



# WASHINGTON NEWSLETTER

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## C O N T E N T S

Congress in Recess . . . . .	p. 1	ALA Copyright Amendment . . . . .	p. 3
Continuing Resolution/Impoundment	p. 1	ESEA Hearings in Senate . . . . .	p. 3
Appropriations FY 1974 . . . . .	p. 2	Postal Legislation . . . . .	p. 4
Copyright Hearings . . . . .	p. 2	Minimum Wage Increase . . . . .	p. 4
Grants for Postsecondary Innovation . . . . .		p. 5	
Attachment: Status of Legislation Chart dated 8/3/73			

### Congress in Recess Until After Labor Day

It was after 7 p.m. on Friday, August 3, when Congress finally wound up whatever business it could, and adjourned for the August recess. The legislators are scheduled to reassemble on Wednesday noon, September 5. They took special action before adjourning, however, to provide for their return at any time prior to September 5, if, in the opinion of the leadership, "legislative expediency shall warrant it . . ." In this way, they have served notice that if the intent of Congress is flouted in their absence, they are prepared to return to Washington at once to do something about it.

Take advantage of the opportunity to see your lawmakers while they are back on home ground. Invite them to visit your libraries. Inform them of past benefits to library users of federally funded library programs, and give them facts on the critical effects of the current holdup of FY 1974 library funds Congress provided under the continuing resolution signed into law by the President July 1.

### FY 1974 Continuing Resolution -- Impoundment

Although the intent of Congress is clear with respect to the funding of library programs under the continuing resolution (PL 93-52), the administration has not yet released the money nor has it made known its intent to do so. The resolution provides for funding of the library programs (LSCA, ESEA II, and HEA II-A&B) at the level of the House-passed FY 1974 Labor-HEW appropriations bill (HR 8877). See the July 3 newsletter for details.

To date, the Office of Education has announced its "spending plan" under the continuing resolution in piecemeal fashion only. States have been notified, for example, of the administration's spending plan for the instructional equipment NDEA Title III program under the continuing resolution. The funds for this program are being released at the rate of \$2 million, rather than the \$25 million provided in HR 8877 -- which appears to be a clear case of impoundment. Seventeen states have filed suits against the government for impoundment of FY 1973 NDEA III funds, and many are seriously considering moving ahead now on FY 1974 impoundment suits.

Fourteen states have filed suits for impoundment of FY 1973 LSCA funds, and several others are in process of drawing up the necessary legal papers to initiate court action. Careful attention must now be paid as well to the administration's FY 1974 spending plan. If the funds are not forthcoming for the library programs under the continuing resolution, court action will clearly be in order. While word has been expected momentarily from the administration for over a month now on library funding under the continuing resolution, in the event there is no news, nor funds, it is not too early

*Al: AHL Copyright Committee*

for state library officials to begin exploring with their attorneys general, ways in which court action might be initiated, if necessary, to force release of the FY 1974 grants to which the states are entitled.

FY 1974 Appropriations

Although the FY 1974 Labor-HEW appropriations bill passed the House on June 26 (HR 3877), the Senate still has not had time to take action on the measure. Just before the Labor Day recess began August 3, the Labor-HEW Appropriations Subcommittee, chaired by Sen. Warren G. Magnuson (D-Wash.) concluded its hearings, and is scheduled to begin marking up the bill soon after Labor Day.

Speaking before the Subcommittee on July 25 in support of library funding, Eileen D. Cooke, Director of the ALA Washington Office, urged the Senators to approve, at the very least, the funding levels in the House-passed bill, but she also pointed out the higher funding levels appropriated in last year's bill would be more realistic in view of rising costs and budgetary constraints. The \$15 million approved by the House for the HEA Title II college library resources, training and research programs is particularly inadequate, she stated, because it is not sufficient to allow eligible institutions of higher education to receive even the minimal \$5,000 basic grant for library resources to which they are entitled by law.

Copyright Hearings

The Senate Subcommittee on Patents, Trademarks and Copyrights, chaired by Sen. John McClellan (D-Ark.), heard a full schedule of witnesses on July 31 and August 1, on five problem areas specified in advance by the subcommittee: library photocopying, general educational exemptions, cable television royalties, sports events on CATV, and religious broadcasting exemption.

On the issue of library photocopying, the library groups were allowed 40 minutes, as were the publisher groups. Edmon Low, Chairman of ALA's Subcommittee on Copyright, testified for the Association, and offered an amendment backed by ALA and the Association of Research Libraries to provide a "definite statement in the law that making a single copy to aid in teaching and research, and particularly in inter-library loan, is permissible and not subject to possible suit." The text of the ALA-ARL amendment follows:

AMENDMENT TO COPYRIGHT REVISION BILL, S. 1361  
RECOMMENDED BY THE AMERICAN LIBRARY ASSOCIATION

Substitute for section 108(d) the following:

(d) The rights of reproduction and distribution under this section apply to a copy of a work, other than a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work, made at the request of a user of the collections of the library or archives, including a user who makes his request through another library or archives, but only under the following conditions:

- (1) The library or archives shall be entitled, without further investigation, to supply a copy of no more than one article or other contribution to a copyrighted collection or periodical issue, or to supply a copy or phonorecord of a similarly small part of any other copyrighted work.
- (2) The library or archives shall be entitled to supply a copy or phonorecord of an entire work, or of more than a relatively small part of it, if the library or archives has first determined, on the basis of a reasonable investigation that a copy or phonorecord of the copyrighted work cannot readily be obtained from trade sources.
- (3) The library or archives shall attach to the copy a warning that the work appears to be copyrighted.

On August 10, ALA submitted a supplementary statement to McClellan's subcommittee, replying to certain testimony presented during the course of the hearing that urged instituting a royalty payment for photocopying and stated that a mechanism now exists which will easily permit such an arrangement. ALA's supplementary statement makes the point that abandoning fair use is a sacrifice the public should not be required to make, and, further, if this concession were made, there is no practical way at present for libraries to implement such a concept. The following four points are covered in the statement:

1. Such an arrangement completely destroys the fair use concept which is the right to copy in limited amounts for stated purposes without permission.
2. If payment is required for all photocopying, the scholar or library then must secure license for such from each copyright proprietor which then would require that the Copyright Act provide for mandatory licensing.
3. Even with mandatory licensing, there is no assurance that works will not be suppressed by establishment of royalty rates which are prohibitive. Therefore, the Copyright Act must establish a fixed royalty rate applicable to all copying.
4. The mechanism envisioned apparently involves sense marks on copyrighted works which could be recognized and recorded by a Xerox machine, properly equipped, as to copyright proprietor, journal or monograph, and royalty rate and amount. This raises the following questions:
  - a. What would be done about the vast amount of material now protected by copyright but without sense marks?
  - b. What Xerox machines would be required to be fitted with sensing equipment? Only those in a library? Or all those in a school or college? Or all machines everywhere?
  - c. How would royalty rates be charged, and who would regulate charges? Such regulations would be necessary since copyright is a monopoly.
  - d. Would different rates be permitted for different works?
  - e. Would royalties be payable in a lump sum to some agency or would they have to be segregated by copyright proprietor, journal, article, or monograph?
  - f. How often would payment be made?

#### ESEA Hearings in Senate

On July 25, at hearings on the bill S. 1539 sponsored by Sen. Claiborne Pell (D-RI), which would among other things extend for four years the school library resources ESEA Title II program, ALA was represented by president-elect Edward G. Holley, Dean of the School of Library Science, University of North Carolina.

Sen. Pell's bill is a complex one which would mandate the continuation of existing categorical education and library programs, including LSCA, ESEA II and HEA II. The bill would require that these library programs be funded at certain minimal levels at least, thus precluding the possibility of either zero funding or block grant consolidation. Dean Holley spoke for ALA in support of various aspects of the proposal, which is generally referred to as a study document rather than a finished piece of legislation. Many changes will undoubtedly be made in the course of the hearings and afterward, as the Education Subcommittee of which Senator Pell is chairman, continues to refine the bill. The timetable at present calls for continued hearings through the autumn months.

On the House side, the General Education Subcommittee has concluded its markup of HR 69, the five-year ESEA extension bill introduced last January by Education and Labor Committee Chairman Carl Perkins (D-Ky.), and after the August recess, the full committee will be considering the bill. One of many changes made at the subcommittee level was a proposed consolidation of several existing categorical programs including ESEA II and NDEA III. Once the subcommittee draft becomes available, the ALA Washington Office will be reviewing it carefully with state school library officials and others, and taking action as seems appropriate at that time.

For information on HR 69 hearings, at which ALA was represented by three state school library supervisors last February, see February 9 newsletter.

### Postal Legislation

The Educational and Cultural Postal Amendments of 1973 (HR 8929), reported by the House Post Office and Civil Service Committee on July 10 (H.Rept. 93-369) went down in defeat on July 23, as the House failed to adopt the rule for its consideration. Among other things, the bill would have extended to ten years the phase-in period for special fourth-class rate increases. See July 3 newsletter for fourth-class phase-in schedule.

In the House, once a bill has been reported out of committee, the usual procedure is for the committee to obtain from the Rules Committee a rule governing how the bill is to be handled on the floor. The rule generally specifies such details as the length of time allowable for debate on the bill, how the time is to be controlled, whether amendments are in order, and so forth. Then, before the House actually considers the bill, the rule for its consideration must be adopted, usually a routine occurrence. In the case of the postal amendments, however, the bill's proponents could not muster the simple majority necessary to adopt the rule, which was defeated in a vote of 180 yeas to 202 nays. In this way, the bill was killed before it could even be debated.

Following this fiasco, Rep. William D. Ford (D-Mich.) introduced a new postal bill, HR 9962, on August 3, this one called Aid to Libraries and Free Flow of Educational and Cultural Mail Act of 1973. The new bill, cosponsored by Rep. James H. Quillen (R-Tenn.), would extend to ten years the present five-year phase-in period for special fourth-class book rate increases, and further it would place a ceiling on the special fourth-class rate of not more than directly attributable costs, such as now exists for the fourth-class library rate. Finally, the bill would require that in rate setting, the Postal Rate Commission must take into account the educational and cultural value of the mailed materials along with other criteria provided by statute for determining rates.

Some of the same provisions were included in an earlier bill, HR 528, introduced by Ford last January, which ALA supported before the House Subcommittee on Postal Service in March. (See newsletters of March 30 and April 19.) Subsequently, parts of the earlier Ford bill became incorporated in HR 7554 and its successor HR 8929, both introduced by subcommittee chairman Rep. James Hanley (D-NY). The Hanley bills also contained several provisions to alleviate and/or limit rate increases for second-class mail. The new Ford bill, however, is directed specifically to the problems of the special fourth-class rate increases. The full text of Ford's introductory statement, which describes in some detail the adverse effects of postal rate increases on libraries, appears in the August 3 Congressional Record, Part II, pps. H7473-4. Rep. Quillen's statement, entitled "Aid to Libraries," appears in the same issue, on pp. H7480-1.

### Minimum Wage Increased and Coverage Extended

Public library employees would be covered for the first time by the minimum wage, equal pay, and overtime provisions of the Fair Labor Standards Act, according to the Fair Labor Standards Amendments of 1973 (HR 7935), which was cleared for the White House on August 3. Most other types of libraries were covered by the 1966 amendments to the Act. Opposed by the administration, HR 7935 is a likely candidate for a veto. Congress took steps, however, to eliminate the possibility of a pocket veto by stipulating that the bill not be officially signed for transmittal to the President until on or after

August 25. This means they will be back in session in time to have a crack at veto override should the President exercise his veto power as expected.

Under the new amendments, the minimum wage would be increased in gradual increments from its present level (\$1.60 an hour for nonagricultural workers) to \$2.20 an hour, and its coverage would be extended to nearly 7 million workers not now covered, including public employees. The measure provides a three-step increase for employees covered for the first time by the 1966 or 1973 amendments: \$1.80 an hour two months after the new law is enacted, \$2.00 an hour beginning July 1, 1974, and \$2.20 July 1, 1975. For those covered before the 1966 amendments and for federal employees covered for the first time in 1966, a two-step increase is provided: \$2.00 an hour two months after enactment, and \$2.20 beginning July 1, 1974. (A different schedule applies for agricultural workers.)

Full-time students may be employed in higher educational institutions, according to the new amendments, at rates not less than 85 percent of the applicable minimum wage, or \$1.60, whichever is higher, for a period of up to 20 hours per week (and full time during vacation periods). The measure also provides a minimum wage and overtime exemption for students employed by an elementary or secondary school if the employment constitutes an integral part of the school's regular program, provided that the employment satisfies applicable child labor provisions. (More details on these and other provisions of the new amendments are provided in the conference report, H.Rept. 93-413 or S.Rept. 93-358.)

#### Grants for Postsecondary Innovation

January 15, 1974 is the next application deadline for a new program of grants to demonstrate more effective, non-traditional approaches to postsecondary education administered by the U.S. Department of Health, Education, and Welfare. Guidelines and regulations will be available in mid-September from the Fund for Improvement of Postsecondary Education, Room 3139, FOB 6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Funded for the first time in FY 1973, the new program recently announced 89 grants totaling \$9.3 million to colleges, universities, state governments, and other agencies providing educational services to "nontraditional learners such as homemakers and workers who cannot regularly attend schools, isolated rural populations, servicemen, inner-city minorities, and prison inmates."

Established under the Education Amendments of 1972, the Fund's FY 1974 money is included in the Labor-HEW appropriation bill which has passed the House but not the Senate at this writing (HR 8877). The House-passed bill provides \$10 million for the Fund, although the administration had requested \$15 million.

Some of the projects funded by the FY 1973 grants are: a two-year project to support educational teams to arrange individualized learning opportunities for rural Vermonters in non-traditional settings, such as churches and libraries (\$750,834 over two years to Community College of Vermont in Montpelier); \$255,548 to Dayton-Miami Valley Consortium, Dayton, Ohio, for the development of experimental TV courses and supporting services for homemakers, workers, and other adults living in two communities with homes recently wired for cable television; a project to increase educational opportunities in isolated communities by establishing a network of learning centers in regional libraries (\$49,378 to University of Montana, Missoula); and \$50,457 to the Women's History Research Center in Berkeley, California for developing local collections of materials sensitive to women's needs by (1) intensive training of library interns in methods of the library, and (2) on-site consultations to libraries interested in providing services to women.

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STATUS OF LEGISLATION OF INTEREST TO LIBRARIANS	H O U S E					S E N A T E					FINAL ACTION			ALA DIVISION CONCERNED
	Introduced	Hearings	Reported by Subcommittee	Committee Report Number	Floor Action	Introduced	Hearings	Reported by Subcommittee	Committee Report Number	Floor Action	Conference Report	Final Passage	Public Law	
93rd Congress, 1st Session Convened January 3, 1973														
Chart Date: August 3, 1973														
Adult Education Amdts. of 1973	HR 7818					S. 1814	x							RASD, PLA
Arts and Humanities	HR 3926	x	x	255	x	S. 795	x	x	100	x				All Divisions
Budgetary Control	HR 7130	x				S. 1541	x	x						" "
Copyright Revision	HR 8186					S. 1361	x							" "
Criminal Justice Codification	HR 6046	x				S. 1&1400	x							" "
Education Revenue Sharing	HR 5823	x				S. 1319	x							AASL
Educational Technology Act	HR 3062					S. 2126								AASL, ACRL
Elem. & Sec. Educ. Amdts. of 1973	HR 69	x	x			S. 1539	x							All Divisions
Emergency Employment Act Extension	HR 7949	x	x	404		S. 1560	x	x	305	x				" "
Fair Labor Standards Amendments	HR 7935	x	x	232	x	S. 1861	x	x	300	x	413	x		" "
Freedom of Information Act Amdts.	HR 5425	x				S. 1142	x							" "
Impoundment Control	HR 8480	x		336	x	S. 373	x		121	x				" "
Medical Libraries (1-yr. Extens.)	HR 7806	x	x	227	x	S. 1136	x		87	x	none	x	93-45	AHIL
Newsmen's Privilege	HR 5928	x	x			S. 1128	x							All Divisions
Older Americans Act Amdts.	HR 71	x	x	43	x	S. 50	x	x	19	x	none	x	93-29	" "
Patent Reform Act of 1973	HR 7111					S. 1321								" "
Pension Plans	HR 9824	x				S. 4	x	x	127					" "
Postal Amendments	HR 9962					S. 1404	x							" "
Reading Emphasis Act (Elem. Sch. )						S. 1318	x							AASL, CSD
Reading Improvement Act						S. 2069	x							AASL, CSD, YASD, PLA
Rules of Evidence	HR 5463	x	x											All Divisions
Taxation-Manuscript Donations	HR 3152	x				S. 1367								" "
White House Conf. on L.& Inf.Servs	HJRes302					SJRes40	x							" "
APPROPRIATIONS														
Continuing Resolution thru 9/30/73	HJRes636			328	x				277	x	364	x	93-52	All Divisions
Independent Offices & HUD	HR 8825	x	x	296	x		x	x	272	x	411			" "
Interior & Related Agencies	HR 8917	x	x	322	x		x	x	362	x				" "
Labor-HEW	HR 8877	x	x	305	x		x							" "
Legislative Branch	HR 6691	x	x	107	x		x	x	323	x				" "
Second Supplemental, FY 1973	HR 9055	x	x	350	x		x	x	none	x	none	x	93-50	" "

NOTE: For copies of bills and reports, write to House & Sen.Doc.Rms., U.S. Capitol, Wash. D.C., 20515 & 20510 respectively.