

Proposed Amendment No. 1. to S. 829. Section 2.

On Page 1, Line 8, beginning with the words "to control", strike out all through Line 3 on Page 2, ending with the words "control of banks".

Explanation of Proposed Amendment No. 1. to S. 829.

Section 2

This is the declaration of policy section. It lays the basis for the grant of extraordinary powers to the Reserve Board in Section 6 (d) on Page 9.

It is proposed that Section 6 (d) be modified (See proposed amendment No. 5). While the declaration of policy is not law the Board would naturally consider it an invitation to convert it into law by making its own rules and regulations under the rule making power granted under Section 10, Page 12.

Proposed Amendment No. 2. to S. 829. Section 3

On Page 2, Line 21, after the word "banks", add
the following:

"or a company which is a bank holding company
by virtue of this section".

Proposed Amendment No. 3 to S. 829, Section 3

On Page 3, Line 5, after the word "any", insert the words "person or".

Proposed Amendment No. 4. to S. 829, Section 3

On Page 5 after Line 16, insert the following sub-
section:

"(g) 'Person' means an individual or company".

Explanation of Proposed Amendments Nos. 2, 3, and 4,
to S. 829, Section 3.

This whole section was taken from the "Public Utility Holding Company Act of 1935" (Title 15, Section 79b, U. S. Code) with certain omissions. The three proposed amendments would cause the definitions in the bill to conform more closely to those in the Public Utility Holding Company Act, and would reach all bank holding companies in the same manner as the Public Utility Holding Company Act.

Proposed Amendment No. 5, to S. §29, Section 6

"(d) In determining whether to approve any acquisition subject to paragraphs (a), (b) or (c) of this section consideration shall be given to the financial history and condition of any acquiring bank holding company or subsidiary thereof and of any acquiring bank, including the adequacy of such bank's capital structure, the general character of its management and that of any such company, the future earning prospects of such a bank, the convenience and needs of the community to be served, including the economic and trade relations in the area affected and the right of stock-holders in a bank to realize the financial worth or their assets.

The factors stated in this section shall likewise be considered by the Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, respectively, insofar as applicable to banks and/or bank holding companies or subsidiaries as the case may be, in determining whether to approve an application of any bank to establish or change the location of a branch or branches, and in admitting state banks to membership in the Federal Reserve System and to the Federal Deposit Insurance Corporation. Notwithstanding any other provision of law, no bank shall acquire all or substantially all the assets of any other bank without obtaining such approval as is required in the case of acquisitions by banking subsidiaries of bank holding

companies under subsection (c) of this section, and in determining whether or not to approve any such acquisition or sale the factors stated in this subsection shall be considered by the Board, the Comptroller of the Currency and the Federal Deposit Insurance Corporation, as the case may be."

Explanation of Amendment No. 5 on Page 11, S. 829

This amendment would substitute a new subsection (d) to Section 6 designed to set up standards to govern the exercise of discretion of the Reserve Board or other agencies in acting upon applications, consistent with the factors set forth in the Banking Act of 1935, Section 101 (g). The language stricken out would give the Board or other agencies, in dealing with an application, discretion to consider not only financial condition, history, prospects, character of the management and needs and convenience of the community concerned but in addition other provisions which purport to set up broader standards such as "welfare of the communities and the area concerned;" or "the national policy against restraint of trade" (measures so vague and so broad as to give the Board the power to enforce the philosophy of the anti-trust laws), "undue concentration of economic power" and "in favor of the maintenance of competition in the field of banking" and "the size and extent of a bank holding company system" (provisions of even greater breadth and vagueness).

These clauses would put into the hands of the Board new powers of practically unlimited discretion.

Proposed Amendment No. 6 to S. 829, Section 6

On Page 11 after Line 23, insert a new subsection as follows:

"(e) Any shareholder or group of shareholders owning voting shares of a bank affected by the terms of any plan, undertaking or agreement for purchase or sale of such shares or assets, the consummation, effectuation or completion of which, by the terms of this section, is or may be deemed to be subject to the prior approval of the Board and/or the approval of any other officer or agency, or any bank, company or bank holding company any so affected, either as seller or purchaser of assets or through a sale or purchase of voting shares of a bank, shall have the right to notify the Board and/or other agency in writing of the existence of any such plan, undertaking or agreement and make formal application for such approval. Thereupon it shall be the duty of such Board or other agency immediately upon receipt of such notice to advise the applicant or applicants concerning the details of the information required in support of the application to enable said Board or other agency to act upon the same; and it shall be the duty of the applicant or applicants to furnish such information in such form and within such time as may be required. Any such application shall be deemed pending after the service notice hereinabove provided, and while so pending any other proceeding of any character authorized by this act affecting the subject matter of the application shall be suspended.

If the Board or other agency shall disapprove such application

the grounds of disapproval shall be stated, together with the facts which in the judgment of such Board or other agency warrant an adverse finding on each ground stated and any action, finding or conclusion of the Board or other agency shall be by order and shall not be considered agency action committed to agency discretion within the provisions of the Administrative Procedure Act and specifically, within Section 16 thereof.

Any shareholder or shareholders, bank, company or bank holding company authorized to make application under this section shall have the right to obtain a judicial review under the provisions of the Administrative Procedure Act of any agency action of the Board or other agency by which he or it is adversely affected or aggrieved or suffers legal wrong.

The review provided in this section shall take precedence over and be in addition to any other review for which provision is made elsewhere in this act, and the District courts of the United States, the United States District Court for the District of Columbia and the United States Courts of any territory or other place subject to the jurisdiction of the United States shall have jurisdiction to review the action of the Board or other officer or agency under this section upon a petition for review or in any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus). The venue of any action or proceeding to obtain a review of a determination under this section shall be the district in which an affected bank is located and does business or, at the option of the complaining party or parties, the

United States District Court for the District of Columbia. In any such action or proceeding service may be made upon the secretary of any agency whose action is sought to be reviewed at its offices in the city of Washington, D. C., or if there be no secretary, upon the officer at his offices in the city of Washington, D. C. Notwithstanding any other provision of law, the court shall have exclusive jurisdiction of such review and power to render any judgment or decree within the scope provided by Section 10 of the Administrative Procedure Act. Findings of fact by such Board or other agency which are sustained by substantial evidence shall be conclusive when such evidence is duly certified by the Board or other agency and filed with the clerk as an exhibit in any proceeding in which review of such action is sought. Ex parte statements or declarations, sworn or unsworn, given in circumstances in which there was inadequate opportunity for confrontation or cross examination by an applicant shall not be considered as evidence. Any finding or conclusion by the Board or other agency which determines or purports to determine law, national policy, or community or area welfare shall be reviewed de novo and there shall be no presumption that it is either correct or incorrect and such finding or conclusion shall not be treated as evidence.

The judgment or decree of the court in any such proceeding shall be final but shall be subject to review as provided in Sections 128, 239, and 240 of the Judicial Code, as amended. No costs shall be assessed for or against the Board or other agency.

Following is a new subsection (subsection (e) of Section (6) that has been drafted on the theory that subsection (d) would remain substantially as in the bill. This proposed subsection will, in my judgment, if adopted be the most important section in the bill because it provides the only practical procedure for protecting the parties affected by the bill against discrimination and excesses of discretionary power. The way the bill is written without this subsection there is practically no limitation and no review.

The most important transactions after the adoption of this bill would be those which fall within the scope of Section 6 and all or any of them could be nullified at the whim or caprice of the Board or other agency, and the purported facts upon which they would rely to sustain their determinations might have been gathered by secret investigations conducted in the absence of the parties most vitally interested. Power to nullify legitimate business transactions should only be exercised in some kind of orderly proceeding and it should be conducted in accordance with due process and administrative action should be subject to judicial review.

This bill would make mockery out of the Administrative Procedure Act, and it would by-pass it completely with respect to the principal powers exercised.

Incidentally, this amendment highlights the interest of the shareholder and the bank concerned. It is so drawn as to emphasize the right of the seller and the bank as well as the purchaser.