Exhibit 55

76TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
3d Session } { No. 1787

APPORTIONING REPRESENTATIVES IN CONGRESS

MARCH 14, 1940.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. DUNN, from the Committee on the Census, submitted the following

REPORT

[To accompany S. 2505]

The Committee on the Census, to whom was referred the bill (S. 2505) to amend an act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress, approved June 18, 1929, so as to change the date of subsequent apportionments, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

That an Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress, approved June 18, 1929, is hereby amended in the first sentence of section 22 (a) by striking out the words "second regular session of the Seventy-first Congress" and substituting the following words: "first regular session of the Seventy-seventh Congress", and by striking out "fifteenth" and inserting "sixteenth".

SEC. 2. The first sentence of section 22 (b) of such Act is amended to read as follows: "If the Congress to which the statement required by subdivision (a) of this section is transmitted has not, at the session during which such statement is transmitted, enacted a law apportioning Representatives among the several States, then each State shall be entitled, in the next Congress and in each Congress thereafter until the taking effect of a reapportionment under this Act or subsequent statute, to the number of Representatives shown in the statement based upon the method used in the last preceding apportionment." In submitting the statement to Congress he shall exclude aliens from the population total in the several States and apportion the number of Representatives accordingly.

Under the present law the President, after each census, is required to transmit to Congress a statement showing the number of persons in each State as ascertained under the census and the number of Representatives to which each State would be entitled under an apportionment of 435 Representatives made in each of the following manners:

(1) By the method used in the last preceding apportionment;
(2) By the method of equal proportions; and
(3) By the method of major fractions.

Under the present law that statement is required to be submitted within 1 week of the beginning of the second regular session of the Seventy-sixth Congress. The adoption of the twentieth amendment since the Reapportionment Act of 1929 has made it impossible that that requirement be complied with. Under the present law that statement would have to be submitted within 1 week after January 3, 1940, which is before the census of 1940 could be taken. The bill as referred to the committee and the committee amendment postpone that date to within 1 week of the beginning of the first regular session of the Seventy-seventh Congress; that is, the statement must be transmitted within 1 week after January 3, 1941.

Section 2 of the committee amendment amends the provision of existing law under which the apportionment shown in the statement goes into effect if Congress fails to act. Under the bill as referred to the committee, the apportionment set forth in the statement would take effect with respect to terms of Representatives in Congress for the term beginning January 3, 1945, if Congress failed to act. Under the committee amendment, if Congress fails to act during the session to which the statement is transmitted (the first regular session of the Seventy-seventh Congress), then the apportionment would take effect, unless Congress later provides otherwise, with respect to terms beginning on January 3, 1943; that is, terms of Members elected in 1942.

The committee amendment also provides that the statement transmitted to Congress shall exclude aliens from the population in the several States, and the apportionment of the number of Representatives shall be made accordingly.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill as referred to the committee are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SEC. 22. (a) On the first day, or within one week thereafter, of the [second regular session of the Seventy-first Congress] *first regular session of the Seventy-seventh Congress* and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the [fifteenth] *sixteenth* and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives made in each of the following manners:

(1) By apportioning the then existing number of Representatives among the several States according to the respective numbers of the several States as ascertained under such census, by the method used in the last preceding apportionment, no State to receive less than one Member;

(2) By apportioning the then existing number of Representatives among the several States according to the respective numbers of the several States as ascertained under such census, by the method known as the method of major fractions, no State to receive less than one Member; and

(3) By apportioning the then-existing number of Representatives among the several States according to the respective numbers of the several States as ascer-

tained under such census, by the method known as the method of equal proportions, no State to receive less than one Member.

(b) If the Congress to which the statement required by subdivision (a) of this section is transmitted, fails to enact a law apportioning Representatives among the several States, then each State shall be entitled, in the second succeeding Congress and in each Congress thereafter until the taking effect of a reapportionment under this Act or subsequent statute, to the number of Representatives shown in the statement based upon the method used in the last preceding apportionment. It shall be the duty of the Clerk of the last House of Representatives forthwith to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of Clerk or of his absence or inability to discharge this duty, then such duty shall devolve upon the officer who, under section 32 or 33 of the Revised Statutes, is charged with the preparation of the roll of Representatives-elect.

(c) This section shall have no force and effect in respect of the apportionment to be made under any decennial census unless the statement required by subdivision (a) of this section in respect of such census is transmitted to the Congress within the time prescribed in subdivision (a).

MINORITY VIEWS

The proposal before us would provide for an automatic reapportionment of the House of Representatives in advance of the 1940 census and all subsequent censuses. This bill was reported out of the Census Committee by a vote of 10 to 8. We, the undersigned minority, are opposed to the bill and wish to call attention to the provisions in the Constitution concerning the matter of the census and reapportionment. The Constitution provides:

> Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers which shall be determined by adding to the whole Number of free persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons * * *. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent term of ten years, in such Manner as they shall be Law direct. The number of Representatives shall not exceed one for every Thirty Thousand, but each State shall have at Least one Representative; *and until such enumeration shall be made*, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

The clear purport and intent of the Constitution is that the census shall be taken and the return made and then an apportionment act is to be acted upon. There is nothing mandatory in the Constitution whatever that requires Congress to pass in advance of the census an automatic reapportionment act for the House. In fact, it can readily be inferred that such a procedure is contrary to the intent of the fundamental law.

We wish to call the attention of the House to the fact that since 1790 up to 1930, with the exception of 1920 only, Congress has not failed to pass a reapportionment act after the census return has been made. The inference that Congress will not pass a just and fair reapportionment act after the 1940 census returns are known is without foundation and casts unfair implications upon the integrity of the Congress.

If the proposed legislation becomes a law the Senate of the United States or the House can by negative action forever freeze the size of the House of Representatives at 435, as well as the particular mathematical formula to be used in arriving at an apportionment. If this bill is passed the Senate can by negative action deny the House of Representatives in all future times its just prerogative of apportioning its own Members.

We wish to call the attention of the Congress to the further fact that if this bill becomes a law the apportionment of the number of Representatives for each State becomes the ministerial function of a Government bureau and no longer is a legislative act of a deliberative body.

In view of these facts and that the passage of this bill would mean a further surrendering of the rights, powers, and prerogatives of the

House of Representatives to the Senate and a further delegation of power to appointive bureaus, not directly responsible to the people, we oppose this bill.

Respectfully submitted.

J. ROLAND KINZER.
GUY L. MOSER.
R. T. BUCKLER.
FREDERICK C. SMITH.
WM. H. WHEAT.
CARL T. CURTIS.

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