MR. PRESIDENT,

It is the purpose of this bill, S. 6, to make certain that private contractors doing business with the United States Government shall not be immune from State or local taxation on their business activities solely on the ground that a provision in the contract with the Government names such private contractors agents of the United States in the procurement of tangible property of any kind for use in the performance of the contract.

Under a long established doctrine of constitutional law, the Federal Government enjoys sovereign immunity from State and local taxation, and no State or local taxing authority may levy a tax on the Federal Government, its agencies or instrumentalities without the express consent of the Congress. As a result of a very broad application of this doctrine, State and local taxing authorities were, for many years, unable to levy any taxes upon purchases made by private contractors in the course of their performance of Government contracts, and were thus deprived of much needed revenue.

In 1937, the Supreme Court of the United States reviewed this doctrine and its history and upheld a State gross receipts tax on a Federal contractor's earnings, holding that the tax was not laid upon the Federal Government, its property, officers or any of its instrumentalities; nor was it laid upon any contract of the Federal Government. (James v. Dravo Contracting Co., 302 U. S. 134). The Court held further that the fact that the State tax might increase the costs of the Federal Government did not render it constitutionally objectionable.

In 1941, the Supreme Court further narrowed the broad doctrine of immunity in upholding the constitutional validity of a State sales tax levied upon a private contractor performing work for the Government on the ground that the contractor and not the Federal Government was the actual purchaser of the property sought to be taxed by the State. Once again, the Court pointed out that Federal sovereignty does not spell immunity from paying added costs attributable to the taxation of those who furnish supplies to the Government and who have been granted no tax immunity. (Alabama v. King & Boozer, 314 U. S. 1).
Summarizing the situation following these decisions, we find, Mr. President, that immunity of the United States Government from State and local taxation was interpreted, in the constitutional sense, to refer only to immunity from the direct application of State and local tax laws; that it did not mean that the United States was constitutionally immune from increases in costs which are occasioned by the fact that those with whom it does business are required to pay State and local taxes; and that private, independent contractors doing work for the United States are not, by virtue of that status alone, immune from generally applicable State and local taxes. Thus, the Supreme Court has upheld the validity of both State sales taxes and State gross receipts taxes upon Federal contractors on the ground that such taxes did not interfere in any substantial way with the performan of Federal functions, and that the taxes in question were not laid on any property of the United States, its agencies or instrumentalities.

It was against this background, Mr. President, that in 1954, the Supreme Court held that an Arkansas gross receipts tax law, which levies on sellers a 2 percent excise tax on the gross receipts from all sales in the State, was unconstitutional as applied to the transactions there involved, in which private contractors procured in Arkansas two tractors for use in constructing a naval ammunition depot for the United States under a contract with the Navy Department which provided that in procuring articles for the accomplishment of the work, the contractor shall act as purchasing agent for the United States, title to the articles purchased shall pass directly from the seller to the United States, and the United States shall be directly liable to the seller for the purchase price. (Kern-Limerick, Inc. v. Scurlock 347 U. S. 110). The Court held first, that the Armed Services Procurement Act of 1947 authorized the use by the Navy Department of purchasing agents and the delegation to them of authority to act on behalf of the United States; and second, that since the contract with the Navy Department specifically provided that the contractor was to act as the purchasing agent for the United States, which was the real purchaser, the State was actually levying a tax on an instrumentality of the Federal Government which it could not do constitutionally, in the absence of express consent by the Congress.
Mr. President, the basic objective of this bill is to prevent the immunity of the Federal Government from attaching to what is essentially a tax levied on the private contractor or his supplier through the use of the purchasing agency provision. It would in no way invalidate such contracts; nor would it in any way prevent agencies and departments of the United States Government from entering into such contracts. Furthermore, nothing contained in this bill would encroach on long-existing, well established Federal immunities from local taxation.

S. 6 simply provides that if an agency or department of the Federal Government does enter into one of these so-called purchasing agency contracts, the business activity of the private contractor will be subject to the same State and local government taxation as are all other similar business activities which are carried on between private business organizations. In other words, all this bill would do is to restore the taxability by the States of private contractors engaged in performing Federal contracts to the status it enjoyed prior to the decision of the Supreme Court in the Kern-Lимерick case.

Now at this point, I desire to make it perfectly clear that this bill does not constitute an attack on the Supreme Court of the United States or on the Court's decision in the Kern-Lимерick case. Certainly, I would not want to say that the Court might properly have held differently than it did in the face of the facts before it. As a matter of fact the Court, in a decision handed down Monday, March 3, said, "In such circumstances the Congress is the proper agency,......, to make the difficult policy decisions necessarily involved in determining whether and to what extent private parties who do business with the Government should be given immunity from state taxes." This statement was made in the case of City of Detroit et al v. The Murray Corporation, et al, in which the Court refused to a Government contractor immunity from an ad valorem tax based on possession of property, the title to which was vested in the United States.

What this bill would do is strike down a vicious practice engaged in by certain Federal agencies and departments for one purpose and one purpose alone - the use of the purchasing agency contract to avoid payment of State and local taxes.
Mr. President, I believe that every Member whose privilege it is to serve in this great body is well aware of the dual nature of his responsibilities. As Members of the United States Senate, we owe a duty to the people of this great Nation to safeguard the Federal Treasury. At the same time, we owe an equally important duty to the people and governments of the States which we represent. Many of us in this body have been privileged to serve as State or local officials. During that service, we have become acutely and painfully aware of the serious fiscal problems which confront State and local governments. Their sources of revenue are limited, but the demand for services goes on.

Where do the State and local governments obtain the funds necessary to enable them to operate and to perform essential services for their citizens? Largely from the taxpayers, of course. The latest available statistics reveal that in 1956, our States derived approximately 75 percent of their revenue from taxes; and that sales and gross receipts taxes, now in use by 33 States, supplied some 23 percent of total State tax yields.

Whereas State governments look to sales, gross receipts and income taxes for their primary sources of revenue, local taxing authorities rely, to a very considerable extent, on the property tax. We are all aware of the fact that the Federal Government's real property holdings have been increasing at a very rapid rate, and every time that the Federal Government acquires an additional parcel of real property, be it land, improvements, or both, the revenue sources of local taxing authorities are, to that extent, diminished. Recent studies reveal that the Federal Government owns more than 409 million acres of land, or 21.5 percent of the total land area of the United States. These studies also reveal that, the real property owned by the United States within the continental limits of the United States, consists of 12,689 installations, containing 336,545 buildings, covering a total of some 2.16 billion square feet. The total cost of the land is $2.5 billion and the total cost of buildings, structures, and facilities amounts to $33.7 billion, or a total of $36.2 billion, the great bulk of which is not subject to taxation.

In order to meet the ever-increasing demands of their taxpayers, in the face of continuing Federal acquisition of real property with its consequent denial to local taxing authorities of vital revenues, local taxing authorities have been forced to turn to the States for help.
In 1950, the States paid their local governmental units $4,217,000,000
in 1954, the amount was $5,679,000,000; in 1955, it was $5,986,000,000
and in 1956, the total amount paid was $6,538,000,000.

I cite these figures to demonstrate what is, in fact, well
known - that the needs of State and local government are growing
constantly, and that the Federal Government is continuing to cut down
the source of actual and potential revenue available to these taxing
authorities. They are doing this first by acquiring property which
is then taken off the tax rolls; and second, by using a type of
contract which enables private contractors to assert the immunity of
the Federal Government, with respect to activities which would
otherwise be taxable.

Mr. President, full hearings were held on the pending bill.
Appearing in support of the measure were representatives of various
State Tax Commissions and State Tax Departments, State and local
assessors, and the National Association of Tax Administrators. These
are the men who are faced with the problems of operating and financing
State and local governments each day. These are the men who are in
possession of the facts. During the course of these hearings, the
committee received testimony from official sources, that in five States:
alone - Tennessee, Washington, New Mexico, California and Indiana -
$5,506,000 worth of sales and gross receipts taxes are in dispute,
and the accrual rate of additional disputed taxes in these five States
is estimated at more than $5,000,000 annually; and these figures
involve the activities of only one Federal agency, the Atomic Energy
Commission in just five States. Where do these figures come from?
They may be found in a memorandum submitted by the Atomic Energy
Commission to the Solicitor General of the United States in connection
with the litigation pending in the United States Supreme Court. They
are reprinted on page 19 of the Hearings on State taxation of atomic
energy contractors held by the Joint Committee on Atomic Energy in the
82d Congress, second session.

In the State of Washington, it is estimated that if all Federal
construction, building and manufacturing contracts were to carry
purchasing agency clauses, the loss would amount to at least $2.5
million annually. In New Mexico, the loss is estimated at $500,000
annually and in North Dakota, it is estimated at $200,000 annually.

Mr. President, these are small amounts of money to the Federal
Government. But to the States, they represent very substantial sums
of money which are urgently needed by the States in the conduct of State business and in furnishing assistance to local governmental subdivisions.

At these same hearings, the only argument made by representatives of the Bureau of the Budget, the Atomic Energy Commission and the Department of Defense, in opposition to the pending bill, was that it would result in additional costs to the Federal Government. Some estimates of probable cost were submitted, but they were admittedly nebulous and based only upon projections and possibilities. In connection with the cost estimates, two points must be considered: First, the Supreme Court of the United States has held that the immunity of the United States from State and local taxation does not mean immunity from increased cost resulting from taxes imposed on those with whom the United States does business; and second, as a matter of sound fiscal policy, it makes no sense for the Federal Government to take the position that it will keep its costs down by depriving State taxing authorities of that which is rightfully theirs and which private contractors would be required to pay if they were doing business with private persons. It would make as much sense if we enacted a law requiring all private businessmen doing business with the Federal Government to forego their profits in order to keep the cost to the Federal Government down. Such a law would probably be unconstitutional, in any event.

I believe we must bear in mind the fact that when a State or local taxing authority is permitted to tax private contractors doing business with the Federal Government, we are not taking money out of the Federal Treasury; what we are, in fact, doing, is putting into the State Treasuries money which is rightfully theirs, in accordance with the provisions of State law, and in the manner in which it was done prior to the decision of the United States Supreme Court in the Kern-Limerick case.

In conclusion, Mr. President, I desire to emphasize once more that the basic issue which is raised by this bill is whether a private contractor doing business with the Federal Government should be immune from State and local taxation on his business activity in connection with that transaction solely on the ground that a provision in the contract with the Government names such private contractor an agent of the United States for the purpose of procuring tangible property for use in the performance of the contract.
After reviewing the testimony presented at the hearings and evaluating the arguments both in support of and in opposition to the enactment of S. 6, the committee concluded that opponents of the bill failed to present any compelling reason for exempting from State and local taxation private contractors doing business with the Government whose business activity would otherwise be subject to such taxes, solely because the private contractor has been named an agent of the United States in the procurement of property required for use in the performance of that contract.

Finally, Mr. President, I desire to reemphasize the following important facts:

1. The pending measure is not intended to, nor will it, in any way encroach on long-existing, well-established Federal immunities from State and local taxation. Its sole purpose and its sole effect is to eliminate the rule established by the Kern-Limerick case, and to restore the rule which existed prior to that decision.

2. A distinction must be made between taxes imposed directly on the Federal Government and the indirect effect of taxes imposed on private persons which result in increased costs to the Federal Government. As previously noted, the Supreme Court of the United States has held consistently that the fact that the economic burden of a tax imposed on private contractors doing business with the Government is passed on to the United States does not make it a tax on the United States. I repeat the words of the Supreme Court in a leading case on the subject: "Federal sovereignty does not spell immunity from paying the added costs, attributable to the taxation of those who furnish supplies to the Government and who have been granted no tax immunity."

3. Aside from the legal and constitutional questions, as a matter of sound policy and economics, a relatively small increase in the costs to the Federal Government resulting from the imposition of State taxes on private contractors can offer no possible justification for depriving a State and local governments of needed revenues which would be forthcoming and payable if the contractor were doing business with a private business organization, rather than with the United States.

4. S. 6 does not involve any payments-in-lieu of taxes by the Federal Government to State and local governments; nor is it in any way connected with various pending proposals on the subject.
5. S. 6 refers only to situations in which a contract between the United States and a private contractor specifically names the private contractor as the agent of the United States for the purpose of making purchases required in the performance of the contract. It does not invalidate such contracts, nor does it in any way prevent agencies and departments of the United States Government from entering into such contracts. Nor will it affect, in any way, or subject to taxation the activities of any purchasing agent who is, in fact, an officer or employee of the United States. It affects only private contractors who, by the terms of their contract with the Federal Government, are named as agents thereof for the purpose of making purchases required in the performance of the contract.

Mr. President, this is a simple bill. Its enactment is clearly in the public interest which requires that our State and local governments remain solvent and in a healthy financial condition. If State and local governments are continually deprived of needed revenues, resulting from the encroachment of the Federal Government in the face of ever-increasing demands by their citizens for essential services, our Federal system is in danger of breaking down.

-END-