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Regulatory Reform-press

REVIEW & OUTLOOK

Row Your Own Boat

The business of kicking people out of one's country can get tricky. No, we're not talking about Republican immigration policies, but about one of the world's great unwanted groups: the boat people. After years of eyeing each other across barbed wire, the citizens of Hong Kong and the colony's population of Vietnamese boat people are tumbling toward a final confrontation.

Hong Kong's Legislative Council finds itself under enormous pressure to support the colonial government's plan to further deny Vietnamese boat people some basic rights now enshrined in international covenants. Defending such rights is not a popular cause. Most Hong Kongers long ago dropped any sympathy they may have had for the Vietnamese, of whom some 20,000 remain in the colony. Hong Kong government officials have helped paint a picture in the public mind of the boat people—many of them women and their children, labeled "migrants" and imprisoned in maximum security camps—as a seething mass of criminals and bums addicted to drugs or living off the fat of Hong Kong taxpayers.

So when boat people facing forced repatriation to Hanoi took such desperate measures as stabbing themselves, the Hong Kong press complained about the waste of valuable hospital resources needed to patch them up. Such is the antipathy to the boat people that one local member of an NGO team monitoring police behavior in the camps made the extraordinary recommendation that when the police use tear gas on the inmates they should first turn off the water supply so the "VMs" (industry-speak for Vietnamese migrants) can't use water to wash the gas out of their eyes.

No wonder then, that there was an outcry in Hong Kong recently when London's Privy Council ruled that the colony's law allows authorities to keep boat people in detention only because they are going to be repatriated to Vietnam. Otherwise, there is no legal basis for locking some of them up.

This ruling seriously gummed up Hong Kong's master plan to have the colony cleansed of boat people before the handover to China next year. Because not all boat people can go back, Hanoi has explicitly refused to take hundreds, either because they are ethnic Chinese or because the state

doesn't want the burden of looking after them. Thousands more have yet to be screened by Hanoi.

Their hands temporarily tied, Hong Kong authorities have had to let a few handfuls of boat people go free. There is every reason to believe that they will settle down to lives as quiet and industrious as the few families released into the local community in the past. But the government wants the legislature, Legco, to rubber stamp a bill that would close the "loophole" in the law before more boat people manage to escape their fate. What makes this decision so intriguing is that the so-called loophole is actually a protection that the people of Hong Kong themselves may dearly need after 1997. Basically, legislators are being asked to legalize arbitrary, indefinite detention. What a nice present that would be for Beijing. Today the boat people, tomorrow Hong Kong trade unionists and democratic members of Legco itself?

The choice just put to the boat people themselves is not so clear cut. The Clinton Administration announced this week that people who sign up to go back to Vietnam by June 30 this year can apply for an interview with U.S. immigration authorities in Vietnam about the possibility of getting a visa for the U.S. It's all pretty vague and hedged with caveats. Many boat people will suspect the whole thing is part of a trick to get them to go back to Vietnam without protest. They know that when members of Congress tried to bring some "old soldiers" and others out of the camps directly to America last year, the Clinton Administration fought hard to prevent that.

Distasteful and widely publicized scenes are sure to come as the last thousands of protesting boat people are dragged back to Vietnam this year. Whatever Washington's motive, here's hoping that the boat people who do place their trust in Uncle Sam and go home without a fuss are rewarded with a fair chance at starting a new life in America. As to Hong Kong, with luck, its people will never find themselves at sea in search of asylum. But if they decide that their only policy option in this case is a law against the rights of Vietnamese boat people, they must be prepared to wake up one day and find that law turned on themselves.

What the President Signed

If Republicans scored a victory inside the Beltway, would anyone hear about it? Probably not these days. In fact, President Clinton on March 29 signed into law important provisions reining in the bureaucrats who impose a heavy tax on American productivity with rules and regulations.

The amendments, attached to a debt-ceiling extension, put some teeth into the 1980 Regulatory Flexibility Act, which requires federal agencies to assess the impact of their regulations on small business. The law has been largely a dead letter, but thanks to the debt-ceiling bill small businesses can now take non-complying agencies to court. Second, and more important, the bill mandates Congressional review of all regulations, even "routine" ones, before they're adopted.

Under the legislation, a proposed rule-making won't take effect for 60 days, during which time Congress can override the bureaucrats' wishes. There's nothing controversial about this provision. It was unanimously adopted by both houses of Congress and endorsed by President Clinton. But the White House apparently didn't read the fine print.

While regulations will be stalled for only 60 calendar days, Congress will be able to override them under expedited procedures for 60 session days. That's a big difference. Since Congress often isn't in session, 60 session days can stretch out into six months or longer. And during that whole period Congress can veto proposed regulations under rules that, for example, bar filibusters in the Senate.

Some conservatives opposed this measure on the grounds that it would distract attention from the larger regulatory reform bill, which mandates lengthy cost-benefit studies, and which has stalled in the Senate because of a filibuster. But Congressman David McIntosh, a longtime warrior against regulatory excess who

crafted this provision, says it "allows us to codify 90% of what we were trying to do in the Contract with America with regard to regulatory reform." He says it could prevent President Clinton, should he lose the November election, from issuing myriad "midnight regulations," the way Jimmy Carter did in his final hours.

Confirmation, of a sort, comes from the Administration, which reportedly is experiencing buyer's remorse. The Bureau of National Affairs, in its Washington newsletter, says that some Democratic insiders are calling President Clinton's signing of this law "a big mistake." According to the bureau, "One agency official said the review provisions may have a similar impact as the White House Council of Competitiveness in the Bush Administration, which reviewed major rules. That is, this official said, agencies may have to moderate their positions on issues pertaining to environmental and safety concerns just to ensure the rules pass the review process."

This unnamed official laments that the effect of all this "may be a compromise in environmental, health and safety protections" and that "it will give special interests the opportunity to lobby Congress on rules they find troublesome, creating still more delay." Translation: This measure will force bureaucrats to consider the economic impact of their rulings, and it will allow those affected by government actions to make their voices heard.

Those, of course, are goals endorsed by President Clinton. But whenever it comes time to implement his rhetoric, Mr. Clinton balks. Last fall, he vetoed an earlier debt ceiling bill in part because it contained even more far-reaching regulatory reforms. It's a tribute to the Republican Congress that on this occasion, at least, it got Mr. Clinton to act like a New Democrat—despite himself.

Asides

Qaddafi Goes Too Far

Muammar Qaddafi has had a long and dark career, no doubt about it. He has trained and funded terrorists, provided safe haven to assassins like those who blew up Pan Am Flight 103, attacked the Achille Lauro and bent every effort to destabilize neighboring Arab states. In addition to all this, we now discover yet more about the Libyan dictator's interests. According to Judith Miller's new

book about the Middle East ("God Has Ninety-Nine Names"), Qaddafi worked himself into such a fever over Margaret Tutweiler, spokeswoman for the Bush State Department, that he considered sending word that she should "wear something green at her next press conference"—to signal if she was interested. That should about finish it for the terror-loving Libyan. With sexual harassment now added to the list of offenses, Qaddafi has finally gone too far.

A Bill of Rights for Crime Victims

How shocking it would be to describe a criminal justice system in which a defendant had no constitutional right to be treated fairly, no right to information about the progress of the case, no right to notice of when critical proceedings would be held, no right to be present and heard at those proceedings, and no right to a speedy trial or reasonable finality to the matter—in short, no constitutional rights at all. Yet this precisely describes the plight of a victim of crime. While the Bill of Rights enumerates extensive rights for criminal defendants, it contains not even a single word on behalf of crime victims.

Rule of Law

By Paul G. Cassell
And Steven J. Twist

On Monday a bipartisan group of senators and congressmen introduced a constitutional amendment that would extend these basic rights to crime victims. The Victims' Bill of Rights Amendment would bring balance to a system whose scales of justice are tipped decidedly in favor of the accused.

How did we arrive at a system that gives so little consideration to the interests of victims? The problem is traceable to the peculiar evolution of the office of public prosecutor. The first colonists imported the English common law tradition of private prosecutions, which gave the victim of a felony the right to initiate and prosecute a criminal case against the offender. The Framers of the Constitution probably saw little need for separate "victims' rights" because victims could act on their own.

Over time, public prosecutors gradually displaced the system of private prosecutions. While the reasons for this

transformation are disputed, the undeniable effect was to exclude crime victims from meaningful participation in the criminal justice process. They lost any status as parties to the case. Their primary role became to report crimes to police and serve as witnesses if called. Meanwhile, it became accepted that prosecutors represented only the public interest, not the victims' interest.

This imbalance was exacerbated in the 1960s, when the Warren Court expanded the rights of criminal defendants and constitutionalized most aspects of criminal procedure. Trial judges who had previously accommodated victims' concerns informally within their courtrooms now found they had to follow prescribed formulas. Without a constitutional basis for considering victims' interests, a defendant's claim of a procedural right always prevailed. The court's one-sided expansion of defendants' rights slid victims out of the picture.

These developments leave us with a criminal justice system that pays scant attention to victims. Often victims do not even find out about critical proceedings, such as hearings about releasing a defendant on bail or allowing him to cop a plea to a reduced charge. When victims do learn about these proceedings, they frequently have no right to speak about why releasing the defendant is a bad idea or why the proposed plea bargain is undesirable. In many trials, victims are told that while the defendant is entitled to be present, they must leave the courtroom and sit outside in the room reserved for witnesses. Even after the conviction of the defendant, victims have often been denied the right to speak at sentencing or parole hearings.

Every year, 43 million Americans are the victims of violent or property crimes. The need for constitutional protection of their rights was first recognized by the

President's Task Force on Victims of Crime, whose 1982 report concluded that "the criminal justice system has lost its essential balance." The Task Force proposed a constitutional amendment guaranteeing crime victims the basic rights to be present and heard at critical stages of the proceedings.

Since that recommendation, more than 20 states have adopted victims' amendments. In 1994 alone, voters in Alabama, Alaska, Idaho, Maryland, Ohio and Utah gave their overwhelming approvals. While the amendments vary in

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form and effect, they have generally improved the treatment of crime victims throughout the criminal justice process. The federal Victims' Bill of Rights Amendment would draw upon the successful experience with the state amendments and require protection for victims under the federal Constitution.

The core of the amendment would guarantee victims of violent and other serious crimes the rights to be informed of and to attend court hearings. At proceedings concerning bail, plea bargains and sentencing, victims could speak—not to dictate the court's decision but to suggest what the decision should be. The amendment also would guarantee victims protection, including the right to a warning if a defendant escapes from custody.

The amendment would further grant victims a right to a speedy trial. Defendants have always had such a right but

are often the only ones with no interest in seeing it enforced. Victims also deserve an end to interminable delays in capital and other cases. The defendant's right to appeal should be protected, but under the amendment courts would be required to rule finally and without unreasonable delay.

While victims have won many state legislative victories in recent years, the overall protection of their interests is piecemeal and inadequate. A federal amendment would establish a basic package of victims' rights, a floor below which states could not go and which defendants could no longer automatically trump. Victims' rights, no less than defendants' rights, would apply in state proceedings under current constitutional doctrine, because the rights would be incorporated into the 14th Amendment's nationally applicable guarantees of due process of law. This works no new violence to the important value of federalism. Rightly or wrongly, the Supreme Court has already federalized many aspects of criminal procedure and extended substantial rights for defendants throughout country. The proposed amendment simply adopts the view that victims deserve equal treatment.

A 1991 national public opinion poll found that 89% of Americans would support an amendment to their state constitution guaranteeing victims' rights. In recent years, state voters have given such amendments approvals as high as 92%. The American public recognizes what many criminal justice professionals seem to ignore—that the system must protect the rights of victims, too.

Mr. Cassell, a professor at the University of Utah College of Law, and Mr. Twist, a Phoenix attorney, are on the executive board of the National Victims' Constitutional Amendment Network.

Economic Scene

Peter Passell

The drive to put cost limits on regulatory benefits isn't dead yet.

REGULATORY reform, shorthand for the Republican push to require regulators to take account of economic costs as well as benefits in rule-making, crashed and burned in the Senate last summer. But there is a glimmer of hope that a coalition of Republicans and moderate Democrats can fashion a compromise — reform lite, if you will — before it is hopelessly mired in election year politicking.

Much depends on the willingness of Democrats to sacrifice what has become a dandy partisan issue. Even more turns on the resourcefulness of Bob Dole, the Senate majority leader and the Republican choice to challenge President Clinton, who has very good reasons at the moment to demonstrate his ideological flexibility.

What a difference a year makes. With conservative Republicans riding high, Mr. Dole led the charge for sweeping changes that would have required Federal agencies to show that the benefits of all regulations exceeded the costs.

As an abstraction the concept is unattainable. By definition, rules that exact costs in excess of benefits are bad rules. Besides, Robert Stavins, an economist at the Kennedy School of Government at Harvard, notes that even where the law prohibits consideration of costs in pursuit of mandated goals — the Clean Air Act, for example — regulators never truly ignored them. "Surely it would be better," he argues, "to consider costs in the front room rather than the back room."

But some benefits are very difficult to quantify. It is hard to say, for example, how much it is worth to make post offices accessible to wheelchairs, or how much Americans would lose if pollutants from distant power plants reduced visibility on the rim of the Grand Canyon to 20



Nicolas Aspin

miles from 100 miles. Relying on the courts as the arbiter would, at very least, be cumbersome. "It would amount to a full employment act for regulatory lawyers," says Robert Hahn, an economist at the American Enterprise Institute.

Democrats charged that the Dole bill was an invitation to nullify a quarter-century of health, safety and environmental rules and to tie up new regulatory initiatives indefinitely. They frightened enough fence-sitting senators to make it impossible to stop a filibuster, effectively killing the bill before Mr. Clinton got to veto it. Indeed, polls suggest that the bill was a disaster for the Republicans in general and Bob Dole in particular, tarring them as lackeys of business interests.

But regulatory change is not quite dead. For one thing, policy wonks from both parties are still beating the drums for it. Last week, a who's who of mainstream economists ranging from the Nobel laureate Kenneth J. Arrow to Richard L. Schmalensee of M.I.T., who was an adviser on regulation to President George Bush, published a statement in *Science* magazine defending the role of cost-benefit analysis in Government rule-making. And today, the Center for Innovation and the

Environment, a nonpartisan arm of the influential Democratic Leadership Council, plans to call for a "second generation of environmental protection" — one that faces up to the costs of greening America.

More important, the politics of regulation remains volatile. Mr. Dole needs to find a way back to the middle if he is to win the support of the mineral water and granola crowd in the suburbs. Meanwhile, centrist Democrats, including Senator Carl Levin of Michigan, understand that last summer's triumphant rejection of change could become this summer's failure to save factory jobs in the swing states of the Midwest. He argues that for the moment, environmentalists have a chance to negotiate from a position of strength, compromising to "get the issue behind us."

Mr. Levin fashioned a kinder, gentler alternative to the Dole bill that would mandate cost-benefit analysis, yet give the executive branch considerable leeway to use other criteria in judging proposed rules. And while he notes that "it was unacceptable to business, environmental groups and the White House," the political risks of delay could still drive the parties to the bargaining table.

Mr. Stavins of Harvard, one of the signers of the *Science* magazine statement, would like to see a compromise that forces the agencies to weigh costs against benefits and explain themselves if, in the end, they choose to override the policy dictated by the numbers. That way, the political risks in ignoring costs would increase. At very least the public would learn whether it cost, say, 21 cents or \$27,000 for each visit by a wheelchair-bound American to the post office.

What is most frustrating in this debate is that the stalemata serves hardly anyone's interest. Mr. Hahn argues that "we have the technical know-how" to refine rule-making, clarifying the facts undermining rational debate over issues ranging from asbestos to airline safety. Still lacking, apparently, is faith among competing interests that more information is better than less.

Is There a Role for Benefit-Cost Analysis in Environmental, Health, and Safety Regulation?

Kenneth J. Arrow, Maureen L. Cropper, George C. Eads,
Robert W. Hahn, Lester B. Lave, Roger G. Noll, Paul R. Portney,
Milton Russell, Richard Schmalensee, V. Kerry Smith,
Robert N. Stavins

The growing impact of regulations on the economy has led both Congress and the Administration to search for new ways of reforming the regulatory process. Many of these initiatives call for greater reliance on the use of economic analysis in the development and evaluation of regulations. One specific approach being advocated is benefit-cost analysis, an economic tool for comparing the desirable and undesirable impacts of proposed policies.

For environmental, health, and safety regulation, benefits are typically defined in terms of the value of having a cleaner environment or a safer workplace. Ideally, costs should be measured in the same terms: the losses implied by the increased prices that result from the costs of meeting a regulatory objective. In practice, the costs tend to be measured on the basis of direct compliance costs, with secondary consideration given to indirect costs, such as the value of time spent waiting in a motor vehicle inspection line.

The direct costs of federal environmental, health, and safety regulation appear to be on the order of \$200 billion annually, or about the size of all domestic nondefense discretionary spending (1). The benefits of the regulations are less certain, but evidence suggests that some but not all recent regulations would pass a benefit-cost test (2). Moreover, a reallocation of expenditures on environmental, health, and safety

regulations has the potential to save significant numbers of lives while using fewer resources (3). The estimated cost per statistical life saved has varied across regulations by a factor of more than \$10 million (4), ranging from an estimated cost of \$200,000 per statistical life saved with the Environmental Protection Agency's (EPA's) 1979 trihalomethane drinking water standard to more than \$6.3 trillion with EPA's 1990 hazardous waste listing for wood-preserving chemicals (3, 5). Thus, a reallocation of priorities among these same regulations could save many more lives at the given cost, or alternatively, save the same number of lives at a much lower cost (6).

Most economists would argue that economic efficiency, measured as the difference between benefits and costs, ought to be one of the fundamental criteria for evaluating proposed environmental, health, and safety regulations. Because society has limited resources to spend on regulation, benefit-cost analysis can help illuminate the trade-offs involved in making different kinds of social investments. In this regard, it seems almost irresponsible to not conduct such analyses, because they can inform decisions about how scarce resources can be put to the greatest social good. Benefit-cost analysis can also help answer the question of how much regulation is enough. From an efficiency standpoint, the answer to this question is simple: regulate until the incremental benefits from regulation are just offset by the incremental costs. In practice, however, the problem is much more difficult, in large part because of inherent problems in measuring marginal benefits and costs. In addition, concerns about fairness and process may be important noneconomic factors that merit consideration. Regulatory policies inevitably involve winners and losers, even when aggregate benefits exceed aggregate costs (7).

Over the years, policy-makers have sent mixed signals regarding the use of benefit-cost analysis in policy evaluation. Congress has passed several statutes to protect health, safety, and the environment that effectively

preclude the consideration of benefits and costs in the development of certain regulations, even though other statutes actually require the use of benefit-cost analysis (8). Meanwhile, former presidents Carter, Reagan, and Bush and President Clinton have all introduced formal processes for reviewing economic implications of major environmental, health, and safety regulations. Apparently the Executive Branch, charged with designing and implementing regulations, has seen a need to develop a yardstick against which the efficiency of regulatory proposals can be assessed. Benefit-cost analysis has been the yardstick of choice (9).

We suggest that benefit-cost analysis has a potentially important role to play in helping inform regulatory decision-making, although it should not be the sole basis for such decision-making. We offer the following eight principles on the appropriate use of benefit-cost analysis (10).

1) *Benefit-cost analysis is useful for comparing the favorable and unfavorable effects of policies.* Benefit-cost analysis can help decision-makers better understand the implications of decisions by identifying and, where appropriate, quantifying the favorable and unfavorable consequences of a proposed policy change, even when information on benefits and costs, is highly uncertain. In some cases, however, benefit-cost analysis cannot be used to conclude that the economic benefits of a decision will exceed or fall short of its costs, because there is simply too much uncertainty.

2) *Decision-makers should not be precluded from considering the economic costs and benefits of different policies in the development of regulations.* Agencies should be allowed to use economic analysis to help set regulatory priorities. Removing statutory prohibitions on the balancing of benefits and costs can help promote more efficient and effective regulation. Congress could further promote more effective use of resources by explicitly asking agencies to consider benefits and costs in formulating their regulatory priorities.

3) *Benefit-cost analysis should be required for all major regulatory decisions.* Although the precise definition of "major" requires judgment (11), this general requirement should be applied to all government agencies. The scale of a benefit-cost analysis should depend on both the stakes involved and the likelihood that the resulting information will affect the ultimate decision. For example, benefit-cost analyses of policies intended to retard or halt depletion of stratospheric ozone were worthwhile because of the large stakes involved and the potential for influencing public policy.

4) *Although agencies should be required to conduct benefit-cost analyses for major decisions and to explain why they have selected actions for which reliable evidence indicates*

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that expected benefits are significantly less than expected costs, those agencies should not be bound by strict benefit-cost tests. Factors other than aggregate economic benefits and costs, such as equity within and across generations, may be important in some decisions.

5) *Benefits and costs of proposed policies should be quantified wherever possible. Best estimates should be presented along with a description of the uncertainties.* In most instances, it should be possible to describe the effects of proposed policy changes in quantitative terms; however, not all impacts can be quantified, let alone be given a monetary value. Therefore, care should be taken to assure that quantitative factors do not dominate important qualitative factors in decision-making. If an agency wishes to introduce a "margin of safety" into a decision, it should do so explicitly (12).

Whenever possible, values used to quantify benefits and costs in monetary terms should be based on trade-offs that individuals would make, either directly or, as is often the case, indirectly in labor, housing, or other markets (13). Benefit-cost analysis is premised on the notion that the values to be assigned to program effects—favorable or unfavorable—should be those of the affected individuals, not the values held by economists, moral philosophers, environmentalists, or others.

6) *The more external review that regulatory analyses receive, the better they are likely to be.* Historically, the U.S. Office of Management and Budget has played a key role in reviewing selected major regulations, particularly those aimed at protecting the environment, health, and safety. Peer review of economic analyses should be used for regulations with potentially large economic impacts (14). Retrospective assessments of selected regulatory impact analyses should be carried out periodically.

7) *A core set of economic assumptions should be used in calculating benefits and costs. Key variables include the social discount rate, the value of reducing risks of premature death and accidents, and the values associated with other improvements in health.* It is important to be able to compare results across analyses, and a common set of economic assumptions increases the feasibility of such comparisons. In addition, a common set of appropriate economic assumptions can improve the quality of individual analyses. A single agency should establish a set of default values for typical benefits and costs and should develop a standard format for presenting results.

Both economic efficiency and intergenerational equity require that benefits and costs experienced in future years be given less weight in decision-making than those experienced today. The rate at which future benefits and costs should be discounted to present values will generally not equal the rate of return on private investment. The discount rate should instead be based on how individuals trade off current for future consumption. Given uncertainties in identifying the correct discount rate, it is appropriate to use a range of rates. Ideally, the same range of discount rates should be used in all regulatory analyses.

8) *Although benefit-cost analysis should focus primarily on the overall relation between benefits and costs, a good analysis will also identify important distributional consequences.* Available data often permit reliable estimation of major policy impacts on important subgroups of the population (15). On the other hand, environmental, health, and safety regulations are neither effective nor efficient tools for achieving redistributional goals.

Conclusion. Benefit-cost analysis can play an important role in legislative and regulatory policy debates on protecting and improving health, safety, and the natural environment. Although formal benefit-cost analysis should not be viewed as either necessary or sufficient for designing sensible public policy, it can provide an exceptionally useful framework for consistently organizing disparate information, and in this way, it can greatly improve the process and, hence, the outcome of policy analysis. If properly done, benefit-cost analysis can be of great help to agencies participating in the development of environmental, health, and safety regulations, and it can likewise be useful in evaluating agency decision-making and in shaping statutes.

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4. These figures represent the incremental direct cost of part or all of proposed regulations relative to specified baselines. For examinations of issues associated with estimating the full costs of environmental protection, see (16).
5. Office of Management and Budget, *Regulatory Program of the United States Government: April 1, 1992-March 31, 1993* (Government Printing Office, Washington, DC, 1993).
6. If the goals of a program or the level of a particular standard have been specified, economic analysis can still play an important role in evaluating the costs of various approaches for achieving these goals. Too frequently, regulation has used a one-size-fits-all or command-and-control approach to achieve specified goals. Cost-effectiveness analysis, which identifies the minimum-cost means to achieve a given goal, can aid in designing more flexible approaches, such as using markets and performance standards that reward results.
7. L. Lave, in (2).
8. Several statutes have been interpreted to restrict the ability of regulators to consider benefits and costs. Examples include the Federal Food, Drug, and Cosmetic Act (Delaney Clause); health standards under the Occupational Safety and Health Act; safety regulations from the National Highway and Transportation Safety Agency; the Clean Air Act; the Clean Water Act; the Resource Conservation and Recovery Act; the Safe Drinking Water Act; and the Comprehensive Environmental Response, Compensation, and Liability Act. On the other hand, the Consumer Product Safety Act, the Toxic Substances Control Act, and the Federal Insecticide, Fungicide, and Rodenticide Act explicitly allow regulators to consider benefits and costs.
9. In particular cases, such as the phasing out of lead in gasoline and the banning of certain asbestos products, benefit-cost analysis has played an important role in decision-making (17).
10. For a more extended discussion, see (18).
11. In this context, "major" has traditionally been defined in terms of annual economic impacts on the cost side.
12. For example, potentially irreversible consequences are not outside the scope of benefit-cost analysis. The combination of irreversibilities and uncertainty can have significant effects on valuation.
13. For a conceptual overview of methods of estimating the benefits of environmental regulation and a brief survey of empirical estimates, see (19). For examinations of regulatory costs, see (16).
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Economic Scene

Peter Passell

The drive to put cost limits on regulatory benefits isn't dead yet.

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But some benefits are very difficult to quantify. It is hard to say, for example, how much it is worth to make post offices accessible to wheelchairs, or how much Americans would lose if pollutants from distant power plants reduced visibility on the rim of the Grand Canyon to 20



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miles from 100 miles. Relying on the courts as the arbiter would, at very least, be cumbersome. "It would amount to a full employment act for regulatory lawyers," says Robert Hahn, an economist at the American Enterprise Institute.

Democrats charged that the Dole bill was an invitation to nullify a quarter-century of health, safety and environmental rules and to tie up new regulatory initiatives indefinitely. They frightened enough fence-sitting senators to make it impossible to stop a filibuster, effectively killing the bill before Mr. Clinton got to veto it. Indeed, polls suggest that the bill was a disaster for the Republicans in general and Bob Dole in particular, tarring them as lackeys of business interests.

But regulatory change is not quite dead. For one thing, policy wonks from both parties are still beating the drums for it. Last week, a who's who of mainstream economists ranging from the Nobel laureate Kenneth J. Arrow to Richard L. Schmalensee of M.I.T., who was an adviser on regulation to President George Bush, published a statement in *Science* magazine defending the role of cost-benefit analysis in Government rule-making. And today, the Center for Innovation and the

Environment, a nonpartisan arm of the influential Democratic Leadership Council, plans to call for a "second generation of environmental protection" — one that faces up to the costs of greening America.

More important, the politics of regulation remains volatile. Mr. Dole needs to find a way back to the middle if he is to win the support of the mineral water and granola crowd in the suburbs. Meanwhile, centrist Democrats, including Senator Carl Levin of Michigan, understand that last summer's triumphant rejection of change could become this summer's failure to save factory jobs in the swing states of the Midwest. He argues that for the moment, environmentalists have a chance to negotiate from a position of strength, compromising to "get the issue behind us."

Mr. Levin fashioned a kinder, gentler alternative to the Dole bill that would mandate cost-benefit analysis, yet give the executive branch considerable leeway to use other criteria in judging proposed rules. And while he notes that "it was unacceptable to business, environmental groups and the White House," the political risks of delay could still drive the parties to the bargaining table.

Mr. Stavins of Harvard, one of the signers of the *Science* magazine statement, would like to see a compromise that forces the agencies to weigh costs against benefits and explain themselves if, in the end, they choose to override the policy dictated by the numbers. That way, the political risks in ignoring costs would increase. At very least the public would learn whether it cost, say, 21 cents or \$21,000 for each visit by a wheelchair-bound American to the post office.

What is most frustrating in this debate is that the stalemate serves hardly anyone's interest. Mr. Hahn argues that "we have the technical know-how" to refine rule-making, clarifying the facts undermining rational debate over issues ranging from asbestos to airline safety. Still lacking, apparently, is faith among competing interests that more information is better than less.

THE NEW YORK TIMES,
THURSDAY, APRIL 18, 1996

Dole to Offer Amendment To Health Insurance Bill

By ROBERT PEAR

WASHINGTON, April 17 — Senator Bob Dole, the likely Republican nominee for President, has told other senators that he will try to amend a bipartisan health insurance bill to encourage medical savings accounts, a proposal that puts him squarely at odds with President Clinton.

The proposal, strongly supported by conservative Republicans, would create tax incentives for people to establish such savings accounts to pay medical expenses, as an alternative to standard health insurance.

Conservatives like Senator Don Nickles of Oklahoma, chairman of the Senate Republican Policy Committee, support such accounts, saying they encourage people to take more responsibility for their medical spending and give them virtually unlimited choice of doctors and hospitals.

Opponents say the accounts appeal most to people who are relatively healthy and well-off, leaving traditional insurance coverage to sicker and poorer people and thus making it more expensive.

The chief sponsor of the bill, Senator Nancy Landon Kassebaum, said today that she would resist efforts to amend it. Mrs. Kassebaum, a Kansas Republican, said she had the votes to block medical savings accounts. She said she feared that such a proposal would undermine support for her bill, which is intended to make health insurance more readily available.

Mr. Dole, the majority leader, and the supporters of his proposal "don't have 50 votes for medical savings accounts," Mrs. Kassebaum said.

Senator Edward M. Kennedy of Massachusetts, the main Democratic co-sponsor of the legislation, said tonight, "The addition of highly controversial riders like medical savings accounts will certainly sink the bill."

The House last month passed a similar but more complicated bill that includes medical savings accounts. The bills are the first major effort to make health insurance more accessible to Americans since the demise of Mr. Clinton's ambitious proposal in 1994. Their main purpose is to guarantee that people in employer-sponsored health plans can obtain health insurance if they switch jobs or lose their jobs.

By pushing medical savings accounts at this time, Mr. Dole would put himself at odds with Mr. Clinton, who sharply criticized such accounts when they were included in the House bill.

But Kevin L. Kearns, chairman of the Business Coalition for Affordable Health Care, which represents 1.7 million businesses, said, "Senator Dole needs to include medical savings accounts to put his stamp on this legislation." Otherwise, Mr. Kearns said, Mr. Clinton will get all the credit for it.

Senator Robert F. Bennett of Utah, chairman of the Republicans' Health Care Task Force, said Mr. Dole outlined his plans at a lunch for Republican senators on Tuesday. Two other Senators at the meeting, Mr. Nickles and Senator Trent Lott of Mississippi, quoted Mr. Dole as saying he intended to offer the proposal on medical savings accounts as part of an amendment to the bill.

Speaker Newt Gingrich is a strong supporter of medical savings accounts, but when the House passed its bill, he said, "If the President

sends up a veto signal, maybe we would have to back down."

Without explicitly threatening a veto, the White House said last month, "Medical savings accounts will provide a tax break for the healthiest and wealthiest individuals and attract them out of the general health insurance market, potentially raising premiums for all other people."

Maneuvering over the bill has strained relations between Mr. Dole and Mrs. Kassebaum, who is chairwoman of the Committee on Labor and Human Resources.

Michael Horak, a spokesman for Mrs. Kassebaum, said: "She is adamant that medical savings accounts not be attached to the bill. She will aggressively oppose such an amendment, whether it is offered by the majority leader or any other senator. She believes that attaching medical savings accounts to this bill will threaten enactment of the legislation, and she believes that many thoughtful Republicans support her."

Senator Bennett, a co-sponsor of the bill, said he had intended to support the "no amendments" strategy, but did not want to undercut Mr.

Going against the wishes of a fellow Kansas Republican.

Dole.

"When my leader has an amendment, I have to call my previous comments inoperative," Mr. Bennett said. "With Senator Dole supporting it, I'm inclined to favor the amendment."

Mr. Dole is working with Senator William V. Roth Jr., the chairman of the Finance Committee, on the amendment, which would also increase the tax deduction for health insurance purchased by people who are self-employed. Democrats generally support this proposal.

Virginia Koons, a spokeswoman for Mr. Roth, a Delaware Republican, said the amendment would also crack down on Medicare fraud and let people with terminal illnesses receive tax-free payments of amounts owed to their survivors under life insurance contracts.

Two Democratic Representatives, Robert G. Torricelli of New Jersey and Andrew Jacobs Jr. of Indiana, sent a letter to Mr. Clinton today urging him to support medical savings accounts, which they described as a "wonderfully innovative idea."

People who establish medical savings accounts would use them to pay medical expenses up to a certain level — say, \$1,500 for an individual and \$3,000 for a family. Under the proposals in Congress, people with the accounts would have to buy insurance to help cover medical expenses exceeding those amounts.

An employer or an employee could put money into the account, and that money would belong to the employee. Any money not used in one year could be carried over and invested. Earnings on such investments would not be taxed, and money withdrawn would not be subject to income tax if it was used for medical expenses.

Opponents Nervous as a Democrat Tries Regulatory Overhaul

By JOHN H. CUSHMAN Jr.

WASHINGTON, March 11 — Another major proposal to give industry broad relief from costly Government rules is coming to the Senate soon, but this time not from the Republican leaders whose ambitious antiregulatory agenda has been stymied so far. Instead, its author is an influential Democrat, and his proposal has stirred deep unease among environmental, labor and consumer groups and in the Clinton Administration.

Together they have fought for the last year against a determined effort by Congressional Republicans to roll back health, safety and environmental regulations. Now they are intensely lobbying the author of the new proposal, Senator Carl Levin, trying to persuade the Michigan Democrat to scale back his bill or to abandon it. And they are enlisting the United Auto Workers and other groups with influence in his home state to underline their message.

Mr. Levin's efforts behind the scenes have provoked this strong reaction because he has the support of some business leaders who may be able to convince Republicans that he is on the right track, and because he presumably could attract many Democrats to join him. That combination might overcome the partisan divisions that killed a regulatory overhaul in the Senate last year.

Mr. Levin would not go as far as the original Republican proposal that the House passed last year. But he said he intended his measure to force agencies to make real changes in their rules, and that has alarmed environmentalists, who fear undermining a generation of protections against pollution.

For weeks Mr. Levin has been negotiating with environmental groups and Administration officials, sharing draft after tedious draft of his bill, but so far they say they are not satisfied. They plan to meet with him again on Tuesday.

At the same time, he has been working closely with representatives of the Business Roundtable, a group whose members head the nation's biggest corporations.

Mr. Levin, who said in an interview that he intended to introduce the bill this week, may be well positioned as a deal maker.

Long an advocate of regulatory relief, he supported a bipartisan alternative that the Senate narrowly rejected last year. Then he played a vocal role in staving off the main Republican proposal, which died in the Senate after Democrats three times defeated motions to cut off debate and bring the issue to a final vote.

Now the issue of curbing the Government's regulatory powers is suddenly elbowing its way back into the limelight. Last week the House leadership canceled a debate on regulatory relief when moderate Republicans complained that a Republican proposal before the House went too far. Yet another proposal, offered by Senator Christopher S. Bond, a Mis-

souri Republican, could come to the Senate floor this week.

Meanwhile, many in industry are signaling that they would settle for something less than the ambitious proposals the Republicans pressed last year.

Mr. Levin's bill, while not as sweeping as the main Republican proposals, is intended to make significant changes in how Federal agencies carry out a broad range of laws on public health, safety and the environment, according to people involved in drafting it.

Last week, the leaders of 13 major

environmental organizations wrote to tell him that "the proposal has numerous serious flaws."

Mr. Levin's draft would encourage Federal agencies to take much more account of the costs of regulations protecting public health, safety and the environment, seeking to make sure that the benefits are worthwhile. It would also give the courts new grounds to review agency decisions. Industry groups have long complained that too often environmental regulations cost more than they are worth.

The bill is loosely patterned after a

proposal sponsored last year by Senator J. Bennett Johnston, Democrat of Louisiana, and Senator Bob Dole of Kansas, the majority leader, and backed mainly by Republicans, but it omits many of the provisions that raised the fiercest opposition from Democrats, who said the Dole bill jeopardized a generation of environmental protection. It is considerably less radical than the version that passed the House last year.

Mr. Levin said he was adamant that his bill not override existing law in situations where regulatory agencies now give more weight to protect-

ing public health or the environment than to limiting costs as they write rules about clean air, water pollution, worker safety and the like. Earlier bills left opponents fearful that such laws would be overridden.

And Mr. Levin said that the Senate should pass his bill only with the understanding that its fine print would not be rewritten in subsequent negotiations with the House.

"It is such a complicated subject, and the ground shifts significantly every time the House Republicans propose something extreme, which they have done on so many occasions," Mr. Levin said. "It makes a more moderate approach to it very, very, difficult. Everything gets thrown into a caldron of discussion

where instead of analytical language, it is labels and preconceptions and generalities."

Senator Levin said he wanted the bill to be considered carefully in hearings before the Senate Governmental Affairs Committee before coming to the Senate for a full debate — not tacked suddenly onto some other bill and voted up or down before most members understand what is in it.

But he conceded that "circumstances out of my control" might force quick action without hearings, especially if the Senate considered broadening Mr. Bond's bill. If that happens, it might be Mr. Levin's only chance to bring his proposal to a vote.

THE NEW YORK TIMES

TUESDAY, MARCH 12, 1996

Prosecutor Says Clinton Helped Ex-Partner Get Improper Loan

LITTLE ROCK, Ark., March 11 (AP) — As Governor of Arkansas, Bill Clinton helped secure a \$300,000 business loan for a business partner that she instead put into her personal checking account, a Federal prosecutor argued today at the opening of the Whitewater trial here.

The partner, Susan McDougal, had told the financier, David L. Hale, that she was going to use the money for her real estate marketing company, the prosecutor, Ray Jahn, said in his opening statement. Mr. Hale spoke with Mr. Clinton about the loan later, Mr. Jahn said.

Mr. Jahn said that Mrs. McDougal, her former husband, James B.

nel extra money into Mr. Hale's Capital Management Services, a lender backed by the Small Business Administration. Mr. McDougal faces 19 charges, Mr. Tucker, 11, and Mrs. McDougal, 8.

Neither Mr. Clinton nor his wife, Hillary, are charged in the case.

During a break, Mr. Tucker said he did not recall the events the same way as the prosecutors.

"I've heard almost nothing that was accurate," Mr. Tucker said.

Sam Heuer, Mr. McDougal's lawyer, said, "That meeting between Hale and Clinton at the Capitol never, ever, ever took place."

Mr. Clinton has called Mr. Hale's claims "a bunch of bull." Mr. Clinton is expected to testify for the defense, probably in early April. His testimony could be given in person, via videotape or by satellite.

Before the court convened today, Mr. McDougal said he had declined an offer of immunity from the Government in exchange for his testimony. Government lawyers denied making the offer.

Mr. Jahn acknowledged that Mr. Hale was a convicted felon, but he maintained that Mr. Hale had been a trusted member of a circle of conspirators until he began cooperating with Whitewater investigators.

The Clintons and the McDougals were partners in the Whitewater land land development in northern Arkansas.

Mr. Jahn gave his opening statement to a nine-woman, three-man jury after Judge George Howard Jr. of Federal District Court reinstated a black woman on the jury, saying she had been improperly excluded by the prosecution.

The jury has nine white and three black members. One alternate is a woman who has worn a Star Trek uniform to every court session.

The opening of a trial related to the Whitewater inquiry.

McDougal, and Mr. Clinton's successor as Governor of Arkansas, Jim Guy Tucker, got nearly \$3 million in illegal loans from Mr. Hale in the mid-1980's.

"It was the intention of the defendants to go in, obtain the money, make their profits and sneak the money back," Mr. Jahn said. "This was nearly the perfect crime. Until David Hale came forward in 1993, the crime was undiscovered."

Later, defense lawyers attacked Mr. Hale's credibility and urged jurors not to believe him.

"He was a fraud from the top of his head to the bottom of his feet," said Mr. Tucker's lawyer, W. H. Sutton.

Mr. Tucker and the McDougals are accused of arranging sales of real estate at inflated prices to fun-

ADVERSARIES BACK POLLUTION RULES NOW ON THE BOOKS

BUT FLEXIBILITY IS URGED

Clinton Panel of Activists and
Industry to Issue Report —
Campaign Use Hinted **A1**

By JOHN H. CUSHMAN Jr.

WASHINGTON, Feb. 11 — After a year in which industry and environmental groups have been at war over Republican-led efforts to roll back Federal environmental regulations, a Presidential panel with adversaries from both sides has reached a rare consensus that while the existing system can be improved, it must not be weakened.

Rather than strip away many environmental regulations, as Republicans in Congress tried to do last fall, the panel calls for a new regulatory framework to give businesses more flexibility in preventing pollution — but only if they can perform better than is required under the current system of strict safeguards.

The group included two sides that are more likely to be found in court than at a negotiating table: leading companies in the oil, paper and chemical industries, all of which have supported Republican proposals for regulatory relief, and major environmental organizations that have accused the industries of trying to undo 25 years of progress. It also included members of President Clinton's Cabinet and labor and civil rights groups.

In its final report, the panel, the President's Council on Sustainable Development, also calls for a comprehensive review of taxes and corporate subsidies, aimed at increasing taxes on pollution and consumption in exchange for cutting income taxes.

It urges long-range steps to stabilize the country's population, including more Federal money for family-planning and contraceptive research. And it says the United States, "even in the face of scientific uncertainty," should lead the world in heading off serious or irreparable global trends like climate change.

The report will be issued by the White House in the next few weeks, and in the months ahead it appears destined to serve as the environmental platform for Mr. Clinton's reelection campaign. Members of the council, created by the President in 1993, gave a copy of the report to *The New York Times*.

For months, Mr. Clinton has been striving to make environmentalism a key issue separating him from the Republicans. The report offers him a coherent environmental credo that

Continued on Page B7, Column 1

Continued From Page A1

is not anchored in the status quo and that draws support not only from liberals but also from businesses.

"Implicitly, this denounces the kind of work that the Congress has been up to for a year," said Kathleen A. McGinty, who heads the White House Council on Environmental Quality and who as Mr. Clinton's top environmental aide worked closely with the President's Council on Sustainable Development.

"The environment is something that brings us together as a nation. It is a deplorable idea to use it to polarize the nation."

The President's council spent three years touring the country and debating how to balance economic growth and environmental protection. Among the members were leaders of environmental organizations like the Natural Resources Defense Council, the Sierra Club and the Environmental Defense Fund, and executives of the Georgia-Pacific Corporation, the Enron Corporation, and the Chevron Corporation.

"The current polarization is just the reason why our agreement is important," wrote the council's co-chairmen, Jonathan Lash, president

Proposing more flexibility in preventing pollution.

of the World Resources Institute, and David T. Buzzelli, vice president of the Dow Chemical Corporation.

At the outset, council members could not even agree on the basic issue of whether economic growth in itself was a good thing, they recalled.

The report binds no one and the recommendations are often vaguely couched, but these weaknesses may be offset by the political power of a joint statement from such an unlikely coalition.

Mr. Clinton has already begun to adopt the report's language, as he did in calling for tough but flexible environmental standards in his State of the Union speech in January. And some of the report's language is unmistakably redolent of the campaign trail.

"Americans want to take back control of their lives," the report proclaims, at once acknowledging and endorsing a shift of environmental power and responsibility away from the government and toward individuals and enterprises.

The report's chapter on regulations is perhaps the most pertinent to the current political debate.

"We didn't start the conversation by asking, 'What are we going to roll back?'" said Mr. Buzzelli of Dow Chemical. "You have to say, 'What do we have that is worth keeping, and what do we really need to do to get better?'"

Mr. Lash of the World Resources Institute added, "There was a strong feeling on the council that if you pull the foundation stones out, it is really hard to go ahead and build a new building."

Republicans in Congress, strongly supported by business groups, tried and failed last year to undo many environmental regulations, provoking an intense struggle with environmentalists and the Clinton Administration. While Republican leaders have promised to try once again to push through changes this year, the momentum is going against them,

and they are likely to take a more moderate approach.

In recent weeks, however, many business leaders have begun advising Republicans in Congress that they should scale back their earlier proposals, if they expect to succeed in providing any regulatory relief to industry.

The President's council shares some of the goals but few of the methods of the Republican approach, which would have changed how existing environmental laws are carried out by imposing elaborate new studies of costs and benefits, and by opening up new opportunities for industry to challenge burdensome rules in court.

Instead, the council called for adding, not stripping away, a layer of environmental protection. The current system of standards, deadlines, permits, and inspections, while it might be modified, would be retained as a kind of safety net. At a higher level of performance, companies would be free to innovate.

To this end, the report endorsed using financial incentives instead of dictates to discourage pollution, and putting more emphasis on results than on how they are obtained. The aim less costly, but not less effective, pollution control — and, wherever possible, preventing pollution rather than spending to clean it up.

"Regulations that specify performance standards based on strong protection of health and the environment — but without mandating the means of compliance — give companies and communities flexibility to find the most cost-effective way to achieve environmental goals," the report said.

"But this flexibility must be coupled with accountability and enforcement to insure that public health and the environment are safeguarded."

It called for giving agencies like the Environmental Protection Agency specific authority to move away from "one size fits all" regulations. But it warned that a proliferation of pilot programs and demonstration projects would drive the agency's budget up, not down, as Congress has tried to do.

In interviews, members of the council said the report was no less important for having steered clear of detailed prescriptions for new policies, new legislation, or new programs. Instead, they said the council chose to cite ground-breaking programs that are already getting results, often without much publicity.

The "most important finding" of the council, the report said, is that new approaches can work only if they are based on collaboration and consensus.

That has been a consistent refrain of the Clinton Administration all along, but one that has not always worked as hoped. In disputes over issues like forestry and automobile efficiency, some of the Administration's previous efforts at building consensus were disappointing.

The early arguments over whether growth was good or bad finally were answered in the very first words of the statement of beliefs that all the members finally endorsed:

"To achieve our vision of sustainable development, some things must grow — jobs, productivity, wages, capital and savings, profits, information, knowledge and education — and others — pollution, waste and poverty — must not."

That formulation, obvious as it might seem, drove the group toward a central conclusion: that efficiency, profit and environmental protection are all linked. "Pollution is waste, waste is inefficient, and inefficiency is expensive," they summed up.

Hourly News Summary

Around the World, Around the Clock...with United Press International.

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The candidates are busy in anticipation of tonight's important Iowa caucuses. It's their chance to un-seat Bob Dole as the GOP presidential front-runner.

Three other Republican contenders appeared at a Des Moines rally over the weekend, with several thousand conservative Christians. Texas Senator Phil Gramm, comentator Pat Buchanan, and talk show host Alan Keyes each signed a pledge vowing not to legalize same-sex unions.

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Authorities say one of the engineers in Friday's deadly train collision in New Jersey was involved in several earlier mishaps, including a derailment.

Investigators say engineer John DeCurtis, who drove one of the trains in the accident that killed three and injured 162, was suspended more than 100 days for bypassing red signals, skipping a station and once derailing a train.

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President Clinton has declared parts of northwest Idaho a disaster area because of heavy rain in the past week that has caused flooding. The Federal Emergency Management Agency is coordinating recovery operations in nine counties and the Nez Perce Indian reservation.

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Pope John Paul II says youth are open to ``fraternity, peace, dialogue'' and has called on them to be ``craftsmen of social renovation'' to help confront drug trafficking, violence and other problems. The address before 200,000 Venezuelan youths came on the last day of the pope's Latin America trip.

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Researchers say religions of all kinds seem to help people stay healthier and live longer.

The scientists say at the annual meeting of the American Association for the Advancement of Science that theories differ as to why, but twenty-two out of 27 studies link church attendance with lower disease rates and longer life.

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A boy believed to have died in a brushfire that trapped a Hong Kong school hiking group has been found alive but there was no trace of a teacher missing in the outing that claimed four lives.

The discovery of the boy left unclear the identities of the four bodies found in Hong Kong's semi-rural New Territories near the Chinese border.

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By Shirley Smith (UPI)

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Regulatory Flexibility Is Pushed Again

Senate Hearing Is Slated on Giving Teeth to 1980 Law

By STEPHANIE N. MEHTA

Staff Reporter of THE WALL STREET JOURNAL
The Senate this week will hold hearings on strengthening the Regulatory Flexibility Act, a change that apparently has near unanimous support among lawmakers yet has failed to win congressional approval so far.

Entrepreneurs cheered the renewed push to enhance the 1980 law, which requires federal agencies to assess the impact of regulations on small business. But they also expressed disappointment over how long it is taking to enact such changes, which were first proposed about a decade ago.

"It's frustrating," says John Wang, owner of John Wang Associates, a marketing consulting firm in New York. Mr. Wang was a delegate to the White House Conference on Small Business in Washington last summer, in which participants named strengthening the regulatory flexibility law as one of their top three policy recommendations. "Everybody pays lip service to small business, but it seems small business ends up getting the short end of the stick," he says.

The Senate Small Business Committee will discuss measures to beef up the regulatory flexibility law at a Wednesday hearing on proposed small-business legislation. The regulatory flexibility proposal would allow small businesses to sue federal agencies that fail to adhere to the law's guidelines. The proposal also would subject the Internal Revenue Service, which has said it is exempt from the law, to regulatory flexibility rules.

Small-business owners have found it frustrating that politicians continue to debate an issue that appears to have little opposition. Small-business groups say reg-

ulators will take the law more seriously if the threat of lawsuits exists. President Clinton and lawmakers from both parties have pledged support, too. "It's utterly noncontroversial," says Michael Roush, Senate lobbyist for the National Federation of Independent Business in Washington.

But the measure has been attached to sweeping regulatory-overhaul legislation that remains in limbo. Last year, the House approved a measure to enhance existing regulatory flexibility laws as part of its sweeping "Contract With America" legislation. It then became part of Majority Leader Robert Dole's bill to revamp the regulatory system that died last summer.

Sen. Christopher Bond, a Missouri Republican who heads the Senate small-business panel, is seeking to keep the issue alive through the package of pro-small-business proposals that will be discussed Wednesday. Though not nearly as extensive as Sen. Dole's bill, Sen. Bond's proposal calls for a number of regulatory overhauls, such as simplification of language and forms for small-business regulation.

Another proposal to strengthen the Regulatory Flexibility Act is part of new regulatory-reform legislation being written by Sen. Charles Robb, a Virginia Democrat, and others. That proposal hasn't yet been introduced on the Senate floor, a spokeswoman for Sen. Robb says.

Some small-business advocates ask why lawmakers don't separately propose a bill that consists solely of measures to give teeth to the regulatory flexibility law.

"The idea that the Regulatory Flexibility Act will pull along the other legislation is simply not going to work," says Jere Glover, head of the Small Business Administration's Office of Advocacy. No one in Congress, however, has put forth such a proposal.

But Sen. Bond thinks small companies will derive more long-term benefits from the passage of a more comprehensive regulatory-overhaul bill such as his or Sen. Dole's. "There are, in the broader packages, measures that are designed not to stop regulations but to make sure they are fair and good," he says. "To the extent that we can do more of that, I think the entire economy, including small business, will benefit."

Office-Seeker Challenges State's 'Supreme Being' Law

By MARGARET A. JACOBS

Staff Reporter of THE WALL STREET JOURNAL
Herb Silverman may be an atheist, but he's on a crusade. He's challenging an obscure clause in the South Carolina Constitution barring people who deny the existence of a "Supreme Being" from holding public office.

After losing a bid for governor in 1990, he applied for the less-lofty office of notary public. Notaries do little more than witness the signing of legal documents, but they are required by law to sign an oath that they will defend the state constitution "so help me God."

Mr. Silverman crossed out the word "God," was rejected and took his challenge to the state constitution to court.

"It's not really my lifelong dream to become a notary," says Mr. Silverman, a 63-year-old mathematics professor at the College of Charleston. "It's more of a civil-rights issue than anything else: I just want a backwards law changed."

Mr. Silverman's case comes as the Religious Right is gaining political power and pushing its agenda to put more religion into public life. Just last week, the state Senate in Tennessee approved a resolution urging homes, businesses and schools to post and observe the Ten Commandments, despite an opinion by the state attorney general that the measure is unconstitutional. And in South Carolina, the secretary of state says that, as a Christian, he believes the 128-year-old "Supreme Being" clause in the state constitution "is exactly the way it ought to be."

Legal experts say Mr. Silverman's battle also highlights larger questions about

the constitutionality of more common oaths, including those used to swear in jurors and witnesses at trials in state and federal courts around the country. The First Amendment to the U.S. Constitution clearly bars the government from establishing a state religion or preventing individuals from freely exercising their beliefs.

But courts haven't always been clear about the rights of nonbelievers. Some have said that jurors and witnesses must be given an alternative to swearing to God to tell the truth. But a Texas state court judge found prospective juror Robin Murray-O'Hair in contempt and sent her to jail in 1987 for refusing to swear to God or make a pledge. Ms. O'Hair, an atheist and granddaughter of prominent atheist Madalyn Murray-O'Hair, had said that even pledging to tell the truth would be a religious act. Ms. O'Hair was released after six hours in jail, but a federal appeals court in Texas later refused her request to issue rules for judges on handling nonbelievers.

Lawyers for religious-rights groups add that courts haven't addressed the legality of references to God in government seals and the common practice of government officials voluntarily inserting the phrase "so help me God" in their inaugural oaths. Some U.S. Supreme Court justices have suggested in opinions and dissents that such common applications are too trivial to amount to government "establishment" of religion. Last week, the high court let stand a state Supreme Court ruling allowing Colorado to keep a monument engraved with the Ten Commandments in a public park.

Mr. Silverman, however, has U.S. Supreme Court precedent on his side. Thirty-five years ago, the high court declared unconstitutional a Maryland law requiring notaries to believe in God. The drafters of the U.S. Constitution and First Amend-

ment intended to put the "people securely beyond the reach of religious test oaths" for public office, the high court said. "We reaffirm that neither a state nor the federal government can constitutionally force a person to profess a belief or disbelief in any religion."

Pennsylvania and Arkansas are the only other states besides South Carolina that still have religious requirements for public office on their books, but neither currently enforces its law. Margaret Downey, a spokeswoman for the Free Thought Society of Greater Philadelphia, says the group tested the Pennsylvania law a few years ago by having a member successfully apply for a notary license and will continue to do so.

"It's amazing to me that South Carolina is defending [its] constitution," says Mark Stern, an attorney with the American Jewish Congress in New York.

Mr. Silverman, a founding member of Secular Humanists of the Low Country, a group dedicated to religious tolerance, won a round in his court battle last summer. That's when South Carolina state court Judge Thomas L. Hughton Jr. in Columbia ruled that the First Amendment prevents the state from requiring public officeholders to have religious beliefs, even a basic belief in God. Judge Hughton gave the state 30 days to act on Mr. Silverman's notary application.

The state, which hasn't yet addressed the provision's constitutionality, is appealing the judge's decision on procedural grounds. It insists that the governor rejected Mr. Silverman's notary application for technical reasons, including his failure to get enough signatures of support from his state legislative delegation. Mr. Silverman says the state hasn't been that nit-picky with any of its 33,000 other notaries and that its real motivation is religious. Most notaries pay a \$25 fee and are routinely approved, state officials ac-

knowledge.

Even lawyers for the state acknowledge that the South Carolina clause probably violates the U.S. Constitution, but they insist that the governor rejected Mr. Silverman's application for legitimate reasons. "At the time the governor's office reviewed it, the form was incorrectly filled out," says Brad Waring, a Charleston attorney in private practice who is representing the state.

Some state officials, however, say that Gov. David M. Beasley's position is motivated less by legal principle and more by religious politics. Gov. Beasley was elected in 1994 with strong support from the conservative Christian Coalition and is loath to drop a position in which he believes fundamentalists sympathize, the officials say.

Robyn Zimmerman, a spokeswoman for the governor, denies that he is motivated by political considerations and says he believes he shouldn't "unilaterally reverse years of tradition." "If there needs to be a change," she adds, "it should be done by the state court."

For his part, Mr. Silverman is amazed that South Carolina is spending tens of thousands of dollars in legal fees to oppose his application. "It's crazy," he says. "I can teach at a state-supported institution, but I can't be a notary."

Micrografx Says It Settled Suit

RICHARDSON, Texas — Micrografx Inc. said it settled a suit it had filed recently in federal district court in Dallas against the Binney & Smith unit of Hallmark Cards Inc., Kansas City, Mo.

At issue were the terms of a license agreement between the two companies. The settlement extends to Micrografx, a software concern, the right to sell and market its Crayola Art and Crayola Art Studio 2 software products through March 31, 1997, the company said.



New Proposals On Encryption Get Tepid Response

By JARED SANDBERG

Staff Reporter of THE WALL STREET JOURNAL

Two bills are expected to be introduced in Congress that try to resolve the deadlock between the administration and the Internet industry on software encryption, but industry executives are lukewarm to the new proposals.

The two proposals, sponsored by Democratic Sen. Patrick J. Leahy of Vermont and GOP Rep. Robert W. Goodlatte of Virginia, seek to loosen government restrictions on encryption — mathematical formulas that are used to scramble data beyond recognition of eavesdroppers. The government prevents the export of strong encryption because it hampers its efforts to monitor the actions of terrorists and foreign governments. The Clinton administration wants to set up government-approved repositories that keep copies of mathematical keys for decoding encrypted information, so law enforcement officials can decode private communications if granted a court order.

Those policies have met with uniform distaste on the part of the industry executives, who say that widespread use of strong encryption is essential to the success of electronic commerce over the Internet. They argue that the administration's export restrictions on strong cryptography, determined by the length of the key needed to unlock the code, are hurting business abroad where competitors can freely offer stronger encryption software.

Producing a separate weaker version of encryption software for foreign markets not only raises costs but is becoming pointless because hackers can now access computers powerful enough to break the weaker code.

"The federal government's ideas on encryption are based on a situation which may have existed 10 or 20 years ago with very little realization of the realities of today," said Sen. Leahy. "We're not going to sell our computer programs if we have outdated computer technology, especially if people can buy it in Europe or Asia."

The two new bills would allow for the export of much stronger encryption provided that level of security was "generally available." Sen. Leahy's proposal states that the key-escrow scheme will be voluntary, and establishes rules by which companies rather than government agencies would hold the keys for decoding data. These companies would be liable for abuse of keys and subject to strict procedures for releasing the keys to law enforcement.

Though industry executives welcome the bills, they say the measures don't go far enough to unshackle high-tech companies. Thomas Parenty, product manager at the database firm Sybase Inc., said that both bills represent "a good start." But by allowing U.S. companies to export encryption only as strong as that which is available overseas, Mr. Parenty said, the bills won't allow them to innovate and produce superior products.

And putting keys in the hands of third-party companies, they say, is still likely to meet industry opposition.

People familiar with the bills said one motivation is to build support for a private version of the key-escrow concept, which could be an opportunity for several companies who are selling products based on the idea. "It would establish the legal framework for their implementation to go forward," said James Bidzos, chief executive officer of RSA Data Security Inc., an encryption-software company in Redwood City, Calif.

—Don Clark contributed to this article.

Internet Coalition Plans Suit Opposing Restrictions

By a WALL STREET JOURNAL Staff Reporter

PHILADELPHIA — A broad-based coalition of Internet companies, trade organizations and high-technology civil-liberties groups are expected to file a lawsuit today challenging the constitutionality of the new telecommunications bill's restrictions on on-line communications, further fueling opposition to the new law.

The 40-member group, dubbed the Citizens Internet Empowerment Coalition, includes the American Library Association, the Association for American Publishers, the Newspaper Association of America and high-tech companies such as Microsoft Corp. and America Online Inc. The coalition seeks to challenge the so-called Communications Decency Act, which makes it illegal to make "indecent" materials available to minors over computer networks. Violators of the measure, which was signed into law by President Clinton earlier this month, face up to \$500,000 in fines and two years in prison.

The coalition, which is expected to file a 75-page complaint in U.S. District Court here, say that the law infringes on the First Amendment's speech protections by defining "indecent" too broadly and vaguely, allowing zealous prosecutors, for example, to enforce the law against language in literary works and sex-education manuals.

SEC Reverses Rule Barring Some Political Donations

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON — The Securities and Exchange Commission reversed a rule that blocked many municipal-bond dealers from contributing to California Gov. Pete Wilson's short-lived presidential campaign last year.

The SEC approved a Municipal Securities Rulemaking Board proposal to scrap the previous position that municipal dealers couldn't contribute to a governor running for president until the candidate was on the ballot in jurisdictions where the donors live.

The action is the latest in a series of refinements to a controversial rule drafted by the MSRB and approved by the SEC to combat the practice known as "pay to play," whereby bond dealers contribute to state and local officials' campaigns in hopes of winning bond business. The SEC, while granting accelerated approval of the rule change, invited comments by March 15.

Under the basic rule, dealers aren't barred from making contributions to state and local officials. But the rule sets a \$250 limit on contributions to candidates in jurisdictions where the donors are entitled to vote; if the amount is exceeded, their firms are barred from doing business in the jurisdiction for two years.

Sluggish Hiring Activity Suggested by New Survey

By a WALL STREET JOURNAL Staff Reporter

MILWAUKEE — A quarterly job-outlook survey suggests that hiring activity in the second quarter will be the most sluggish in nearly two years.

On a seasonally adjusted basis, 13% more employers will be adding to their work force next quarter than reducing staff, the survey by Manpower Inc. indicates. That is below the 16% net-hiring increase projected for the current quarter and well below the 18% gain in the 1995 second quarter. The last time the net-hiring figure was as low was in the first quarter of 1994, when it was also 13%.

"A continuing uncertainty prevails among the nation's employers which inhibits job growth," said Mitchell S. Fromstein, president of the Milwaukee-based temporary-help concern. "While the uncertainty compared to last year's levels is evident across all geographies, there are no indications anywhere of conditions that normally lead to job recession. The signs rather indicate a persisting cautionary approach."

Before adjusting for seasonal factors, 26% of the 15,000 surveyed firms plan to add staff in the upcoming three months while 8% anticipate staff cutbacks, the survey found. Sixty-three percent haven't changed their hiring plans and 3% are undecided. This unadjusted net-hiring gain of 18% contrasts with 8% in the current quarter and 23% a year ago.

U.S. Reserve Assets Declined in January

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON — U.S. official reserve assets fell \$3.12 billion in January to \$82.72 billion, the Treasury Department said.

January's decrease compared with a \$77 million increase in reserve assets in December to \$85.83 billion, the department said. U.S. reserve assets consist of foreign currencies, gold, special drawing rights at the International Monetary Fund and the U.S. reserve position — its ability to draw foreign currencies — at the IMF.

The nation's holdings of foreign currency fell \$2.52 billion in January to \$46.58 billion, while its gold reserves rose \$2 million to \$11.05 billion. U.S. holdings of IMF special drawing rights last month fell \$259 million to \$10.78 billion, and its reserve position at the IMF dropped \$337 million to \$14.31 billion.