**S. 3235**

A BILL TO AMEND THE SOCIAL SECURITY ACT SO AS TO  
PROVIDE FOR THE SELECTION ON A MERIT BASIS  
OF CERTAIN PERSONNEL FOR WHOSE COM-  
PENSATION APPROPRIATIONS ARE  
MADE BY THE FEDERAL  
GOVERNMENT

**S. 3370**

A BILL TO AMEND THE SOCIAL SECURITY ACT TO PRO-  
VIDE FOR THE ESTABLISHMENT AND MAINTENANCE OF CERTAIN PERSONNEL STANDARDS  
ON A MERIT BASIS, AND FOR OTHER  
PURPOSES

---

FEBRUARY 15, 1938

---

Printed for the use of the Committee on Finance

---

UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1938

## COMMITTEE ON FINANCE

PAT HARRISON, Mississippi, *Chairman*

WILLIAM H. KING, Utah

WALTER F. GEORGE, Georgia

DAVID I. WALSH, Massachusetts

ALBEN W. BARKLEY, Kentucky

TOM CONNALLY, Texas

JOSIAH W. BAILEY, North Carolina

BENNETT CHAMP CLARK, Missouri

HARRY FLOOD BYRD, Virginia

AUGUSTINE LONERGAN, Connecticut

PETER G. GERRY, Rhode Island

JOSEPH F. GUFFEY, Pennsylvania

ROBERT J. BULKLEY, Ohio

PRENTISS M. BROWN, Michigan

CLYDE L. HERRING, Iowa

EDWIN C. JOHNSON, Colorado

ROBERT M. LA FOLLETTE, Jr., Wisconsin

ARTHUR CAPPER, Kansas

ARTHUR H. VANDENBERG, Michigan

JOHN G. TOWNSEND, Jr., Delaware

JAMES J. DAVIS, Pennsylvania

FELTON M. JOHNSTON, *Clerk*

SUBCOMMITTEE ON SENATE RESOLUTION 226, S. 3235, AND S. 3370

DAVID I. WALSH, *Chairman*

EDWIN C. JOHNSON

JOHN G. TOWNSEND, JR.

# AMENDING THE SOCIAL SECURITY ACT—PROVIDING FOR AN INVESTIGATION OF THE TENNESSEE UNEMPLOYMENT COMPENSATION DIVISION OF THE SOCIAL SECURITY BOARD

TUESDAY, FEBRUARY 15, 1938

UNITED STATES SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON FINANCE,  
*Washin. on, D. C.*

The subcommittee met, pursuant to call, at 10:30 a. m. in the Senate Finance Committee room, Senate Office Building, Senator David I. Walsh (chairman), presiding.

Present: Senators Walsh (chairman), Edwin C. Johnson, and John G. Townsend, Jr.

Also present: Senator James F. Byrnes, of South Carolina; Senator Kenneth McKellar, of Tennessee; Senator George L. Berry, of Tennessee; Arthur J. Altmeyer, Chairman, Social Security Board; Frank Bane, Executive Director, Social Security Board.

Senator WALSH. A subcommittee of the Committee on Finance of the Senate is meeting this morning for the purpose of hearing evidence and considering what action should be taken on Senate Resolution 226, S. 3235, both of which were introduced by Senator McKellar, and S. 3370, introduced by Senator Byrnes.

S. 3235 and S. 3370 seek to amend the Social Security Act, so as to provide for the establishment and maintenance of certain personnel standards on a merit basis. They both limit the personnel standards to those receiving compensation from appropriations by the Federal Government.

Senate Resolution 226, briefly stated, requests the creation of a special committee composed of five Senators to make an investigation into the administration, activities, and operations of the Tennessee Unemployment Compensation Division of the Social Security Board. Both the resolution and the two bills relate to provisions in Public, No. 271, Seventy-fourth Congress, the Social Security Act, which provisions are as follows:

#### Section 2 (a) (5):

Provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan.

#### Section 303 (a) (1):

Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due.

#### Section 402 (a) (5):

Provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan.

**Section 503 (a) (3):**

Provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are necessary for the efficient operation of the plan.

**Section 513 (a) (3):**

Provide for such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are necessary for the efficient operation of the plan.

**Section 1002 (a) (5):**

Provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan.

[S. Res. 226, 75th Cong. 3d sess.]

## RESOLUTION

*Resolved*, That there is hereby created a special committee, to be composed of five Senators, to be appointed by the President of the Senate, which committee is hereby authorized and directed to make a full and complete investigation into the administration, activities, and operations of the Tennessee Unemployment Compensation Division of the Social Security Board. The said committee shall report to the Senate as early as practicable the results of its investigation, together with recommendations as to the advisability or necessity of amending the Social Security Act so as to provide for the appointment of personnel on a merit basis.

For the purposes of this resolution the committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings, to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Senate in the Seventy-fifth Congress, to employ such clerical and other assistants, to require by subpoena or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, and to make such expenditures, as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 25 cents per hundred words. The expenses of the committee, which shall not exceed \$2,500, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman.

[S. 3235, 75th Cong., 3d sess.]

**A BILL** To amend the Social Security Act so as to provide for the selection on a merit basis of certain personnel for whose compensation appropriations are made by the Federal Government

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That clause (5) of section 2 (a) of the Social Security Act is amended by striking out "(other than those relating to selection, tenure of office, and compensation of personnel)" and inserting in lieu thereof "(including methods for the selection of personnel on a merit basis)".

**Sec. 2.** That subdivision (1) of section 303 (a) of the Social Security Act is amended by striking out "(other than those relating to selection, tenure of office, and compensation of personnel)" and inserting in lieu thereof "(including methods for the selection of personnel on a merit basis)".

[S. 3370, 75th Cong. 3d sess.]

**A BILL** To amend the Social Security Act to provide for the establishment and maintenance of certain personnel standards on a merit basis, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That clause (5) of section 2 (a) of the Social Security Act is amended to read as follows: "(5) provide such methods of administration, including methods relating to the establishment and maintenance of personnel standards on a merit basis, as are found by the Board to be necessary for the efficient operation of the plan;"

**Sec. 2.** Section 303 (a) (1) of such Act is amended to read as follows:

"(1) Such methods of administration, including methods relating to the establishment and maintenance of personnel standards on a merit basis, as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; and".

SEC. 3. Clause (5) of section 402 (a) of such Act is amended to read as follows: "(5) provide such methods of administration, including methods relating to the establishment and maintenance of personnel standards on a merit basis, as are found by the Board to be necessary for the efficient operation of the plan; and".

SEC. 4. Clause (3) of section 503 (a) of such Act is amended to read as follows: "(3) provide such methods of administration, including methods relating to the establishment and maintenance of personnel standards on a merit basis, as are necessary for the efficient operation of the plan;".

SEC. 5. Clause (3) of section 513 (a) of such Act is amended to read as follows: "(3) provide such methods of administration, including methods relating to the establishment and maintenance of personnel standards on a merit basis, as are necessary for the efficient operation of the plan;".

SEC. 6. Section 903 (a) (2) of such Act is amended by striking out the words "two years" and inserting in lieu thereof the words "one year".

SEC. 7. Clause (5) of section 1002 (a) of such Act is amended to read as follows: "(5) provide such methods of administration, including methods relating to the establishment and maintenance of personnel standards on a merit basis, as are found by the Board to be necessary for the efficient operation of the plan;".

Senator WALSH. Now, I do not want to keep Senator McKellar, Senator Byrnes, and Senator Berry here any longer than necessary, but I think Senators, it would be of great help to me, and it would to you, if these gentlemen would explain to us the present law and how it operates. What would you say to that?

Senator MCKELLAR. All right, sir.

Senator BYRNES. All right. If you give me 2 minutes I can tell you what it is.

Senator MCKELLAR. Which one do you want to discuss?

Senator BYRNES. S. 3370. The principal purpose of my bill has no reference to this question of appointment. The thing which I am particularly interested in is the provision in the bill that would enable the States to pay unemployment insurance benefits at an earlier date than is now possible under the social-security law, and under the laws of the States.

There are a number of States which will not begin these payments until January 1. The funds are available, and the only way in which they can have these payments made on either July 1 or October 1 is by one sentence of the law now reading "Two years" being changed to "one year." If that is done then the legislature in the State of Ohio, for instance, the State which has communicated with us more than any other State, can change its law so as to make these benefits payable before January 1.

If we can see into the future at all we would know that it will at least provide a cushion in these States for their unemployed. While we may have to increase the relief expenditures, still the unemployment insurance benefits would be of great assistance.

It occurred to me that while that was being done, and while I am assured that if this bill is enacted special sessions of legislatures will be called in one or two States, we should at the same time provide that the State should use some merit system to be approved by the Social Security Board in the appointment of the administrators of the unemployment insurance law.

Senator WALSH. Your bill embraces what Senator McKellar's bill does, but it also embraces another aspect.

Senator BYRNES. Yes. Now this matter was called to our attention by the unemployment investigation we have been conducting. At that time a number of gentlemen who came before the committee presented to us the facts that prompted this amendment, and we had the representatives of the Board give to us a statement of the facts showing the States in which this change was necessary.

If you have a copy of S. 3370, it is section 6: "Section 903 (a) (2) of such act is amended by striking out the words 'two years' and inserting in lieu thereof the words 'one year.'"

Senator McKELLAR. What would be the effect of that, Senator Byrnes?

Senator BYRNES. I will ask you gentlemen to tell me in how many States this would affect the payment of unemployment insurance benefits.

Mr. ALTMAYER. There are 23 States, counting the District of Columbia as a State, that started paying benefits on January 1. In fact Wisconsin started a year and a half before that. There are five States that will start between now and July 1, and all of the rest of the States, with the exception of Illinois, Georgia, and Montana, start paying some time on or before July 1, 1939.

Now, as Senator Byrnes says, the effect of his proposal would be that certain States that are now precluded from starting payment of benefits sooner than 2 years after the first day of the period for which the contributions were required may now amend their laws. I mean if this becomes a law they may then amend their own State laws so as to advance the payment of benefits and pay any time after 1 year, after the first day of the period for which contributions were required.

Senator WALSH. Now, what is the provision in the Federal law that operates to make different periods of time for payment in different States?

Mr. ALTMAYER. The Federal law, as one of the requirements of the State law, reads as follows:

No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required.

Senator WALSH. So that some States require contributions to be commenced earlier than others?

Mr. ALTMAYER. Yes, sir.

Senator WALSH. And the result is that that general law precludes or operates to make the time of payment 2 years, makes the time of payment of unemployment compensation 2 years after the commencement of the payment of the tax.

Mr. ALTMAYER. Yes, sir.

Senator WALSH. Will that have any harmful effect, in a financial way, to advance these payments?

Senator BYRNES. I was just coming to that.

Senator WALSH. All right.

Senator BYRNES. The funds have been set aside in the Treasury to the credit, for instance, of the State of Ohio unemployment insurance fund. It will not affect the fund in anyway, but by reason of their delay in enacting their own laws, this 2-year provision will preclude them from making the payment before January 1 unless we make it 1 year.

Senator WALSH. And I suppose the 2-year provision which was originally fixed to give them that period of time to provide a State law that would operate in conjunction with the Federal law?

Senator BYRNES. That was the reason for it. It will not have any effect except to give to the State this opportunity. In other words, the Congress will have done its part, and if the State fails to legislate and fails to move up the date it will be the fault of the State legislature, the State government, and it cannot complain of the action of the Congress, but they cannot do it unless we make this change to 1 year.

Senator WALSH. Is there any objection to that change from the Social Security Board?

Mr. ALTMAYER. None at all.

Senator BYRNES. I may say, Mr. Chairman, before drawing the bill I discussed the matter with the chairman of the Board as to this feature and as to the other features of the bill.

Senator WALSH. With the Senator's usual caution and conservatism he has taken all the preliminary steps.

Senator BYRNES. Mr. Chairman, it may not always be justified, but in this particular instance I might say that my hope was that by doing that we might facilitate the consideration of it, because I know there are some legislatures in session and if we could act upon this with any promptness they might be able to do it now, and if not it would be of no service at all, because if they do not meet until next year it will just be an academic question.

Senator TOWNSEND. Do you know of any objection to it?

Senator BYRNES. Not at all. I am satisfied there will be no objection.

Now there is the other question, and that question was before our committee in investigating this matter.

Senator WALSH. And the other question is the one that is embraced also in the bill presented by Senator McKellar?

Senator BYRNES. I understand so. I have not read Senator McKellar's bill, but I will say during the investigation it was presented to us that in some States the employees were not selected by a merit system that would meet with approval judged by the tests that we think should be applied in the selection of men to administer this law.

Now, the Federal Government is providing the funds for administration and therefore it is proper, in my opinion, that we should have something to say about the manner in which the appointments shall be made within the States.

Senator WALSH. I think we are all agreed upon that. All administration funds are provided for by the Federal Government out of the Federal Treasury for unemployment insurance. Is that right, Mr. Altmeyer?

Mr. ALTMAYER. That is correct; out of the general fund of the Federal Treasury.

Senator WALSH. And none of the funds collected from employers or employees is applied for administration purposes.

Senator BYRNES. That is true. There is no question about that.

Senator WALSH. I want that clearly on the record so we will have a place to begin with.

Senator TOWNSEND. No money from the State is taken for that purpose?

Senator BYRNES. The unemployment insurance provision is different from the other features of the bill. Our appropriation bills carry appropriations for the administration of that law. Therefore, it seems to be proper for us to say who shall be appointed, and give to the Board the power to disapprove a system which does not provide a satisfactory merit system in these appointments. If we are to pay the money we ought to have that power. There is great danger in some sections of the country. Evidence has already been presented that the employees have not been selected by a satisfactory merit system, and I think with the handling of such a tremendous amount of money no man is going to disapprove of a merit system which receives the approval of the Board here.

Senator WALSH. Do you know, Senator, why the administration of the unemployment insurance law was treated differently from the other administrative features of this bill? Why was not the same system, the same method of the application of the general civil service under the Federal laws applied to all employees, including the unemployment insurance?

Senator BYRNES. The purpose at the time was to try to give complete power to the States. I remember the discussion, and I think you will recall it. We were endeavoring to place power in the State as to the administration of it, and the selection of appointees, and particularly as the State was making contribution in the other phases of the act, the other features of the act. Even now, under this proposal, we would not undertake to say that John Jones or Sam Brown should be appointed in the State of New York, but we say, if we are to appropriate money to administer the law you should adopt a merit system that will provide a test of merit for those who are to disburse this large amount of money. It will be the best thing for the unemployment insurance system to give to the people the feeling that it is not to be made the football of politics in the States. It does not give to the Board the power of appointing the individual, but simply gives the power of approving a satisfactory merit system.

Senator TOWNSEND. Are you familiar with the bill of Senator McKellar?

Senator BYRNES. No, Senator; I am not. When I went into it I went into solely on the basis of the investigation made by the unemployment committee and I submitted the proposal that I had to Mr. Altmeyer, asking him to tell me of his experience in the States, and I think it would be of interest to you.

Senator WALSH. Will you state, Senator Byrnes, just what is the present provision of law on this subject and just what change you propose to make?

Senator BYRNES. If you have a copy of the law before you, on page 8, section 303 it says:

The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under title IX, includes provisions for—

(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due.

It is specifically excepting the questions of the method of the selection, tenure of office, and compensation of personnel. The bill that I have introduced provides:



That clause (5) of Section 2 (a) of the Social Security Act is amended to read as follows: "(5) provide such methods of administration, including methods relating to the establishment and maintenance of personnel standards on a merit basis, as are found by the Board to be necessary for the efficient operation of the plan;"

Senator JOHNSON. Senator Byrnes, what would happen in the States that do not have a merit system?

Senator BYRNES. Well, it would require a merit system in the State that has no merit system in making these appointments, when they are handling the money appropriated solely by the Federal Government.

Senator JOHNSON. We will not stand for that kind of a statement at all, because this money is all paid by the State.

Senator BYRNES. You were not here when we went into that. We have just gone into it. Not a dollar is paid by the State government for administration.

Senator JOHNSON. Oh, well, they collect it all and then the Federal Government gives back some of it to the State for administration.

Senator BYRNES. Forty-nine million dollars was the estimate for this purpose last year. You are thinking about other features of the law, but when it comes to the unemployment insurance the State of South Carolina and the State of Colorado do not contribute one dollar to administer the unemployment insurance. The money you voted for in the last independent office bill, and next week you will vote for it again, I suppose, includes this fund for administering unemployment insurance.

Senator JOHNSON. Where does it come from when it goes into the Federal Treasury? It comes right out of the State and you give back part of their own money to them.

Senator BYRNES. Of course, that would be true of taxes paid under any law.

Senator JOHNSON. No, it is practically earmarked. The State of Colorado pays in a certain amount, that is the people who employ persons in Colorado pay in a certain amount, and the money that they pay in goes into the Federal Treasury, and if they pass a State unemployment compensation act then 90 percent of their money is kept by them in the form of an offset.

Senator BYRNES. Yes, but this administration money is not deducted from that earmarked money.

Senator JOHNSON. It is 10 percent of that very money.

Senator BYRNES. I am sure I am right.

Senator JOHNSON. Does not it come out of the 10 percent, sir?

Mr. ALTMAYER. Both of you are right.

Senator JOHNSON. Of course it comes out of the 10 percent.

Mr. ALTMAYER. There is 90 percent offset against the Federal tax for the contributions made into the State unemployment compensation fund, but the remaining is a Federal tax, not earmarked for any such purpose. It is just as much a Federal tax as any other Federal tax.

Senator JOHNSON. But it is paid by the States in the first instance.

Mr. ALTMAYER. All taxes are paid by the people in the several States.

Senator JOHNSON. Ordinary taxes are paid by the individuals as citizens of States, but this is a different thing altogether. Now we will take a State. Suppose the State of Colorado has this tax placed upon it, this 100 percent tax by the Federal Government, the money

goes directly into the Federal Treasury. If they do not have any State law they get nothing, no offset at all; it goes right into the Federal Treasury, all of it, and is expended by the Congress, but if they will set up—and that was held out as an inducement to them—if they will enact an unemployment compensation law in their State, then they are given an offset of 90 percent, and the 10 percent retained by the Federal Government was supposed to take care of all the expenses, State and Federal. So it is not fair to say that this money is Federal money. Of course it all is Federal money, but this is special Federal money.

Senator BYRNES. Well, I repeat that it is not deducted from funds that are earmarked. It is true the 10 percent to which you refer is like all taxes paid into the Treasury. Now we might say that that 10 percent is used for the purpose of the assistance it has granted to the State of Colorado and State of South Carolina in regard to all of the other features of the bill, but certainly there is no deduction from any earmarked funds for the payment of administration of unemployment insurance in the States.

Senator JOHNSON. It was planned this way to get away from unfavorable Supreme Court decisions. Congress levied a tax—a tax which they had every right to do—that was one of their constitutional rights—they levied a tax and put all of it into the Federal Treasury.

Senator BYRNES. All right.

Senator JOHNSON. Then they said to the State, "Now if you folks will set up a plan we will give you an offset of 90 percent of that tax which you may keep in your States."

Senator TOWNSEND. Ninety percent of what?

Senator JOHNSON. Ninety percent of the total amount paid by the employers and employees of the State.

Senator BYRNES. And if you do not set it up you do not get anything.

Senator JOHNSON. If you do not set it up you get nothing.

Senator BYRNES. That is right.

Senator JOHNSON. You get none of these services. There are no employees, under the merit system or out of it, unless you pass the law. All right; they passed the law under that kind of compulsion. It was a way that the Congress had of compelling States—and getting around the Supreme Court difficulty—of compelling the States to come in and set up the machinery for the administration of this whole thing, and that is the way Congress planned it. Now they get 10 percent of their own money back for administration and other expenses.

Senator BYRNES. It is a tax levied not on a State, but levied on an individual, just as a tax levied upon gas or anything else, upon any person in any State. The people of any State contribute to all revenue of the United States Government. When it comes to this particular feature of the law the State does not contribute at all.

Senator WALSH. There must be some tax levied to pay the expenses of the Board here.

Senator JOHNSON. That comes out of the general fund and is part of the 10 percent.

Senator BYRNES. That tax to which the Senator from Colorado refers is levied just like the tax on gas or anything else, and the tax to pay the expenses of the Board, and of everything else, is paid out of the revenue of the Federal Government pooled. None of it is

earmarked. We have never levied a tax, and we could not levy it and say that this 10 percent is to be for this fund or that fund.

Senator WALSH. The point you are making is, from whatever source it comes, the same money that is paid to this class of employees comes from the same source that the money comes from that is paid to the Board in Washington?

Senator BYRNES. That is true.

Senator McKELLAR. And all other employees.

Senator BYRNES. In reference to this 10 percent that is laid apart and earmarked, as you say, the Board here in Washington requires a merit system for appointment, and the only purpose of the legislation would be that when this money is collected by the Federal Government, that is levied upon an individual and not upon a State, the Federal Government should have something to say about the approval of a merit system, not the approval of an individual, but the system by which employees are appointed. The Federal Government makes the appropriation and it has no right to make the appropriation to any State if the State is to have its officials make a political machine out of the expenditure of funds from the Federal Government.

Senator JOHNSON. Senator Byrnes, may I ask you this question?

Senator BYRNES. Yes.

Senator JOHNSON. Is the unemployment compensation self-supporting?

Senator BYRNES. In what way do you mean?

Senator JOHNSON. Is it self-supporting? Does it pay its way?

Senator BYRNES. I would find it difficult to answer for the reason that if you would take the expenses of the Board here—

Senator JOHNSON (interrupting). I mean the expenses of the Board and everything.

Senator BYRNES. It would not be fair to charge up to the unemployment-insurance fund all of the expenses of the Social Security Board when they do other things besides administer that fund, because they administer the other features of the law.

Senator JOHNSON. Yes.

Senator BYRNES. I would say, if you wanted to make an accurate answer to that statement, you would have to apportion it, and I really would not know without looking at the loss and taking the amount spent by the Board and adding it up. I would not be able to answer. Have you any idea, Mr. Altmeier?

Mr. ALTMEYER. Yes.

Senator JOHNSON. I can give you the answer. It is self-supporting.

Mr. ALTMEYER. It is now, but we do not know whether in the future that 10 percent will be sufficient to cover all the administrative expenses of the States. In the case of Great Britain, for example, the administrative expenses have gotten up as high as 12 percent. If it exceeds 10 percent here Congress will be asked to make grants in excess of 10 percent.

Senator JOHNSON. Is it not barely possible that whenever it exceeds 10 percent the Congress may change the law and make it self-supporting? In other words, it was the intention of Congress to make this thing self-supporting and put this whole burden upon the people who were the beneficiaries of it, the employers and employees. That was the whole purpose of it, and Congress, in order to take care of the difficulties of the administration of the whole matter, in order to get

away from what they were afraid of in the way of Supreme Court decisions, they fell upon this method of the Federal Government levying a tax, putting it into the Federal Treasury, letting the State set up a complete organization of administration, and permitting them to keep an offset of 90 percent within their State. Now that is the plain statement of the matter, and it does seem unreasonable now for the Federal Government to come in and say to the State, when the Federal Government was entirely dependent upon the State in the first place to set this thing up, it does seem unreasonable that we should become so dictatorial as to tell the State just how it should set up its administration.

Senator BYRNES. Mr. Chairman, of course I would agree that we should not become too dictatorial at any time in the administration of any one of these acts where we have contributions by the State and Nation in cooperation. There is no reason for it, and there should not be. This act provides in a number of places, in the various sections to which I have referred, for the approval by the Board of many things. The payment of unemployment compensation is to be made solely through public unemployment offices in the State, or such agencies as the Board may approve. If it does not approve of it, it would not pay.

All that I have proposed in this bill of mine is not that any individual shall be appointed by any official of the Social Security Board, but only that a merit system shall be followed in appointments in the State.

I submit to the Senator, even without involving the question that we have been discussing as to the contribution, that there can certainly be no harm done. If there is anything that we can agree upon today it is that this social-security fund involves the expenditure of the largest amount of money that we have ever had expended by any department in behalf of the people. It is destined to grow, and we should do everything in our power to remove any question as to this fund being used by anybody anywhere for purposes other than the object of the Congress. We should do everything in our power to remove any question as to this fund being used for political purposes, to have in a State some official appointed at the head of a labor department, or some other department who has political aspirations and who could build up a political organization out of this relief fund, out of this fund appropriated by the people, by the Congress and collected from the people to relieve unemployment and to help those who are in trouble. I can see possibilities of it, and whenever it occurs in the States it is going to bring this very praiseworthy act into disrepute among the people. We can avoid it. We can avoid it now at the beginning of the operation of the law by simply providing not for appointments, but for a system; for a merit system.

Now in every State, and I assume in Colorado, you have some kind of a merit system.

Senator JOHNSON. We have the best merit system of any State. It is a part of our constitution.

Senator BYRNES. Then it certainly could do no harm. They have got no merit system in the constitution of my State, but I am entirely willing that some system of merit should be applied in the appointment; not naming the individuals, but a system that will be approved here. I do not think you will find any State will object, unless somebody in the State has an idea that they might want to use it to help themselves.

Senator JOHNSON. May I point out to the Senators that the States have a remedy. If there is an intolerable situation developed there out of this the States have a remedy. They can repeal their law. This law is dependent on the States for their statutory enactment, and if an intolerable situation developed the State has its remedy at hand.

As far as the State of Colorado is concerned, and so far as my interest in this thing in behalf of the State of Colorado is concerned, I am entirely in accord with the Senator's viewpoint and his purposes, because we do have a merit system out there, and we want this set-up that way. That is Colorado's business, however; that is not the business of Congress.

Now when we come to politics and to functions of government, and all that sort of thing, the whole matter is in the same situation that you mentioned. It is not a peculiar thing to this thing, it is general. It is a general problem.

Senator BYRNES. The next section of the bill provides that the Board shall approve the character of employment office. We might say, in the same way, that that is South Carolina's business and the Board has nothing to do with it, but we determined that that would not do, that to administer it in a uniform way throughout the country we should give to the Board the right to lay down a rule by which those employment offices should be selected in the States.

I think the Chairman of the Board might call to the attention of the committee many things that must be approved. What else is there that must receive the approval of the Board?

Mr. ALTMAYER. The method of administration must be reasonably calculated to insure the full payment of unemployment compensation when due. So acting under that general mandate the Social Security Board requires each State to submit its plan of administration, so that it can be assured that the congressional mandate is observed and the purpose of the law accomplished.

Now I think the general proposition, Senator, is this: That in considering a Nation-wide plan of unemployment insurance Congress was confronted with two alternatives—one a straight Federal system of unemployment insurance financed and administered solely by the Federal Government; the other was a Federal-State system, administered by the States but coordinated by the Federal Government.

Senator JOHNSON. That is right.

Mr. ALTMAYER. In other words, the reason this problem came before Congress was that it was a national problem. Congress had been called upon to make huge appropriations for relief and work relief. Therefore, it desired to develop an alternative that seemed to be wiser than the past measures, and so to adopt this plan.

I am in full accord with Senator Byrnes' position that there should be standards laid down in the Federal act sufficient to assure a reasonable degree of uniformity and efficiency of administration throughout the country.

Senator WALSH. Mr. Altmeyer, do you now control the number of employees that a State may designate for this work?

Mr. ALTMAYER. Yes, sir.

Senator WALSH. So you have that jurisdiction. Do you apportion the amount of salaries that they pay these employees?

Mr. ALTMAYER. Yes, sir.

Senator WALSH. The total amount?

Mr. ALTMAYER. The total amount; yes.

Senator WALSH. So you now have, in the administration of this law, without being specifically designated in the law, you have the general power to say to this State, "The total budget for the employees should be so much?"

Mr. ALTMAYER. That is right.

Senator WALSH. You have no right to say that the merit system of selection should be employed?

Mr. ALTMAYER. There is no specific provision that gives us such a right. That right may be derived from the Board's general authority to require efficient administration, but the amendment of Senator Byrnes would give the Board definite and specific right to require such system.

Senator WALSH. That is what this proposes to do; that is what he seeks to accomplish by this bill.

Mr. ALTMAYER. Yes, sir.

Senator WALSH. Do I state it correctly?

Mr. ALTMAYER. Yes.

Senator McKELLAR. As I understand it, the difference is that part of the law which is in parentheses in these sections "(other than those relating to selection, tenure of office, and compensating of personnel)", and you think that that part ought to be out so that you would have the same right that you had before?

Mr. ALTMAYER. That is right.

Senator McKELLAR. Now, as I understand it, Mr. Byrnes, your amendment here, the first is substantially the same as the amendment that I have offered. I had the investigating board prepare the amendment that I offered on January 13 to read this way:

Mat clause (5) of section 2 (a) of the Social Security Act is amended by striking out "(other than those relating to selection, tenure of office, and compensation of personnel)" and inserting in lieu thereof "(including methods for the selection of personnel on a merit basis)".

That is exactly what you are aiming at in this section.

Senator WALSH. In other words, you both have the same objective.

Senator BYRNES. We both have the same objective.

Senator McKELLAR. Yes; we both have the same objective.

Senator WALSH. And it is for the committee to choose the best language.

Senator McKELLAR. It would be satisfactory to me either way.

Senator BYRNES. The Social Security Board and the drafting office suggested to me that they should have the three sections, because the language appears in those several places in the act.

Senator McKELLAR. That is true.

Mr. ALTMAYER. That is right.

Senator BYRNES. That is the explanation of the three sections, because if it is taken care of in one it should be taken care of in the other.

Senator WALSH. I understand.

Senator BYRNES. I particularly call the attention of the committee again to this amendment that I am really more interested in than anything else, and that is in changing the time from 2 years to 1 year, so as to make it possible for these States to pay earlier.

Senator WALSH. Senator Johnson, the Senator explained that before you came in.

Senator BYRNES. Yes. That is to enable the State to make their benefits payable not before January 1 because of the provision in the

statute of 2 years, but to change it to 1 year, so if they see fit to do so they can move it up and provide for the payment of these benefits on July 1 this year, or October 1, or whatever day they want. There are a number of States that have legislatures in session now and would like to have the opportunity to act upon that matter.

Senator JOHNSON. Thank you, Senator. I will be glad to read your remarks in the record. I am sorry I was late.

Senator BYRNES. That is all right.

Senator JOHNSON. I have one other question that I would like to ask Senator Byrnes before he goes.

Senator BYRNES. What is that?

Senator JOHNSON. I am glad that the Congress did accept the second plan that Mr. Altmeyer mentions, the plan of making this a cooperative enterprise between the States and the Federal Government. I have watched the operation of these matters of joint interest between the United States Government and the State governments, and in all cases where they have turned over the administration to these States I think they met with great success, and I think that is a splendid plan, instead of trying to direct everything from Washington, so I am very happy that you chose the plan that you did choose.

Now, the question that I want to direct to you, Senator Byrnes, is this: This has been a cooperative plan between the States and the Federal Government. The law was laid down. The States were induced to come in and do their part. They were told what the Federal law was, and they were told what their powers would be. They accepted those powers and they passed their laws. Now you are coming in, after this agreement has been made and after this contract has been entered into between the States and the Federal Government, and you are trying to change the conditions. Is it fair upon the part of Congress to do that now, after the States have accepted and have come in and are working under this plan? Is it fair now for the Federal Government, for the Congress, to begin encroaching upon the States and begin to lay down new rules, new laws, new regulations, compelling the States to do things that they did not know about when they entered into this contract?

Senator BYRNES. I think certainly the Congress would never say that the social-security law as it was passed, should never, through all time to come, be amended in any particular.

Senator WALSH. As a matter of fact there is a bill pending in the House, a very important bill, which contains a large number of amendments that the Department considers to be essential by reason of its discoveries made in the operation of the law. Is that correct?

Mr. ALTMAYER. Yes, sir; and before the Finance Committee, too.

Senator BYRNES. Before this committee, too.

Senator WALSH. How many amendments are proposed?

Mr. ALTMAYER. Oh, there must be two or three dozen.

Senator JOHNSON. May I ask if those amendments have to do with functions given to the State to perform or with functions retained by the Federal Government under this law?

Senator BYRNES. Some of them do.

Senator JOHNSON. Some of them change the status of these States?

Mr. ALTMAYER. It clarifies the language and some of the provisions ease up matters for the States. For instance, in the collection of sums of money from the estates of these aged persons who are receiving old-age assistance there has been some difficulty experienced by the

States in securing compliance with present provisions, and we suggest a modification to correct that.

Senator JOHNSON. Experience in the administration of any law, nearly always call for changes. You cannot get the thing perfect in the first instance. This, however, is a fundamental change affecting only the States.

Senator BYRNES. Of course, I do not think it is such a fundamental change.

Senator JOHNSON. It is one affecting the States.

Senator BYRNES. Every one of these will affect the States. If the Senator will take the trouble to read the amendment he will see that that is true. I have read a number of these amendments, and there will be many more.

Senator JOHNSON. Under it will there be any encroachment upon the States? Will they cut off the powers of the States?

Senator BYRNES. Undoubtedly some persons will argue that they will encroach upon the States. There will be a great many more changes, Senator. Senator Vandenberg, you know, has been taking quite an interest in the committee. There will be fundamental changes that will affect this law. Whenever we undertake in this country a system of this kind for the first time it will not be perfect and as the result of experience we must change it in order to make it serve the purpose that we want it to serve. I do not think any State is going to object, any more than the State of Colorado will.

Senator JOHNSON. Colorado will not object at all, because we have a merit system.

Senator BYRNES. Unless there are one or two States that will want to do what no one will ever desire to have them do. What Mr. Altmeyer says I think is correct. If it ever breaks down in one State in the Union and this system is used as a political football it will break down in every State in the Union.

Senator McKELLAR. Absolutely.

Senator WALSH. I would like to have you state for the record how this law is administered, so far as the merit system is concerned, in the District of Columbia. Is it administered entirely on the merit system?

Mr. ALTMAYER. No; it is not.

Senator WALSH. Who makes the appointments?

Mr. ALTMAYER. They have a commission and director under the Commission.

Senator WALSH. We will be affecting the District of Columbia by this act as well?

Mr. ALTMAYER. Yes.

Senator WALSH. Now, the Board itself, has that amendment in its law, and has limited the exceptions entirely to investigators and lawyers, has it not?

Mr. ALTMAYER. Lawyers and experts.

Senator WALSH. I remember great care was taken to have the general act and the administration by the Federal Government as strongly tied up with the merit system as it is possible to do so.

Mr. ALTMAYER. I might say as far as that one exception is concerned as to lawyers and experts, that the Civil Service Commission takes the position that it is no longer necessary for the Board to make appointments under that expert clause, inasmuch as they believe that if registers are not available they can be made available for all the



various types of personnel that the Board needs. So, except for temporary research personnel, they are no longer permitted to employ anyone who is not certified by civil service.

Senator WALSH. I have observed in the administration of this feature of the law that you have been obliged to furnish the names of lawyers, the names of examiners to the Civil Service Commission in order that they might determine, they might conclude that you are not submitting the names of clerks as examiners, is that right?

Mr. ALTMAYER. Yes, sir.

Senator WALSH. And accountants and lawyers?

Mr. ALTMAYER. Yes, sir.

Senator WALSH. So you will have to submit the names and the qualifications of those whom you designate as lawyers and as examiners?

Mr. ALTMAYER. Yes.

Senator WALSH. So in any event, regardless of this controversy here, it would be advisable for setting an example to the country to provide a merit system for the employees of the District of Columbia.

Mr. ALTMAYER. Yes, sir.

Senator TOWNSEND. Who would have the authority of appointing him in the District?

Mr. ALTMAYER. The District Commissioners appoint the unemployment compensation commission which in turn appoints the director.

Senator WALSH. Who is the commissioner?

Mr. ALTMAYER. John Marshall.

Senator WALSH. He is the director?

Mr. ALTMAYER. He is the director, I mean.

Senator WALSH. He is both the commissioner and director?

Mr. ALTMAYER. There are three commissioners: One labor representative, one employer's representative, and one representative of the public.

Senator WALSH. I see.

Senator McKELLAR. Mr. Chairman, may I ask Mr. Altmeyer to look at Senate 3235? I do not know whether he has seen it before or not. I think you have, however, Mr. Altmeyer?

Mr. ALTMAYER. Yes, sir.

Senator McKELLAR. Will you see if it is virtually the same, substantially the same as the first section or the second section of Senator Byrnes' bill?

Mr. ALTMAYER. Senator, I think both you and Senator Byrnes are in agreement on the purpose. I would recommend Senator Byrnes' language, for this reason, that yours pertains only to the selection of personnel, whereas Senator Byrnes' amendment proposes the establishment and maintenance of a merit system. It might be argued that if the original selection were made under the merit system there would be complete compliance with your amendment.

Senator McKELLAR. In other words, you think the Byrnes amendment is stronger than this?

Mr. ALTMAYER. Yes, sir.

Senator McKELLAR. If that is the case I think that the Byrnes amendment should be adopted instead of mine.

Senator WALSH. The committee can report both your amendment and Senator Byrnes' amendment and amend one or the other to take care of the situation.

Mr. ALTMAYER. There is one other advantage that I see in Senator Byrnes' amendment, and that is this: It says, "Establishment and maintenance of personnel standards on a merit basis," indicating that it is not the selection of the individual, but the system that is required.

Senator McKELLAR. Would that include compensation, the amount of compensation? Now, under the amendment that I have offered I am striking out the words "other than those relating to selection, tenure of office, and compensation of personnel." When you strike those words out that would give you a veto power on all of those things?

Mr. ALTMAYER. Yes, sir.

Senator McKELLAR. Would the Byrnes amendment do that?

Mr. ALTMAYER. Yes. Both bills do the same thing in that regard.

Senator McKELLAR. That would be satisfactory.

Senator JOHNSON. I did not catch that question. It would give the Board what kind of veto power over the state functions?

Mr. ALTMAYER. The approval of the personnel or merit system, which system would include the classification of positions. This amendment does not give the Board the right to raise or reduce salaries of specific individuals.

Senator McKELLAR. Approval rather than veto power. It would be the power to approve.

Mr. ALTMAYER. We do not now have that power very clearly.

Senator JOHNSON. Does that mean that you can tell the State: "You must pay this man \$5,000 or \$4,000 or \$3,000"?

Mr. ALTMAYER. No, sir; but it would give us the power to place upper limits, probably.

Senator JOHNSON. You might very easily disrupt the State government by setting standards of salaries that were not in keeping with the rest of the State salary standards.

Mr. ALTMAYER. You mean too low?

Senator JOHNSON. Well, either too high or too low.

Mr. ALTMAYER. No, I don't think we have ever suggested raising any salary. We have suggested reducing salaries in a number of instances.

Senator WALSH. I would like to have a statement for the record before you gentlemen leave on the question of whether you are all agreed that that is within the function of this committee and of the Senate, to report this bill, without violating the constitutional provision that revenue bills and amendments thereto should originate in the House?

Senator BYRNES. I do not think there is any question about that.

Senator McKELLAR. I do not think there is the slightest question about that.

Senator WALSH. What would you say to that, Mr. Altmeyer?

Mr. ALTMAYER. I do not believe I am competent to pass upon congressional questions.

Senator BYRNES. I would think, regardless of the merits of it, inasmuch as it does not in any way provide for the raising of revenue, the fact that it changes the question of administration, that it is entirely within the function of this committee and the Senate.

Senator WALSH. I do not think there is any question about that either. I had a bill passed last year, that was passed by the Senate, providing for a change in the oath that is made when the taxpayers

file their returns, and of course that is an amendment to the revenue law, but it was an administrative act and we had no difficulty.

Senator BYRNES. Of course, the provision, as I recall it, is a bill to raise revenue. This bill is not to raise revenue.

Senator WALSH. Senator Byrnes, you may be excused.

Senator McKELLAR. Senator, if you will bear with me a moment, I want to give you the reasons why my attention has been especially called to this bill.

Senator WALSH. Are you calling attention now to the bill or to the resolution?

Senator McKELLAR. To the bill that we are now considering, as a reason why it should be adopted.

On December 8 I received the following letter, dated at Memphis, Tenn., and addressed to me:

Relative to the personnel set-up in Nashville under the unemployment compensation division, I find that section 303-a of the Social Security law provides as follows:

"The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under title IX, includes provisions for—

"(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; \* \* \*

It is my information that the Federal Government is paying the salary of the personnel referred to in the various States. The Tennessee law reads as follows:

(d) *Personnel*.—Subject to other provisions of this act, the commissioner is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of his duties. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis. The commissioner shall classify the positions and shall establish salary schedules and minimum personnel standards for the positions so classified. He shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and, except for temporary appointments not to exceed six months in duration, shall appoint its personnel on the basis of efficiency and fitness as determined in such examinations. The commissioner shall not appoint or employ any person who is an officer or committee member of any political party organizations or who holds or is a candidate for any elective public office. The commissioner shall establish and enforce fair and reasonable regulations for appointments, promotions, and demotions based upon the ratings of efficiency and fitness and for terminations for cause. The commissioner may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this act, and may in its discretion bond any person handling moneys or signing checks hereunder. These examination provisions shall be in effect until this State shall have adopted an acceptable merit rating system.

And further:

Section 17-a: The Commissioner, with and by the consent of the Governor and attorney general, is authorized to employ a qualified full time salaried attorney for legal work in connection with the unemployment compensation division. Such attorney shall be under the jurisdiction of the attorney general and reporter, and shall devote his full time to the unemployment compensation division.

Senator JOHNSON. Will you permit an interruption, Senator?

Senator McKELLAR. Yes, sir.

Senator JOHNSON. You have just read the Tennessee law, have you not?

Senator McKELLAR. Yes, sir.

Senator JOHNSON. That sounds like pretty good law.

Senator McKELLAR. The trouble is it has not been complied with, as we will show you in a moment.

As you know, the State administration first employed Fletcher Cohn, a lawyer of Memphis, as chief counsel for this set-up of unemployment compensation division in Tennessee. As a result of the recent political fight between the State administration and our Memphis-Shelby County organization, Mr. Cohn was let out with only 1 day's notice.

State Senator Houghlon Akin and Representative Cayce Williams, hereinafter referred to, both hold State offices. These two appointments are in direct violation of the statute under section (d) above quoted.

Mr. Alex Gray, of Brownsville, who was put in in Mr. Cohn's place, had influenced Representative Dixon to vote for Governor Browning's partial disfranchisement bill in the two recent extraordinary sessions of the legislature called by the Governor. Mr. Dixon was a young lawyer in the office of Gray & Gray, Brownsville.

It is also charged that Mrs. O'Dell, Republican representative from Cocke County, who voted for the disfranchisement bill, has had a son put into that department. Young Mr. O'Dell came into the office on or about October 17, and the vote on the disfranchisement bill took place on or about October 20.

I understand that bill has been invalidated by the courts.

It is also charged that Representative James Vines, a Republican representative from Washington County, had his brother appointed to a place in the unemployment compensation division, and that Representatives Vines voted for the disfranchisement and affiliated bills.

It is charged that Cayce Williams, Weakley County representative, who voted for the disfranchisement bill, has a job in the same department. This is directly antagonistic to the State statute quoted above.

Senator WALSH. Is that the bill you spoke of the other day and you said the court was to render a decision on it?

Senator McKELLAR. Yes.

Senator WALSH. The disfranchisement bill?

Senator McKELLAR. Yes.

Senator WALSH. What decision was made?

Senator McKELLAR. It invalidated the legislation.

It is also charged that State Senator Houghlon Akin, of Jackson, Madison County, who voted for the disfranchisement bill, was also given a position in the same department. I quote the Associated Press of December 6:

NASHVILLE, TENN., December 6.—Labor Commissioner Albert Gore announced today the appointment of State Senator Houghlon Akin, of Jackson, as deputy commissioner to handle benefit claims for unemployment compensation. The salary, it was added, will be \$1 per year plus actual expenses. This is a new position. This is in absolute violation of the statute quoted above.

It is also charged that Elijah Tollett, of Cumberland County, who happens to be under indictment in the Federal court for swindling a non compos mentis soldier, was promised or given a place in the same department, but there was such a hue and cry about it that they seem to have arranged the matter with him in some other way.

It is also charged that for like reasons three young ladies were employed in the same department who had had no experience of any kind, typist or otherwise. These young ladies are supposed to have replaced three young ladies who had previously been appointed.

I am giving you this memorandum so that you can see just exactly what has been done. If these charges are true, the Federal Government's money should not be used for any such improper purposes. Whether these charges are true or not, I think the Federal Government should control the employment of those who spend the Federal Government's money. I know that you are interested in introducing an amendment in the Senate to bring this about.

It is inconceivable to me that the Social Security Board, acting for the Federal Government, would countenance or permit this essential if not criminal bribery, and I wish you would take the matter up with that Board and have it make an independent examination, giving you the facts concerning each case.

If you cannot get the Board to make the proper examination and cause these officials thus appointed to be dismissed and honest and capable people put in their places in accordance with the Federal and the State statutes, then I trust you will have a Senate investigation of the matter so that the facts may come to light.

With kind regards,

Very sincerely yours,

E. W. HALE.

Senator McKELLAR. I submitted that to the Social Security Board for examination and report. I will submit the following communications for the record without reading them.

Senator WALSH. The communications may be inserted in the record.

(The communications referred to are as follows:)

UNITED STATES SENATE,  
COMMITTEE ON POST OFFICES AND POST ROADS,  
December 24, 1937.

Hon. MARY DEWSON,  
Social Security Board, Washington, D. C.

DEAR MISS DEWSON: Some time ago I called your attention personally to what had been reported to me as improper uses which were being made of the social security law in Tennessee.

Enclosed I hand you a letter from Commissioner E. W. Hale, of Memphis, Tenn. (Shelby County), citing portions of the Federal law and portions of the State law in reference to social security.

Some time after the social security law went into effect the Commissioner having charge of this work in Tennessee, with the consent of the Governor and the attorney general, appointed Mr. Fletcher Cohn as attorney, and made the other appointments provided for under the Act. Mr. Cohn was from Memphis. Everything went along smoothly apparently until September 13, 1937, when Governor Browning had a political conference with Mr. E. H. Crump, of Memphis, which resulted in a disagreement, Mr. Crump refusing to do what Governor Browning asked. Governor Browning returned to Nashville and announced he would call an extraordinary session of the legislature to bring about better conditions in Memphis, as he claimed.

The facts were that Mr. Browning was nominated through the votes and influence of the Memphis Democratic organization, headed by Mr. Crump. He not only received some 60,000 majority in the city of Memphis, but the fact that it was advertised he would receive this majority in Memphis caused him to receive large majorities in other counties which he would not have received had Shelby County not gone for him. After the primary election in August 1936 Mr. Browning telegraphed that there were 60,000 reasons why he loved Shelby County, referring to his majority there. Notwithstanding this generous support, after the difference that he had with Mr. Crump on September 13, he called an extraordinary session of the legislature and announced that he wanted the legislature to pass a county-unit plan for primary elections for only three offices, United States Senator, Governor, and railroad and public utilities commissioner. All of these come up for nomination next August.

In a sentence, this county-unit plan provides that each county casting more than 100 Democratic votes for President in 1936 should have 1 vote for each 100 votes cast, provided that no county would be entitled to more than one-eighth of the population as shown by the Federal census of 1931.

The provisions of this system would reduce the vote in Shelby County (Memphis) to 384 instead of 600, as she would be entitled to on the usual basis. In part, it also disfranchised some 37 or 38 other counties. The State senate passed the bill and the house passed it by one vote more than the constitutional majority. In the meantime, since the regular session of the legislature another situation came to light.

Some six or more legislators had accepted other positions under the State or counties and had been sworn in. They were receiving their salaries as such county or State officers. It had been held by our courts that under our Constitution, which prohibits a person from holding more than one State or county office at a time, when these legislators accepted the new positions they vacated the offices of legislators. Notwithstanding this, however, these several officials were brought back to the legislature, where they voted. Their votes helped make the 51 votes necessary to pass this law.

Opponents of the measure filed court proceedings, and the lower courts held that the laws thus passed were invalid. These cases are now before the Supreme Court of the State.

I am giving you these facts to acquaint you with the situation. None of the legal proceedings mentioned referred to the positions mentioned in the attached letter from Mr. Hale, except Representative Vines.

I am referring Mr. Hale's letter to you for the purpose of having your Board make an investigation concerning the five members of the legislature referred to by Mr. Hale, and I am asking your Board to have the matter examined into and to report answers to the following questions raised by Mr. Hale:

1. Was Mr. James Dixon, a Representative from Brownsville, Haywood County, connected with the law firm of Gray & Gray there, of which Alex Gray is a member; did Gray & Gray influence James Dixon to change his vote in favor of the Browning disfranchisement bill, as it was called; did Dixon vote for it; after the extraordinary session adjourned was Mr. Cohn removed as attorney for the Social Security Board and Mr. Alex Gray appointed in his place; and does the Federal Government furnish the money to pay the salary of Mr. Alex Gray?

2. Did State Senator Houghlon Akin, of Jackson, Madison County, vote for the disfranchisement bill and these other political measures during the extraordinary session, and after that session was he employed in the Social Security set-up; at what salary or at what expense per month; is the Federal Government paying the expenses and salary of said Akin?

3. Did Representative Cayce Williams, of Weakley County, vote for the disfranchisement bill after expressing himself as being opposed to it; a short time after the adjournment of the extraordinary session was he appointed to a place in the Social Security set-up in Tennessee; at what salary; is he now drawing pay from the Federal Government?

4. Was Elijah Tollett, a representative from Cumberland County, promised a position in the unemployment division of the Social Security set-up in Tennessee; did he vote for the disfranchisement measure; was it reported in the public press that he had been appointed to a Social Security position; did it then occur that Representative Tollett was under indictment in the Federal court; after that, did his sister receive an increase in salary of \$50 per month?

5. Did James Vines, a Republican representative from Washington County, vote for the disfranchisement bill recommended by the Governor; after he voted for it was a brother of his put to work in the Social Security set-up; at what salary; is he drawing a salary from the Federal Treasury?

6. Did a young son, some 18 or 19 years of age, of Mrs. Caroline O'Dell, of Newport, Republican representative from Coeke County, receive a place in said Social Security set-up; on what date did he receive it; on what date did Mrs. O'Dell vote for the Browning disfranchisement bill; is her son on the pay roll of the Federal Government in this set-up?

7. Please have the question of the three young ladies who were discharged and others put in their places examined into, and kindly report who recommended dismissal of those already in and who recommended the employment of those who took their places, giving their names.

(You will note that Mr. Hale states that the above mentioned five members of the legislature were bribed to vote and are being paid for their votes out of the Federal funds allotted to Social Security work.)

8. Please ascertain and report specifically whether any examination was held prior to the appointment of these three members of the legislature, and the brother and son of the other two members of the legislature referred to in this communication.

9. Please advise me if your board does not believe that the following provision of the Social Security law should be repealed:

"(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due: \* \* \*"

My own judgment is that where Federal money is expended it should be expended by Federal officials, not by the State officials or any organization.

These alleged acts have so recently occurred that I know you will not have the slightest difficulty in getting the information and in answering categorically the facts.

Of course, I could have a Senate investigation of the matter, but such is my great respect, admiration, and esteem for you and confidence in your honesty, that I am writing you first so that you can have the matter examined into and advise me as early in January as you can.

I feel that I should also tell you that I have made an independent examination of these facts, and that information leads me to believe that these facts are true. Thanking you for your early consideration of this matter, I am,  
Sincerely your friend,

KENNETH MCKELLAR.

DECEMBER 28, 1937.

HON. KENNETH MCKELLAR,  
*United States Senate, Washington, D. C.*

DEAR SENATOR MCKELLAR: I am in receipt of your two letters of December 24, one relative to the administration of unemployment compensation and the other relative to the administration of old-age assistance in Tennessee. The letter relative to unemployment compensation deals with matters of State personnel, whereas the letter relative to old-age assistance deals with complaints that old-age assistance is not being administered fairly or efficiently.

Section 303 (a) of the Social Security Act strictly limits the authority of the Social Security Board over State personnel. Nevertheless we shall make an investigation to determine what the facts are.

In answer to your question as to whether the Board believes that section 303 should be repealed, I may say that the Board believes that it should have clear authority to require a State to establish and maintain a merit system as regards personnel. However, the Board does not believe that it should have the right to dictate the selection of particular individuals or disapprove the selection of specific individuals who may qualify under a properly conducted merit system.

The material submitted in connection with the administration of old-age assistance is not specific. Therefore, the Board will be considerably handicapped in making an investigation. However, the Board will undertake to make such inquiry as may be feasible within the limits of its budget and personnel.

I appreciate very much your calling these matters to our attention. As soon as I have information regarding them I hope to have an opportunity to discuss them with you further.

Sincerely yours,

MARY W. DEWSON,  
*Member of the Board.*

FEBRUARY 4, 1938.

HON. KENNETH MCKELLAR,  
*United States Senate, Washington, D. C.*

DEAR SENATOR MCKELLAR: Reference is made to your letter of December 24 to Miss Mary Dewson, requesting an investigation by the Social Security Board of the administration of the Tennessee unemployment compensation law on eight specific matters, and to your letter of January 15 to me, listing nine persons who had definite information concerning the matters upon which you requested such investigation. Upon receipt of your first letter, the Board directed Mr. W. W. Bardsley, one of our most competent field representatives who had no connections whatsoever with the State of Tennessee, to make that investigation. Mr. Bardsley was instructed to restrict his inquiry solely to the administration of the State unemployment-compensation law. The Board will write you next week with respect to the matters you mention in connection with the administration of public assistance in the State.

Under the Social Security Act, the administration of a State unemployment compensation law is the duty and responsibility of the State. The Social Security Act does provide, however, that the Board shall make certifications of grants to pay for the total cost of the proper administration of State laws which comply with the standards set forth in titles III and IX of the act. Title III provides, in part, that the Board shall make no certification for payments to any State unless it finds that the law of such State includes provisions for such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due.

Mr. Bardsley carefully examined pertinent records in the office of the unemployment-compensation division of the Tennessee Department of Labor, and consulted all persons who, he had reason to believe, had knowledge of matters pertinent to his inquiries; upon our receipt of your letter of January 17, he made a second trip to Tennessee and interviewed the following persons, whom you suggested be consulted;

Mr. Frank J. Rice, courthouse, Memphis; Mr. E. W. Hale, courthouse, Memphis; State Senator Blain Maxwell, courthouse, Memphis; State Representative Charles Brown, Memphis; Mr. C. W. Miles, United States marshal, Memphis; Mr. Roy Nelms, Bolivar, about 60 miles east of Memphis; Mr. L. B. Ornes, who lives at Franklin, about 30 miles from Nashville, but who comes into Nashville; almost every day; Mr. Lippe Henslee, Works Progress Administration, Nashville; State Senator Elmer Davies, Nashville; Miss Eugenia Hagsdale.

Mr. Bardsley was unable to interview Mr. William Gerber and State Senator Albert W. Roberfs. The former could not be reached. Both Mr. Ornes and State Senator Davies assured Mr. Bardsley that since Senator Roberts was at Livingston, Tenn., in their opinion it would not be worth while for Mr. Bardsley to attempt to interview him there.

In addition, Mr. Bardsley had a conference with County Commissioner Hale on the morning of January 25, at which Mr. Frank J. Rice, Mr. Frank Gailor, State Senators Maxwell and Stratton, and Representatives Charles Brown, Magevney, Percy, Tillman, King, Cole, and Kimble were present. On the afternoon of January 25, at the request of Mr. C. H. Crump, Mr. Bardsley attended a meeting in Mr. Crump's office, at which, in addition to those present at the morning meeting in County Commissioner Hale's office, there were present Mr. Crump, Mayor Overton, District Attorney General McClain, and three or four additional members of the State legislature whose names were not furnished to Mr. Bardsley.

On the basis of Mr. Bardsley's investigations and interviews, the following information is submitted in response to the eight specific questions listed in your letter to Miss Dewson of December 24, and to the further requests in your subsequent correspondence with Mr. Altmeyer and me. The bills concerning the election laws of Tennessee, referred to in several of these questions, were approved by Governor Browning on October 22 and 23.

(1) Mr. James Dixon, representative from Brownsville, Haywood County, voted against the above bills. On November 30, Mr. Fletcher G. Cohn was released from his position as attorney for the Tennessee Unemployment Compensation Division, and on December 10 Mr. Alex Gray was appointed to that position. Mr. Gray was appointed at a salary of \$375 per month. That salary was reduced to \$300 per month in the course of the review of the budget submitted by the Tennessee Unemployment Compensation Division to the Social Security Board. Mr. Albert Gore, commissioner of labor, informed Mr. Bardsley that Mr. Cohn had been released on less than 24 hours' notice, not because there had been any complaint with respect to Mr. Cohn's work, but because Mr. Gore felt that he no longer had confidence in Mr. Cohn's performance of his duties.

(2) State Senator Akin, of Jackson, Madison County, did vote for the above bills. On December 1, Senator Akin accepted the position of chief deputy in the unemployment compensation division. The duties of that position include the drafting of forms and the making of decisions in initial determinations upon claims for benefits. No evidence that Senator Akin has resigned from the State Senate was found. Senator Akin was offered a salary of \$175 per month, plus necessary expenses while traveling on the business of the agency and while in Nashville. The records of the agency indicate that a check for the month of December, in the amount of \$175, was drawn, payable to Senator Akin; Senator Akin asserts that he had no knowledge of the drawing of the check and never saw it. Mr. Scott, director, and Mr. Plummer, accountant, in the division, stated that the drawing of this check was a "double clerical error." The check was returned to the State treasury department for cancellation, and a check for \$1, as salary for the month of December, was substituted. Mr. Akin asserts that he accepted the position at a salary of \$1 per month, plus his expenses while traveling on the business of the agency and while in Nashville. It appears that a nominal salary payment was necessary in order to permit the payment of expenses. Senator Akin stated that he expected to terminate his services with the State division on or about February 1. Mr. Bardsley examined available expense vouchers filed by Senator Akin and found them fair and reasonable.

(3) Representative Cayce Williams, of Weakley County, did vote for the above bills. On November 29, Representative Williams tendered to Governor Browning his resignation as a member of the State legislature. Governor Browning stated to Mr. Bardsley that he no longer regarded Mr. Williams as a member of the State legislature. On December 1, Mr. Williams was appointed to the position of field adviser in the unemployment compensation division at a monthly salary of \$150.

(4) Representative Elijah Tollett, of Cumberland County, did vote for the above bills. On or about December 1, Representative Tollett was offered a position by Mr. Gore, at a salary of \$175 per month. Mr. Gore stated that Mr.



Tollett declined the position. Mr. Gore stated further that he recalled some newspaper publicity concerning an indictment of Mr. Tollett, but that his knowledge concerning the details of the indictment was incomplete. Mr. Tollett's sister is not, and has not been, employed by the Tennessee Unemployment Compensation Division. Mr. Bardsley was informed through the office of the State personnel director that she is employed in the division of highway patrol of the department of administration, and that recently her salary was reduced from \$125 to \$100 per month.

(5) and (6) Representative James Vines, of Washington County, and Representative Caroline O'Dell, of Newport, Cooke County, did vote for the above bills. Representative James Vines' brother was appointed on October 18 to the position of clerk in the unemployment compensation division at a salary of \$110 per month. On the same date, October 18, Mrs. Caroline O'Dell's son was also appointed as a clerk at the same salary of \$110 per month. Mr. O'Dell stated to Mr. Bardsley that he is 25 years of age and that his application for a position in the division was filed in January 1937.

(7) County Commissioner E. W. Hale identified the three young ladies, referred to in the paragraph numbered 7 of your letter of December 24, as Miss Eugenia Ragsdale, Mrs. M. L. Wright, and Miss Louise Short, all of Shelby County. The first two were employed as temporary clerks at \$110 per month, and the latter was a clerk at the same figure. They were released on October 31, October 15, and November 15, respectively. Miss Ragsdale, the only one of the three who could be reached for an interview, stated that she had not been released without advance notice and for no stated reason, that she had been employed on a trial basis, but that her supervisor had complimented her upon her work. Mr. Gore stated that all new employees in subordinate positions are advised that their employment is on a trial basis and that he is responsible for appointments and dismissals.

(8) On January 1, Mr. Hale Crow submitted a letter of resignation as a member of the legislature to Governor Browning. On January 4, Mr. Crow was appointed to the position of junior deputy in the unemployment compensation division at a salary of \$140 per month.

(9) Mr. J. Fons Davis, mentioned in Mr. Snipe's letter to you of January 15, is a senior deputy in the unemployment compensation division. Mr. Gore stated that he had no knowledge of political activities on the part of Mr. Davis.

(10) Mr. William W. Garland, Mr. Gore stated, had persistently sought a position in the unemployment compensation division during the fall of 1937, and that he, Mr. Gore, never offered Mr. Garland any such position.

(11) Both Mr. Gore and Governor Browning informed Mr. Bardsley that on or about December 1, a position as a member of the board of review had been offered to Senator Albert W. Roberts, but that Senator Roberts had declined to accept it. The State statute provides that compensation for this position shall be on a per diem basis.

(12) Mr. Raymond Henson, mentioned in Mr. Brown's letter to you of January 20, stated to Mr. Bardsley that he took the examination for junior interviewer in the State employment service in Memphis, and was advised that he had passed the written examination. He was subsequently appointed to a position of a lower grade in the State employment service. Mr. Henson's qualifications appeared to meet the minimum standards applicable to the position to which he was appointed.

The pertinent constitutional and statutory provisions involved appear to be article II, section 10, of the constitution of the State of Tennessee, which provides that "no senator or representative shall, during the term for which he was elected, be eligible to any office or place of trust, the appointment to which is vested in the executive or general assembly"; article II, section 26, of the Tennessee constitution, which provides in part as follows: "nor shall any person in this State hold more than one lucrative office at the same time"; and section 11 (d) of the Tennessee unemployment compensation law which provides in part that the Commissioner shall not appoint or employ any person who holds or is a candidate for any elective public office.

Whether or not these provisions of the constitution of the State of Tennessee, and of the Tennessee unemployment compensation law, are applicable to the above-stated facts with respect to Senator Akin, Representative Williams and Representative Crow, and if so, the present status of these individuals as employees of the State unemployment compensation division, are questions involving the application of State law. It is the policy of the Social Security Board that moneys granted pursuant to title III of the Social Security Act shall be available for the compensation of State personnel only if such personnel is em-

ployed in conformity with the laws of the State. In applying that policy, the Board relies upon the decisions of the State courts for the construction and effect of State statutory or constitutional provisions. We are advised that suits are pending in your State courts in which it is contended that the acceptance of a lucrative office by a member of the legislature ipso facto vacates his office as a member of the legislature. If the State courts in these pending cases so construe the provisions of the Tennessee constitution, it would seem that no question involving improper compensation of personnel exists for consideration by the Social Security Board. If on the other hand the appointments of these individuals to positions in the State agency were null and void under article II, sec. 10, of the Tennessee Constitution, the Board will deduct from its next grant of funds to the State agency the amount of compensation improperly paid.

Apart from the above constitutional and statutory limitations, the above-discussed positions involve the general question of conformity with the applicable State statutes concerning the appointment of personnel upon the basis of merit. The Board does not undertake to consider individual cases of State personnel, except insofar as such individual cases may constitute evidence of noncompliance with general standards. From the evidence available, the Board cannot conclude that the above-discussed positions in the State unemployment compensation division were or were not offered or filled because of particular legislators' votes on the bills referred to. It does appear, however, that positions in the State unemployment compensation division have been filled without the State's having put into operation the statutory provisions for the appointment of personnel upon the basis of merit examinations.

With respect to the matter of appointments of personnel in the State agency upon the basis of merit examinations, section 11 (d) of the Tennessee unemployment compensation law provides in part as follows:

"(d) Subject to other provisions of this act, the commissioner is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of his duties. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis. The commissioner shall classify the positions and shall establish salary schedules and minimum personnel standards for the positions so classified. He shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and, except for temporary appointments not to exceed 6 months in duration, shall appoint the personnel on the basis of efficiency and fitness as determined in such examinations. The commissioner shall not appoint or employ any person who is an officer or committee member of any political party organization or who holds or is a candidate for any elective public office. The commissioner shall establish and enforce fair and reasonable regulations for appointments, promotions, and demotions based upon ratings of efficiency and fitness and for terminations for cause \* \* \* These examination provisions shall be in effect until this State shall have adopted an acceptable merit rating system."

On February 10, 1937, the Governor of Tennessee approved chapter IV, Public Acts of 1937, which created a division of personnel in the department of administration, and provided for a merit system for the selection of personnel in the State service. In view of the provisions of the last sentence in the above-quoted section 11 (d) of the Tennessee unemployment compensation law, the enactment of this general civil-service law created some ambiguity with respect to which provisions were applicable to the selection of personnel in the unemployment compensation division.

The Board recognizes that the development of a system for the selection of personnel on the basis of merit examinations entails a substantial amount of work and time, and that a State unemployment compensation agency, in the initial stages of the administration of its law, must perform a very difficult administrative task. The Board believes that the Tennessee unemployment compensation agency should have made greater progress in the establishment of a nonpartisan merit system for the selection of its personnel. However, the Board has not felt justified in withholding grants under title III of the Social Security Act, since such action on the part of the Board would have made impossible the development of the administrative organization required to begin the payment of unemployment compensation on January 1, 1938, the date specified in the Tennessee law.

The Board is insisting that the Tennessee agency take all practicable steps to put the applicable statutes into operation at the earliest possible date. We are advised that under the act of February 10, 1937, the State personnel director has prepared the rules and regulations for the administration and execution of the act, and that those rules and regulations are now awaiting the approval of the

commissioner of administration and the Governor. We are also advised that the personnel program will move forward promptly after the issuance of the rules and regulations now awaiting approval by the commissioner of administration and the Governor. The Board has been assured that if, by February 15, the State personnel director's program has not progressed sufficiently to make definite and certain the availability, within a reasonably short time after that date, of lists of eligibles from which the State unemployment compensation personnel may be selected, separate examinations will be held for the staff of the unemployment compensation division. The Board will, of course, expect these assurances to be complied with without delay.

Please be assured of the Board's appreciation of your interest in the proper administration of the social-security program, and of the Board's desire to supply you with all information and assistance within the scope of the Board's activities.

A copy of this letter is enclosed for your convenience.

Sincerely,

FRANK BANE, *Executive Director.*

Senator McKELLAR. The Board found that these members of the legislature had been selected and were acting notwithstanding the law in regard thereto.

Senator TOWNSEND. Did they find substantially what had been stated by this lawyer from Memphis?

Senator McKELLAR. Not a lawyer, but a correspondent from Memphis. They found substantially that that was true. Is that correct?

Mr. BANE. That a number of these gentlemen mentioned had been appointed.

Senator WALSH. The allegation made was substantially correct?

Senator McKELLAR. Substantially correct.

Senator JOHNSON. May I ask, does not the Board have, under the present laws, the authority to correct anything that is wrong in that direction? If there is anything wrong down there in those departments, if they have not complied with the Tennessee law, the law that you accepted as a part of the contract between the Federal Government and Tennessee, don't you have the power and authority now to correct any discrepancies?

Senator McKELLAR. Well, I would like for Mr. Altmeyer to answer that. I yield to him for that purpose.

Mr. ALTMAYER. Senator, the proposed amendment would clarify this matter. We feel that if a State does not comply with its own laws, so that the payment of compensation to the personnel is illegal under its own law, we can disapprove of that expenditure and deduct that amount from any future grants to the State. How far we can go other than that is a question, in view of the specific provision in the Social Security Act against our having jurisdiction over the selection and tenure of office and compensation of personnel.

Senator JOHNSON. Of course you have accepted the Tennessee law as a part of their contract with you.

Mr. ALTMAYER. They make no contract with us.

Senator JOHNSON. Well, it is virtually a contract; it is an agreement.

Mr. ALTMAYER. It is a little different than it is under the other title of the law, where the State must submit a plan. Here the State and the Social Security Board operate under the law itself rather than under a plan. It is a little different.

Senator JOHNSON. Yes, but you say whether or not they are entitled to have an offset of 90 percent.

Mr. ALTMAYER. Yes.

Senator JOHNSON. You are the people who determine that.

Mr. ALTMAYER. Yes.

Senator JOHNSON. You are the only people who determine that.

Mr. ALTMAYER. Yes, but certainly we could not be or would not be justified in withholding or refusing to certify to the Secretary of the Treasury a law of a State so far as their 90-percent offset is concerned, because we found irregularities such as those which have been mentioned. In other words, we are confronted with a very difficult proposition. If we do not have adequate standards in the Social Security Act for the State to observe, and the situation becomes progressively worse, we are then up against the difficult proposition of whether we shall refuse to certify that law to the Secretary of the Treasury.

Senator McKELLAR. May I ask this: If this amendment is adopted, the Byrnes amendment or the amendment I have introduced, either one, then would you have a way of correcting a situation of this sort?

Mr. ALTMAYER. Yes; right at the time instead of letting the matter become progressively worse.

Senator WALSH. Is it your position, Mr. Chairman, that while you might communicate with the State authorities saying, "We regret to note that you are not complying with this particular feature of the State law which was passed in order to cooperate with the Federal Government in the setting up of an unemployment insurance," that if the State government wrote back and said, "It is none of your business," that in substance you would not be empowered to take another step?

Mr. ALTMAYER. We might be powerless, so far as the individual act is concerned. We might get a sufficient number of individual acts so we would reach the point finally where we would say the operation of the law is so inefficient that under the general standards laid down in the Social Security Act we could not certify to the Secretary of the Treasury the offset.

Senator WALSH. Then you would be punishing the people of the State.

Mr. ALTMAYER. Yes.

Senator McKELLAR. I want to read to the committee the last two paragraphs:

The Board is insisting that the Tennessee agency take all practicable steps to put the applicable statutes into operation at the earliest possible date. We are advised that under the act of February 10, 1937, the State personnel director has prepared the rules and regulations for the administration and execution of the act, and that those rules and regulations are now awaiting the approval of the commissioner of administration and the Governor. We are also advised that the personnel program will move forward promptly after the issuance of the rules and regulations now awaiting approval by the commissioner of administration and the Governor. The Board has been assured that if, by February 15, the State personnel director's program has not progressed sufficiently to make definite and certain the availability, within a reasonably short time after that date, of lists of eligibles from which the State unemployment compensation personnel may be selected, separate examinations will be held for the staff of the unemployment compensation division. The Board will, of course, expect these assurances to be complied with without delay.

May I ask you if you have heard from them yet?

Mr. BANE. No; but we expect to hear from them today.

Senator McKELLAR (continuing reading):

Please be assured of the Board's appreciation of your interest in the proper administration of the social security program, and of the Board's desire to supply you with all information and assistance within the scope of the Board's activities.

There was something in here about the bill or the law that was then in the courts. On page 5 of this letter from Mr. Bane, the executive director, he has this to say:

The pertinent constitutional and statutory provisions involved appear to be article II, section 10, of the Constitution of the State of Tennessee, which provides that "no senator or representative shall, during the term for which he was elected, be eligible to any office or place of trust, the appointment to which is vested in the executive or General Assembly"; article II, section 26, of the Tennessee Constitution, which provides in part as follows: "Nor shall any person in this State hold more than one lucrative office at the same time"; and section 11 (d) of the Tennessee unemployment compensation law which provides in part that the Commissioner shall not appoint or employ any person who holds or is a candidate for any elective public office."

Senator WALSH. I would like to ask the chairman if complaints have reached the Board alleging that there has been noncompliance with the merit laws set up in the various States with respect to the employees administering in the States this unemployment insurance?

Mr. ALTMAYER. Yes, sir.

Senator WALSH. So that the situation that is described by the Senator from Tennessee is, to different degrees, alleged to exist in other places?

Mr. ALTMAYER. Yes, sir.

Senator WALSH. The present chairman of the committee has had his attention called to that.

Senator TOWNSEND. How general would you say that was?

Mr. ALTMAYER. Senator, I think this is a fair statement, that the Social Security Board felt that in the initial stages of getting this program under way the Congress intended that the Board should interpret the act literally in approving the State plans for old-age assistance and blind assistance, and dependent children, and approve the administration of State unemployment-compensation laws, and then as time went on cooperate with the States in developing higher standards of administration.

Senator TOWNSEND. I recognize that and approve that.

Mr. ALTMAYER. I would say if we had not taken that position that the Social Security program would be about 50-percent operative today.

Senator TOWNSEND. In other words, you would say that in 50 percent of the States there would be reason for complaint? Is that what I am to understand?

Mr. ALTMAYER. Well, I hate to indict the States by making a flat statement of that kind. I think that they have had their problems, but this sort of an amendment would place the thing on a more impartial and effective basis. With the amendment, I might say this, that the fundamental policy of the Board would remain the same. We feel that we will still be dealing with sovereign States and that our policy should be one of discussion and persuasion rather than force and coercion.

Senator McKELLAR. Mr. Altmeyer, would you give me the number of about how many of the employees of the Social Security Board have been appointed in compliance with the civil-service law?

Senator WALSH. You mean in the district?

Senator McKELLAR. No; just in Tennessee.

Mr. ALTMAYER. None.

Senator McKELLAR. None at all?

Mr. ALTMAYER. None.

Senator McKELLAR. And that law was passed in 1935, was it not?

Mr. BANE. February 10, as I recall, 1937.

Senator McKELLAR. 1937. And up to this date there have been none appointed in compliance with that act?

Mr. ALTMAYER. That is my understanding.

Senator BERRY. As to the references made to February 15, 1938, do you know why that date was identified, February 15?

Mr. BANE. Yes. In our conversations with the administrative agencies in Tennessee with respect to this question of developing the merit system the agreement was reached that in case the general overall State civil-service system was not put into effect by February 15, then the Unemployment Compensation Commission itself would establish an individual merit system for unemployment compensation, which they have the right to do under the act.

Senator BERRY. The fact is then that the act is not actually operative until February 15, 1938?

Mr. BANE. According to the agreement. Of course, the act has been operative for some time.

Senator BERRY. Does not the law stipulate that one year's time should elapse before it becomes actually effective?

Mr. BANE. With respect to the general, overall Civil Service Act of Tennessee I think that is true.

Senator BERRY. That is right.

Mr. BANE. I do not believe that is true with respect to the civil service on the merit system provided in the specific Unemployment Compensation Act.

Senator BERRY. Mr. Chairman, if the matter of the resolution of the Senior Senator, be given further consideration I am going to request that the Governor and the Commissioner of Labor be invited to testify.

Senator WALSH. I am going to ask the senior Senator if his position is that he does not care to press the resolution if the committee acts favorably on the proposed amendment.

Senator McKELLAR. If the committee acts favorably on this, I think it will settle the matter, so far as my State is concerned.

Senator WALSH. Certainly, Senator, if the committee goes into that matter the Governor and the Commissioner of Labor will be invited to testify.

Senator McKELLAR. I will be very happy for them to appear.

Senator WALSH. I would like to ask for the record this question, Mr. Chairman: Has it been your observation that where there has been a compliance with the merit system in the administration of this feature of the Social Security law by the States that a better and more efficient administration has been developed usually?

Mr. ALTMAYER. Decidedly so, and may I make this further observation relative to Senator Johnson's concern about interference in State matters, that I think that there is less interference and less cause for misunderstanding and friction if you can place the personnel on a merit system, because then the operation of the various State laws becomes more automatic so that you do not have to call attention to this, that, and the other little petty irritations that develop because of lack of personnel standards. So I would look upon the imposition of a merit system not as an extension of the Federal Government's powers into State matters, but a method whereby the cooperative

relationship between the States and the Federal Government can be put on a more automatic basis.

Senator JOHNSON. But would you not also say, Mr. Chairman, that the decision whether or not to adopt the merit system in a State should be the determination of the State itself?

Mr. ALTMAYER. No.

Senator JOHNSON. Should not they decide that themselves?

Mr. ALTMAYER. Not when it is a Nation-wide program financed under the taxing power of the United States.

Senator JOHNSON. Well, the taxing power and this Federal-State arrangement was used in order to comply with the Constitution and make this law entirely constitutional.

Mr. ALTMAYER. As I said, I think it was used largely because Congress wished to adopt this cooperative Federal-State approach rather than a wholly Federal approach, which many constitutional experts felt was as fully constitutional as a cooperative Federal-State approach. As a matter of fact, we have the Federal approach in the Federal old-age insurance system, and you could easily, from a constitutional standpoint, adopt the same plan for unemployment compensation. I think Senator Berry, who was on the advisory council which cooperated with the Committee on Economic Security, will bear me out in that statement, that it was a choice between a striaght Federal system and a cooperative Federal-State system.

Senator BERRY. Of course, on the question of the constitutionality one man's guess would be as good as another's, but I do believe the gentleman is correct in his last statement. It was our impression that this State cooperative plan of the Federal Government was the least dangerous of the two, and I believe the more practical of the two.

Senator JOHNSON. You mean there would be less danger of an unfavorable court decision?

Senator BERRY. That is right.

Senator JOHNSON. I just want to make one further statement and a very short one, Mr. Chairman. I do want to commend the Board for the fine job they have done, for the spirit of cooperation that they have shown to the States—and I am speaking in behalf of Colorado now, because I know about that State—and I do want to say that you have leaned backward in giving to our State every opportunity to work these matters out as we thought best out there, and the State of Colorado appreciates it, and I appreciate it. You have done well, and acted wisely so far as Colorado is concerned.

Mr. ALTMAYER. Thank you very much.

Mr. BANE. May I state, Mr. Chairman, with respect to one question which you raised, Senator, when you asked whether or not the Board, under either of these amendments, would have the right to fix the compensation of a particular individual, I take it that insofar as the Board is concerned, and insofar as the Senator who introduced the amendment is concerned, that there is no intention of giving the Board the right to fix the compensation of such specific individual, but only to approved a system established by the State under which the State would select and compensate its personnel on a merit basis in accordance with a system which it established, that system to be approved by the Social Security Board.

Senator WALSH. And the Board has control by its administration budget.

Mr. BANE. The Board has control through the administration budget with respect to unemployment compensation for which activity Congress appropriates funds to cover the entire cost.

Senator WALSH. The committee will stand adjourned subject to the call of the Chair. At that time, after the evidence presented to the subcommittee has been printed, the subcommittee will decide with reference to the action to be taken upon the two bills pending, and if it is deemed desirable to proceed with a consideration of the resolution offered by the senior Senator from Tennessee all parties interested will be notified.

(Subsequently the following reports were received from the Social Security Board on S. 3235 and S. 3370, and were ordered printed in the record:)

SOCIAL SECURITY BOARD,  
*Washington, D. C., February 18, 1938.*

HON. PAT HARRISON,  
*Chairman, Committee on Finance, United States Senate,*  
*Washington, D. C.*

MY DEAR MR. CHAIRMAN: This is in reference to your letter of January 14, 1938, previously acknowledged, requesting a report on S. 3235, entitled "A bill to amend the Social Security Act so as to provide for the selection on a merit basis of certain personnel for whose compensation appropriations are made by the Federal Government."

This bill deals with the conditions which a State old-age assistance plan must meet in order to receive approval of the Social Security Board entitling the State to Federal grants for old-age assistance under title I of the Social Security Act and the conditions which a State unemployment compensation law must meet in order to entitle the State to Federal grants under title III of the act to cover its administrative expenses in carrying out its unemployment compensation law. A State old-age assistance plan and a State unemployment compensation law must, under sections 2 (a) and 303 (a), respectively, of the Social Security Act, among other requirements, provide "such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel)" as are found by the Board to be necessary for the proper administration of such plan or law. The proposed bill would amend these provisions by striking out the parenthetical language and inserting in lieu thereof the following: "(including methods for the selection of personnel on a merit basis)."

The Board is of the opinion that the proposal would accomplish a desirable result and therefore recommends its favorable consideration. The Board would prefer, however, because of greater flexibility, substitution of the following language for that proposed by the bill: "(including methods relating to the establishment and maintenance of personnel standards on a merit basis)".

It is suggested, further, that whatever change is made in title I (old-age assistance) of the act in this respect also be made in titles IV and X. These titles provide, respectively, for grants to States for aid to dependent children and for aid to the blind, and as a general rule State plans approved under these titles are administered, at least in part, by the same personnel as plans for old-age assistance.

It should perhaps also be called to your attention that similar language is contained in parts 1 and 2 of title V of the act, which provide, respectively, for grants to States for maternal and child health and for services to crippled children. These provisions, however, are administered by the Children's Bureau of the Department of Labor and the Board is therefore not in position to make any recommendation with reference to them.

Sincerely yours,

A. J. ALTMAYER, *Chairman.*



SOCIAL SECURITY BOARD,  
Washington, D. C., February 17, 1938.

Hon. PAT HARRISON,  
Chairman, Committee on Finance, United States Senate,  
Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of February 3, 1938, previously acknowledged, requesting a report on S. 3370 entitled "A bill to amend the Social Security Act to provide for the establishment and maintenance of certain personnel standards on a merit basis, and for other purposes."

The bill would amend the respective provisions of titles I (sec. 2 (a) (5)), III (sec. 303 (a) (1)), IV (sec. 402 (a) (5)), V (secs. 503 (a) (3) and 513 (a) (3)), and X (sec. 1002 (a) (5)) of the Social Security Act, which relate to methods which may be found to be necessary for proper or efficient administration of State plans or laws, by striking out the parenthetical language appearing therein and inserting in lieu thereof the following: "including methods relating to the establishment and maintenance of personnel standards on a merit basis."

The language proposed to be deleted reads: "(other than those relating to selection, tenure of office, and compensation of personnel)".

The bill (sec. 6) would also amend section 903 (a) (2) of the act by striking out the words "two years" and inserting in lieu thereof the words "one year". This provision of the act relates to the period for which contributions under a State unemployment compensation law must be accumulated before benefit payments are commenced, if such contributions are to be credited against the Federal tax.

So far as the provisions of the bill relating to methods of administration of State plans or laws under the Social Security Act are concerned, the position of the Board is as outlined in letter to you dated February 16, 1938, reporting on S. 3235. In that letter, an additional copy of which is attached, the Board suggested the following language in lieu of that existing and that proposed by the bill: "(including methods relating to the establishment and maintenance of personnel standards on a merit basis)."

With reference to the proposal to amend section 903 (a) (2) of the act, you are advised that the proposed bill to amend the Social Security Act which the Board recently submitted to you, with recommendation for enactment, would accomplish the same purpose as that proposed by the present bill, and the Board would suggest consideration of this matter in the form previously submitted.

Sincerely,

A. J. ALTMAYER, *Chairman.*

(Whereupon, at the hour of 12 o'clock noon, the committee adjourned subject to the call of the Chair.)

X