

NLWJC - KAGAN

EMAILS RECEIVED

ARMS - BOX 054 - FOLDER -004

[11/08/1995-12/07/1995]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Todd Stern to Elena Kagan at 16:31:06.12. Subject: dinner (1 page)	11/09/1995	Personal Misfile
002. email	Todd Stern to Elena Kagan at 16:06:33.77. Subject: dinner (1 page)	11/09/1995	Personal Misfile
003. email	James Castello to Elena Kagan. Subject: A's for Q's [partial] (1 page)	11/29/1995	P6/b(6)
004. email	Mail Link Monitor to Elena Kagan. Subject: Confirmation [partial] (1 page)	11/29/1995	P6/b(6), b(7)(C), b(7)(E), b(7)(F)

COLLECTION:

Clinton Presidential Records
 Automated Records Management System (Email)
 WHO ([Kagan])
 OA/Box Number: 500000

FOLDER TITLE:

[11/8/1995 - 12/7/1995]

2009-1006-F
ke712

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME: 8-NOV-1995 15:00:38.13

SUBJECT: Redraft of Garamendi Proposal Memo

TO: Martha Foley (FOLEY_M) (WHO)

READ: 8-NOV-1995 18:09:33.38

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)

READ: 8-NOV-1995 15:10:33.12

TO: T J Glauthier (GLAUTHIER_T) (OMB)

READ: 8-NOV-1995 16:32:10.72

TO: Kris Balderston (BALDERSTON_K) (WHO)

READ: 8-NOV-1995 16:05:27.97

TO: Elena Kagan (KAGAN_E) (WHO)

READ: 8-NOV-1995 15:33:05.57

TO: Dinah Bear (BEAR_D) (CEQ)

READ: 8-NOV-1995 16:22:15.49

TO: Alice E. Shuffield (SHUFFIELD_A) (OMB)

READ: 8-NOV-1995 16:28:26.27

TEXT:

Attached is a redraft of the memo on John Garamendi's proposal. Hard copies are to be delivered to your offices prior to the 4:00 meeting today.

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 8-NOV-1995 14:59:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Thomas C. Jensen

TEXT:

PRINTER FONT 12_POINT_ROMAN

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY

\d

MEMORANDUM FOR HAROLD ICKES

FROM: KATIE MCGINTY

RE: ?GARAMENDI? PROPOSAL

Introduction and Summary

The proposal raised by John Garamendi at Wednesday's timber meeting amounts to the idea that timber planned for sale pursuant to the Forest Plan could be substituted for timber released under section 2001(k) of the rescissions act. Such substitution could occur under several different circumstances, but would generally be used to avoid logging of environmentally sensitive timber. The proposal would add a "tool" to the set of measures available

to the Administration (i.e., buy

□

-backs, negotiated modifications, legislation) to reduce the adverse impacts of logging under the rescissions act. This memo discusses the policy and legal implications of the proposal.

As a matter of policy, the proposal could reduce harvest of environmentally problematic timber, thus benefiting the environment and, possibly, the Forest Plan. On the other hand, the proposal could cause an unpopular redistribution of economic benefit among timber interests, at least in the near term. It might also cause a net reduction in timber sales under the Forest Plan.

Politically, the proposal would be supported by environmental interests. The timber industry and related labor unions would oppose. It would initially be seen as constructive and reasonable by the general public, although that perspective could be seriously eroded by timber industry criticism that the President was not meeting his commitments under the Forest Plan. A preliminary analysis does not reveal any insurmountable legal obstacles to the proposal, although our authority is not clear

□

-cut.

Background

Section 2001(k) of the rescissions act has required release of old

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-growth, green timber in the following categories:

1. 318 sales released under their original terms and conditions, rather than in modified, environmentally responsible forms; and

2. Non

□

-318 (or ?Hogan?) sales, which exceed the geographic or temporal scope of pure? 318 sales.

of t

In addition, the law allows the Administration to withhold such sales where threatened or endangered bird species are "known to be nesting," but requires that we provide replacement timber of "like kind and value." The scope of this exclusion is in litigation.

The agencies are working now to determine with precision which timber sales, or portions of sales, released or subject to release under 2001(k) present significant environmental concerns. The Administration has discussed two means to prevent logging of areas with environmental concerns. First, the Forest Service and BLM are asking beneficiaries of sales released under 2001(k) voluntarily to forego or reduce problematic cutting. Second, we would offer beneficiaries of 2001(k) sales compensation in the form of money or timber, or both, in exchange for not cutting certain timber. It is this latter approach that Mr. Garamendi's proposal applies to.

The Garamendi proposal could apply in three cases:

1. Green timber sales developed under the Forest Plan could be a source of equivalent timber under 2001(k) (3) [replacement

volume for withheld "known to be nesting" sales];

2. Green timber sales developed under the Forest Plan could be used in exchange for section 318 timber already released or some of the additional timber sales released by Judge Hogan's injunction, and;

3. The volume of green timber sales developed and actually released under the Forest Plan could be reduced by an amount related to the volume released by section 2001(k)).

Availability of Substitute Timber

The amount of timber available to be used in substitution for environmentally problematic 2001(k) sales is unclear, as are the terms under which it would be provided. The discussion so far has turned largely on the question whether timber sales planned

for release under the Northwest Forest Plan are "available" as substitute volume.

The Bureau of Land Management has stated that it has some as yet unspecified volume of old

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-growth timber not accounted for under the Forest Plan available for substitution. In contrast, the Forest Service has maintained that it has no timber available for substitution, because all volume under its jurisdiction is allocated toward Forest Plan sales.

Whether to use Forest Plan timber as substitute volume for problematic 2001(k) sales is both a policy and legal issue.

Policy Concerns

The approach outlined by Mr. Garamendi offers the valuable benefit of avoiding problematic sales, thus protecting the environment and, possibly, the integrity of the Forest Plan. It could also help fulfill the replacement mandate of 2001(k)(3). It does, however, raise some concerns.

The first concern is one of distributional economics. Timber sales under 2001(k) and the Forest Plan apparently benefit somewhat different groups of timber and related economic interests. Allowing beneficiaries of 2001(k) to draw volume from Forest Plan sales may displace, at least in the short term, other companies and interests who expected to benefit from the plan. The second concern is largely practical. Preparation of Forest Plan sales for this fiscal year has consumed virtually all available Forest Service and BLM personnel resources. The sales have been designed (documented, marked, and so on) to meet plan standards and guidelines. They are not configured as trade items for undesirable 2001(k) sales. Volumes, species, location, and other important features of Forest Plan sales do not necessarily match what would be needed for substitution.

The Forest Service and BLM both have expressed concern that the administrative effort required to go back and reconfigure Forest Plan sales would impede their ability to meet Forest Plan sale volume targets for this and subsequent fiscal years. In other words, the land management agencies believe that, because of limited administrative resources, there might be a net reduction in volume offered under the Forest Plan this fiscal year if they are asked to create "substitute" sales.

Finally, the Forest Service has argued that using Forest Plan sales to substitute for problematic 2001(k) sales will lead some to charge that the Administration is engaged in "double counting." That is, the agency believes that Congress intended the legislation to lead to additive timber harvest above Forest

Plan levels, rather than a zero

□

-sum process.

Political Concerns

Any step by the Administration that eases the environmental impacts of logging authorized by the rescissions bill would be welcomed by the environmental community. Such measures also should help preserve the Forest Plan itself from litigation, reducing (though not eliminating) the likelihood that we find our management plan for the region's forests enjoined and gridlock thereby reestablished.

Conversely, the timber industry and related labor unions will condemn use of Forest Plan timber. Their view is that the logging provisions of the rescission act were meant to create a net increase in logging activity, regardless of environmental impacts. They will forcefully argue that use of Forest Plan timber means that the President is failing to live up to his commitments under the Forest Plan.

The general public would be receptive to a problem

□

-solving

effort and message. However, it would be difficult to rebut timber industry assertions regarding the Administration's failure to fulfill Forest Plan promises. The perception, merited or not, that we've failed to fulfill the plan may be as harmful as actually losing the plan in court.

Legal Concerns

No version of the Garamendi proposal is free from legal difficulties. But there is a perfectly credible, if not necessarily winning, argument that the Administration has authority either to use Forest Plan timber as replacement timber under 2001(k)(3) (Version 1) or to offer Forest Plan timber in exchange for other timber recently or soon to be released under 2001(k)(1) (Version 2). By contrast, the legal support for simply reducing the volume of Option 9 timber by the amount of timber released under 2001(k) (Version 3) is much more scanty. The legality of the various Garamendi schemes rests largely on two sections of the Rescissions Act -- 2001(d) and 2001(k) -- and the relationship between them. Section 2001(d) -- the Option 9 section -- provides that the Administration "shall expeditiously prepare, offer, and award timber sale contracts" covered by the Forest Plan, often referred to as Option 9. Section 2001(k)(1) -- the Section 318 section -- provides that the Administration shall release all contracts previously offered or awarded in the area subject to Section 318 of a prior appropriations bill. (The scope of this provision -- specifically, whether it orders the release only of the particular sales referenced in Section 318 or

of all sales ever awarded in the area covered by that section -- is currently before the Ninth Circuit.) Section 2001(k)(3) provides that if any of the sales under 2001(k)(1) cannot be awarded -- most notably, because of the existence of an endangered bird species known as the marbled murrelet -- the Administration shall provide the purchaser "an equal volume of timber, of like kind and value."

The question whether the Administration (pursuant to Version 1) can use Option 9 timber as replacement timber under 2001(k)(3), should the Administration win the marbled murrelet case and thus come under an obligation to provide replacement timber, is

genuinely difficult. No language in 2001(d) or 2001(k) specifically prevents the Administration from using Option 9 timber as the source of replacement timber. Nor is there any legislative history specifically addressing this issue. The Administration, it might be argued, thus has the discretion to implement the statute in this way. (Of course, the Option 9 timber substituted -- like any other timber substituted -- will have to be of equal volume and like kind and value, as required by 2001(k)(3).) Timber industry lawyers will argue, however, that such a scheme subverts the broadest goals of the statute. Congress, it will be argued, intended for two sets of sales

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□
-Option 9 sales and 318 sales -- to go forward as expeditiously and completely as possible: to use one as substitution for the other is a form of double

□

-counting that undermines this purpose.

Reasonable people can disagree as to the strength of these arguments. DOJ lawyers handling this issue believe that industry lawyers will have the better of this argument. (See DOJ memo attached.) Lawyers from the White House Counsel's Office and CEQ think this analysis slightly overstates the strength of the industry's position. What is clear, as DOJ lawyers agree, is that there is at least a credible claim that the Administration has authority to adopt Version 1 of the Garamendi proposal. The legal analysis relating to Version 2 of the Garamendi proposal proceeds in a similar manner, but with one prefatory caution. It is important to note that the Administration has no authority to force purchasers of timber released or soon to be released under 2001(k) to take Option 9 timber in its place. The purchasers of these sales have a property right to them; the most the Administration can do is to offer the purchasers the opportunity to take Option 9 timber instead. The ability of the Administration to make this offer turns on the same arguments discussed above. Again, nothing in the statute or legislative history specifically prevents this approach; but the approach does undermine the apparent intention of Congress to get out two separate sets of timber sales.

The proposal to reduce Option 9 output by the amount of timber released under 2001(k) (Version 3 of the Garamendi plan) presents a different set of questions; the legality of such an approach is far more dubious. First, this proposal might be thought to violate the specific directive of 2001(d) to award Option 9 contracts expeditiously. Second, the proposal appears to violate 2001(l), which prevents any revisions to land management plans, including the President's Forest Plan (Option 9), "because of implementation or impacts" of sales required by 2001. And even if this action were legal, adopting it might invite further challenge to the President's Forest Plan, because the action seems to concede that significant new circumstances, vitally affecting the Plan, have arisen.

===== END ATTACHMENT 1 =====

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Jennifer M. O'Connor (OCONNOR_J) (WHO)

CREATION DATE/TIME: 8-NOV-1995 21:10:37.79

SUBJECT: RE: Garemandi plan

TO: Elena Kagan (KAGAN_E) (WHO)

READ: 9-NOV-1995 08:34:43.46

TEXT:

the idea being, I assume that it is a litigable issue twwhether we could do it anyway?

You are right, I think -- perhaps we should hve TJ work it into his draft as a legislative option, and have him also point out that we can do it possibly without legislation.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME: 9-NOV-1995 07:41:38.68

SUBJECT: Draft Summary Memo on Timber

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)

READ: 9-NOV-1995 07:47:03.10

TO: Elena Kagan (KAGAN_E) (WHO)

READ: 9-NOV-1995 08:44:03.29

TO: T J Glauthier (GLAUTHIER_T) (OMB)

READ: 9-NOV-1995 21:20:31.73

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)

READ: 9-NOV-1995 08:44:45.80

TO: Shelley N. Fidler (FIDLER_S) (CEQ)

READ: 9-NOV-1995 17:07:14.68

TO: Dinah Bear (BEAR_D) (CEQ)

READ: 9-NOV-1995 08:40:57.11

TEXT:

I've attached a file with a draft overview memo on the timber situation in the Pacific Northwest. Please send me your comments via e-mail. Jennifer has asked to get this done asap this morning, so a copy can go to Harold and Leon before the green group meeting.

===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 9-NOV-1995 07:39:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Thomas C. Jensen

TEXT:

PRINTER FONT 12_POINT_ROMAN
EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY

\d

MEMORANDUM FOR JENNIFER O'CONNOR

CC: KATIE MCGINTY
SHELLEY FIDLER
ELENA KAGAN
DINAH BEAR
T.J. GLAUTHIER

FROM: TOM JENSEN

RE: YOUR REQUEST FOR OVERVIEW MEMO ON TIMBER

Jennifer, per our conversation last evening, here's a one

-page

overview of the timber situation. I'll be in my office early and would be happy to incorporate your comments.

□

Update on Federal Forest Policy Issues in Oregon and Washington

Overview

Economic conditions

The Northwest's economy is strong in virtually all sectors. Oregon and Washington economies are diversifying and moving away from their traditionally high dependence on the forestry sector. Forest product industries have enjoyed record profits, relying largely on timber cut from private and state

□

-owned lands. Lumber

prices have dropped some in recent months, due largely to reduced national housing construction and Canadian competition.

Implementation of Northwest Forest Plan

The Forest Service and Bureau of Land Management report that the volume of federal timber offered for sale in FY 1995 exceeded Forest Plan targets. The target was 600 million board feet (mbf); 610 mbf was actually put on the market. The agencies expect also to exceed the FY 1996 Forest Plan target of 800 mbf. Implementation and Effects of Rescissions Act

Litigation

Every major feature of the logging provision of the rescissions act is in litigation now or is expected to be shortly. To this point, most litigation has focused on the old

□

-growth provisions

of the rescissions act, but an increasing number of suits concern salvage sales around the country and new challenges to the Forest Plan itself are on the horizon (30

□

-60 days).

There are at least 20 rescission act timber cases pending before eight federal district courts and the Ninth Circuit panels. Timber industry plaintiffs continue to challenge the legality of the Forest Plan and seek to expand the scope of the old

□

-growth

sale section of the rescission act. Environmental plaintiffs are seeking to restrain old

□

-growth and salvage sales.

The Administration's posture in litigation has been oriented toward protecting the Forest Plan from undermining by adverse environmental impacts of old

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-growth sales and, in the case of

salvage sales, ensuring our discretion to apply environmental standards.

District court and appellate rulings on old

□

-growth sales have

been adverse to our position, raising significant concerns that the Forest Plan is in jeopardy.

Timber sales under Rescissions Act

The Administration has released for sale 305 mbf of old growth timber under the rescissions act. Another 358 mbf is in dispute for various, largely environmental reasons and has not been released. Figures are not immediately available for salvage

sales under the act, but FY 1995 salvage timber offered for sale exceeded 1.8 billion board feet, considerably in excess of pre

□

-rescissions act planned levels.

Stakeholder Views

The timber industry appears generally to be pleased by the new law and their courtroom victories. There is a sense that the industry has gained revenge against environmental interests and this Administration. Some have speculated that major, national timber interests are uncomfortable with, particularly, the old

□

-growth logging under the rescissions act.

The environmental community continues to feel fundamentally betrayed by the new law. They are pleased that the Administration has taken litigation positions largely coincident with their views, but doubt Administration assertions that we did not know that the act would be construed and applied as broadly as it has. Environmental interests have been involved in numerous civil disobedience actions protesting rescissions act logging. Most controversy has attended old

□

-growth sales in

Oregon, but disputes are expected to spread to salvage sales around the country.

The general public in the Northwest can be expected to sense that the Administration's solution for forest policy is unraveling, and that gridlock is returning.

Administration Actions

Under White House leadership, the Administration is working to defend the Forest Plan. Staff is developing various options for legislation repealing, amending, or otherwise addressing problems arising under the rescissions act. Staff is also developing a coordinated message plan for the Northwest, emphasizing the successes of the Forest Plan.

===== END ATTACHMENT 1 =====

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Kathleen M. Whalen (WHALEN_K) (WHO)

CREATION DATE/TIME: 9-NOV-1995 11:26:31.05

SUBJECT: Bios/resumes

TO: Dawn Chirwa (CHIRWA_D) (WHO)

READ: 9-NOV-1995 11:46:47.63

TO: Mark D. Fabiani (FABIANI_M) (WHO)

READ: 9-NOV-1995 14:24:51.59

TO: David Fein (FEIN_D) (WHO)

READ: 9-NOV-1995 13:56:46.89

TO: Elena Kagan (KAGAN_E) (WHO)

READ: 9-NOV-1995 11:55:54.33

TO: Cheryl D. Mills (MILLS_C) (WHO)

READ: 9-NOV-1995 11:38:07.84

TO: Miriam R. Nemetz (NEMETZ_M) (WHO)

READ: 9-NOV-1995 15:35:38.88

TO: Stephen R. Neuwirth (NEUWIRTH_S) (WHO)

READ: 9-NOV-1995 11:43:49.02

TO: Robert W. Schroeder III (SCHROEDER_R) (WHO)

READ: 9-NOV-1995 11:37:49.94

TO: Jane C. Sherburne (SHERBURNE_J) (WHO)

READ: 11-NOV-1995 10:54:54.69

TO: Natalie Williams (WILLIAMS_N) (WHO)

READ: 14-NOV-1995 09:48:06.18

TO: Jon Yarowsky (YAROWSKY_J) (WHO)

READ: 9-NOV-1995 15:17:39.35

CC: Cheryl L Sweitzer (SWEITZER_C) (WHO)

READ: 9-NOV-1995 12:44:37.10

TEXT:

Those of you who were here summer of 94 may recall that at Ab's request I put together a collection of everyone's bios and/or resumes to help Ab put histories with faces.

Well . . . Jack would like the same. So, could you please get a copy of your resume or a brief (a few paragraphs) bio to Sheri by next Wed. (11/15).

(If you were here in the summer of 94 and are wondering why you are receiving this request, it is because for one reason or another (i.e., vacations, family illnesses) you were not able to provide your information at the time.)

Thanks for your help.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Marna E. Madsen (MADSEN_M) (WHO)

CREATION DATE/TIME: 9-NOV-1995 14:28:31.02

SUBJECT: Business as usual

TO: Jana L. Blair (BLAIR_J) (WHO)
READ: 9-NOV-1995 17:28:50.40

TO: James Castello (CASTELLO_J) (WHO)
READ: 9-NOV-1995 14:27:36.00

TO: Jeffrey J. Connaughton (CONNAUGHTO_J) (WHO)
READ: 9-NOV-1995 15:00:25.97

TO: William "Gregg" Burgess (BURGESS_W) (WHO)
READ: 9-NOV-1995 15:24:01.63

TO: Mark D. Fabiani (FABIANI_M) (WHO)
READ: 9-NOV-1995 14:28:41.36

TO: David Fein (FEIN_D) (WHO)
READ: 9-NOV-1995 15:17:39.98

TO: Joseph Alden (ALDEN_J) (WHO)
READ: 9-NOV-1995 16:54:59.40

TO: Kimberly A. Holliday (HOLLIDAY_K) (WHO)
READ: 9-NOV-1995 14:27:55.55

TO: Edward F. Hughes (HUGHES_E) (WHO)
READ: 13-NOV-1995 08:20:12.32

TO: Rochester M. Johnson (JOHNSON_RM) (WHO)
READ: 9-NOV-1995 14:27:56.50

TO: Marvin Krislov (KRISLOV_M) (WHO)
READ: 9-NOV-1995 15:22:51.72

TO: Bruce R. Lindsey (LINDSEY_B) (WHO)
READ: 9-NOV-1995 15:02:37.87

TO: D. Craig Livingstone (LIVINGSTON_D) (WHO)
READ: 9-NOV-1995 16:41:31.77

TO: Clifford J. Mauton (MAUTON_C) (WHO)
READ: 9-NOV-1995 16:57:43.91

TO: Cheryl D. Mills (MILLS_C) (WHO)
READ: 9-NOV-1995 16:02:23.21

TO: Miriam R. Nemetz (NEMETZ_M) (WHO)
READ: 9-NOV-1995 15:35:57.10

TO: Stephen R. Neuwirth (NEUWIRTH_S) (WHO)
READ: 9-NOV-1995 14:47:29.93

TO: Elena Kagan (KAGAN_E) (WHO)

READ: 9-NOV-1995 14:33:40.88

TO: Jennifer D. Dudley (DUDLEY_J) (WHO)
READ: 9-NOV-1995 14:28:20.31

TO: Victoria L. Radd (RADD_V) (WHO)
READ: 9-NOV-1995 14:33:43.29

TO: Stacy E. Reynolds (REYNOLDS_S) (WHO)
READ: 9-NOV-1995 14:28:10.77

TO: Jane C. Sherburne (SHERBURNE_J) (WHO)
READ: 11-NOV-1995 10:57:36.23

TO: Cheri Sweitzer (SWEITZER_C) (WHO)
READ: 9-NOV-1995 14:29:32.25

TO: Odetta S. Walker (WALKER_O) (WHO)
READ: 9-NOV-1995 14:32:17.82

TO: Renee A. Warren (WARREN_R) (WHO)
READ: 9-NOV-1995 14:30:22.09

TO: Jonathan Denbo (DENBO_J) (WHO)
READ: 13-NOV-1995 09:35:10.88

TO: Kathleen M. Whalen (WHALEN_K) (WHO)
READ: 9-NOV-1995 16:44:42.91

TO: John Yarowsky (YAROWSKY_J) (WHO)
READ: 9-NOV-1995 15:18:52.71

TO: Virginia Canter (CANTER_V) (WHO)
READ: 11-NOV-1995 10:51:12.44

TO: Natalie Williams (WILLIAMS_N) (WHO)
READ: 14-NOV-1995 09:48:32.40

TO: Donna Alberts (ALBERTS_D) (WHO)
READ: 13-NOV-1995 08:53:20.34

TO: Melissa M. Murray (MURRAY_MM) (WHO)
READ: 9-NOV-1995 14:43:56.35

TO: Robert A. VanKirk (VANKIRK_R) (WHO)
READ: 9-NOV-1995 17:24:58.86

TO: Pamela Brewington (BREWINGTON_P) (WHO)
READ: 9-NOV-1995 14:41:55.91

TO: Dawn Chirwa (CHIRWA_D) (WHO)
READ: 9-NOV-1995 17:52:10.51

TO: Christopher D. Cerf (CERF_C) (WHO)
READ: 9-NOV-1995 14:29:18.15

TO: Robert W. Schroeder III (SCHROEDER_R) (WHO)
READ: 9-NOV-1995 14:33:53.33

TO: Catharine Moscatelli (MOSCATELLI_C) (WHO)

READ: 9-NOV-1995 14:31:14.01

TEXT:

Attached is a message I received from the Office of Administration regarding procedures in light of a potential government shut down. Please call me if you have any questions.

=====
ATT CREATION TIME/DATE: 9-NOV-1995 14:23:00.00

ATT BODYPART TYPE:A

ATT CREATOR: Marna E. Madsen

TEXT:

We have received many calls about the Federal Government's potential shutdown beginning Tuesday, November 14. In that regard, please pass along the following message to the staff in your offices:

Please DO NOT PANIC! We will be operating BUSINESS AS USUAL, and will continue to operate in the hopes that we will not shutdown. Please report to work on Monday as usual. However, on Monday, if shutdown is imminent, all personnel will be notified of this status.

If your position is deemed as "Emergency personnel", you will be informed in writing that you must report to work on Tuesday morning.

If you plan to take leave on Monday due to the holiday weekend, please report to work on Tuesday regardless of the shutdown status.

=====
END ATTACHMENT 1 =====

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Todd Stern to Elena Kagan at 16:31:06.12. Subject: dinner (1 page)	11/09/1995	Personal Misfile

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[11/8/1995 - 12/7/1995]

2009-1006-F
ke712

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
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- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME: 9-NOV-1995 16:50:06.90

SUBJECT: Draft Legislative options

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)

READ: 9-NOV-1995 17:05:06.27

TO: T J Glauthier (GLAUTHIER_T) (OMB)

READ: 9-NOV-1995 21:54:49.46

TO: Elena Kagan (KAGAN_E) (WHO)

READ: 9-NOV-1995 17:11:13.67

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)

READ: 9-NOV-1995 20:48:19.37

TO: Martha Foley (FOLEY_M) (WHO)

READ: 9-NOV-1995 19:04:46.30

TO: Barbara C. Chow (CHOW_B) (WHO)

READ: 10-NOV-1995 09:22:14.24

TO: Dinah Bear (BEAR_D) (CEQ)

READ: 9-NOV-1995 17:11:23.90

TO: Kris Balderston (BALDERSTON_K) (WHO)

READ: 9-NOV-1995 18:48:41.84

CC: Michelle Denton (DENTON_M) (CEQ)

READ: 9-NOV-1995 18:15:14.06

CC: Shelley N. Fidler (FIDLER_S) (CEQ)

READ: 10-NOV-1995 09:31:36.11

CC: Christine L. Nolin (NOLIN_CL) (OMB)

READ: 9-NOV-1995 16:53:49.88

CC: Mark A. Weatherly (WEATHERLY_M) (OMB)

READ: 9-NOV-1995 16:57:56.67

CC: Ron Cogswell (COGSWELL_R) (OMB)

READ: 9-NOV-1995 16:51:05.79

TEXT:

Attached is a WP 5.2 file with a draft memo outlining five legislative options regarding the timber provisions of the rescissions bill. It incorporates comments received from TJ Glauthier, Elena Kagan, and Dinah Bear.

Copies are being faxed now to Interior, USDA, Justice, and NOAA for use in tomorrow's meeting on legislation.

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 9-NOV-1995 16:46:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Thomas C. Jensen

TEXT:

PRINTER FONT 12_POINT_ROMAN

DRAFT -- DRAFT -

-DRAFT (Nov. 9th; 4:40 p.m.)

SUMMARY OF LEGISLATIVE OPTIONS

Option 1.

? Repeal entire timber rider (salvage, 318, and Forest Plan provisions [2001])

? Secure discretionary authority to buy

-back vested harvest rights

? Secure discretionary authority to exchange timber harvest rights

? Secure discretionary authority to condemn (and compensate) timber harvest rights

Pro: Sends strongest, most favorable message to environmentalists

PRINTER FONT 12_POINT_ROMAN_ITALIC

Restores legal status quo ante

Useful if we determine there is little or no likelihood

of congressional support

for any kind of fix

PRINTER FONT 12_POINT_ROMAN

Con: Conflicts with agreement with congress on salvage and 318 sales

PRINTER FONT 12_POINT_ROMAN_ITALIC

Appears to be a flip

-flop

Extremely unlikely to gain congressional support

Costly

PRINTER FONT 12_POINT_ROMAN

Option 2.

? Repeal all green timber sale provisions [2001(k)]

? Repeal provisions applicable to Forest Plan to eliminate override interpretation [2001(d)&(1)]

? Secure discretionary authority to buy

-back vested harvest rights

? Secure discretionary authority to exchange timber harvest rights

? Secure discretionary authority to condemn (and compensate) timber harvest rights

Pro: Sends strong, favorable message to environmentalists

PRINTER FONT 12_POINT_ROMAN_ITALIC

Prevents release of additional problematic sales

(nesting & non

-318)

Prevents judicial interpretation that Forest Plan was

overriden

Provides authorities to address released, unharvested

problem sales

PRINTER FONT 12_POINT_ROMAN

Con: Conflicts with agreement with congress on 318 sales

PRINTER FONT 12_POINT_ROMAN_ITALIC

Could appear to be a flip

-flop

Difficult to gain congressional support

Costly

PRINTER FONT 12_POINT_ROMAN

Option 3.

? Amend provisions applicable to listed birds and

non

-318/Hogan sales to match our interpretations

? Repeal provisions applicable to Forest Plan to eliminate
override interpretation

? Secure discretionary authority to buy

-back vested harvest

rights

? Secure discretionary authority to exchange timber harvest

rights

? Secure discretionary authority to condemn (and compensate)

timber harvest rights

Pro: Sends strong, favorable message to environmentalists

PRINTER FONT 12_POINT_ROMAN_ITALIC

Prevents release of additional problematic sales

Prevents judicial interpretation that Forest Plan was

overriden

Provides authorities to address released, unharvested

problem sales

Most consistent with agreement with congress

PRINTER FONT 12_POINT_ROMAN

Con: Difficult to gain congressional support

PRINTER FONT 12_POINT_ROMAN_ITALIC

Could appear to be a flip

-flop regarding listed birds

Costly

PRINTER FONT 12_POINT_ROMAN

Option 4.

? Amend provisions applicable to listed birds to match our
interpretation

? Secure discretionary authority to buy

-back vested harvest

rights

? Secure discretionary authority to exchange timber harvest

rights

? Secure discretionary authority to condemn (and compensate)

timber harvest rights

Pro: Sends favorable message to environmentalists

PRINTER FONT 12_POINT_ROMAN_ITALIC

Prevents release of additional problematic sales

Provides authorities to address released, unharvested

problem sales

PRINTER FONT 12_POINT_ROMAN

Con: Does not resolve problems with non

-318 sales

PRINTER FONT 12_POINT_ROMAN_ITALIC

Appears tepid to environmentalists
Speculative protection for Forest Plan
Difficult to gain congressional support
Costly

PRINTER FONT 12_POINT_ROMAN

Option 5.

? Secure discretionary authority to buy

-back vested harvest

rights

? Secure discretionary authority to exchange timber harvest

rights

Pro: Possible to win congressional support

PRINTER FONT 12_POINT_ROMAN_ITALIC

Provides authorities to address released, unharvested

problem sales

PRINTER FONT 12_POINT_ROMAN

Con: Environmentalists would condemn as inadequate

PRINTER FONT 12_POINT_ROMAN_ITALIC

Speculative protection for Forest Plan

Does not eliminate controversy over "nesting" sales

Costly

===== END ATTACHMENT 1 =====

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. email	Todd Stern to Elena Kagan at 16:06:33.77. Subject: dinner (1 page)	11/09/1995	Personal Misfile

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[11/8/1995 - 12/7/1995]

2009-1006-F
ke712

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME:13-NOV-1995 07:07:47.52

SUBJECT: Timber Working Group Meeting

TO: Alice E. Shuffield (SHUFFIELD_A) (OMB)

READ:13-NOV-1995 11:47:15.67

TO: FAX (9-720-5437, Greg Frazier) (TLXA1MAIL_\F:9-720-5437\C: Greg FraierREA

TO: FAX (9-720-4732, Jim Lyons) (TLXA1MAIL_\F:9-720-4732\C: Jim LyonsREAD:

TO: FAX (9-208-6956, Ann Shields) (TLXA1MAIL_\F:9-208-6956\C: Ann ShieldsREA

TO: FAX (9-208-4684, George Frampton) (TLXA1MAIL_\F:9-208-4684\C: George Frampto

TO: FAX (9-208-3144, Bob Armstrong) (TLXA1MAIL_\F:9-208-3144\C: Bob ArmstrongR

TO: FAX (9-514-0557, Lois Schiffer) (TLXA1MAIL_\F:9-514-0557\C: Lois SchifferR

TO: FAX (9-482-6318, Doug Hall) (TLXA1MAIL_\F:9-482-6318\C: Doug HallREAD:

TO: FAX (9-260-0500, Steve Herman) (TLXA1MAIL_\F:9-260-0500\C: Steve HermanRE

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)

READ:13-NOV-1995 08:15:29.54

TO: Shelley N. Fidler (FIDLER_S) (CEQ)

READ:13-NOV-1995 09:07:59.43

TO: T J Glauthier (GLAUTHIER_T) (OMB)

READ:13-NOV-1995 07:44:30.14

TO: Ron Cogswell (COGSWELL_R) (OMB)

READ:13-NOV-1995 09:09:55.21

TO: Mark A. Weatherly (WEATHERLY_M) (OMB)

READ:13-NOV-1995 09:03:13.67

TO: Christine L. Nolin (NOLIN_CL) (OMB)

READ:15-NOV-1995 13:04:03.64

TO: Elena Kagan (KAGAN_E) (WHO)

READ:13-NOV-1995 08:55:25.73

TO: Martha Foley (FOLEY_M) (WHO)

READ:13-NOV-1995 15:47:56.18

TO: Kris Balderston (BALDERSTON_K) (WHO)

READ:13-NOV-1995 09:56:58.00

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)

READ:13-NOV-1995 07:54:17.36

TO: Dinah Bear (BEAR_D) (CEQ)

READ:13-NOV-1995 08:58:42.17

TO: Remote Addressee (TLXA1MAIL_\F:97205437\C:Anne KennedyREAD:
TO: FAX (92084684,Don Barry) (TLXA1MAIL_\F:92084684\C:Don Barry)
READ:NOT READ
TO: FAX (94821041,Bob Ziobro) (TLXA1MAIL_\F:94821041\C:Bob Ziobro)
READ:NOT READ
TO: Remote Addressee (TLXA1MAIL_\F:97204732\C:Mark Gaede)
READ:NOT READ
TO: Remote Addressee (TLXA1MAIL_\F:92085242\C:Nancy Hayes\)
READ:NOT READ
TO: FAX (92191792,Kris Clark) (TLXA1MAIL_\F:92191792\C:Kris Clark)
READ:NOT READ
TO: FAX (96902730,Mike Gippert) (TLXA1MAIL_\F:96902730\C:Mike GippertREAD:
TO: FAX (92085584,John Leshy) (TLXA1MAIL_\F:92085584\C:John Leshy)
READ:NOT READ
TO: FAX (95144240,Jim Kilbourne) (TLXA1MAIL_\F:95144240\C:Jim KilbourneREAD
TO: Remote Addressee (TLXA1MAIL_\F:95140557\C:Peter CoppelmanRE
TO: Thomas C. Jensen (JENSEN_T) (CEQ)
READ:13-NOV-1995 07:44:13.22
TO: Ruth D. Saunders (SAUNDERS_R) (OMB)
READ:13-NOV-1995 09:20:06.53
TO: Remote Addressee (TLXA1MAIL_\F:915033266254\C:Tom TuchmanRE
TO: FAX (92083877,Bob Baum) (TLXA1MAIL_\F:92083877\C:Bob BaumREAD:NOT

TEXT:

If the government "shuts down" tomorrow, the EOP/agency timber policy working group will NOT meet on Tuesday at 2:00 p.m. The meeting will be rescheduled as government operations permit. Thanks for your cooperation.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: John O. Sutton (SUTTON_J) (WHO)

CREATION DATE/TIME:13-NOV-1995 08:54:49.68

SUBJECT: Timber legislative meeting

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)
READ:13-NOV-1995 09:07:32.64

TO: Barbara C. Chow (CHOW_B) (WHO)
READ:13-NOV-1995 14:09:19.82

TO: Martha Foley (FOLEY_M) (WHO)
READ:13-NOV-1995 11:27:53.13

TO: Alice E. Shuffield (SHUFFIELD_A) (OMB)
READ:13-NOV-1995 09:36:02.01

TO: Thomas C. Jensen (JENSEN_T) (CEQ)
READ:13-NOV-1995 09:42:04.85

TO: Robert C. Vandermark (VANDERMARK_R) (CEQ)
READ:13-NOV-1995 09:34:18.47

TO: Elena Kagan (KAGAN_E) (WHO)
READ:13-NOV-1995 09:49:32.82

TO: Marcia L. Hale (HALE_M) Autoforward to: R. Lawton Jordan
READ:13-NOV-1995 09:10:57.60

TO: Ray Martinez (MARTINEZ_R) (WHO)
READ:13-NOV-1995 08:58:19.58

TEXT:

Harold Ickes will be having a timber legislation today at 1pm in room 180. Please let me know if you or your principal will make it. Thanks.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Dinah Bear (BEAR_D) (CEQ)

CREATION DATE/TIME:13-NOV-1995 20:18:26.77

SUBJECT: timber memo

TO: Elena Kagan (KAGAN_E) (WHO)

READ:14-NOV-1995 08:37:54.99

TEXT:

Revised draft going to Tom . . . subject to additional revision in very early am (Tom does mornings; I do evenings!). Thanks for your comments; they were quite helpful. Ted had a few additional edits.

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE:13-NOV-1995 20:02:00.00

ATT BODYPART TYPE:H

ATT CREATOR: Dinah Bear

ATT SUBJECT: timbermemo

ATT TO: Thomas C. Jensen (JENSEN_T)

TEXT:

PRINTER FONT 12_POINT_ROMAN

LEGISLATIVE PROPOSALS

A legislative package developed under Option 3 would contain the following elements:

a) Geographic and temporal scope: We understood the provisions of Section 2001(k) to require the release of sales previously offered under the provisions of Section 318, a rider attached to a 1989 appropriations bill. Those sales were defined by both specific geographic and temporal boundaries and were subject to environmental requirements provided for in Section 318. Indeed, the common way of referring to this part of the timber rider in the Rescission Act had been "the 318 sale provision".

Judge Hogan's recent decision in NFRC v. Glickman dramatically changes that universe by requiring the release of all timber sales on Forest Service and BLM lands in the geographic area covered by ?318, regardless of whether they were actually offered under Section 318. The injunction issued by Judge Hogan requires the release of all timber sales in the geographic area after the expiration of ?318 to the date of the signing of the rescissions bill, and the scope of the declaratory judgment covers all timber sales offered by the Forest Service and BLM prior to the passage of ?318. Purchasers of sales that did not proceed for environmental or other reasons prior to the passage of ?318 are now coming forward to claim rights to such sales. The proposed amendment would conform the legislation to our original understanding of the geographic and temporal scope of this provision. This amendment would have no effect on sales that we have already released. The practical effect of the change would be to prevent release of sales that had been withdrawn prior to the passage of

?318, as well as clarifying that certain sales currently in dispute do not fall within the parameters of this legislation

unless they were truly "318 sales."

The proposed amendment would amend Section 2001(k)(1) to clarify that the sales subject to release are those "subject to and consistent with" Section 318 of Public Law 101

□

-121.

b) "Known to be nesting": The only exception to the release of sales mandated in Section 2001(k) is for sale units in which threatened or endangered bird species are "known to be nesting". There are a few northern spotted owl nests in sale areas, but the controversy regarding this issue revolves around a number of sales that containing marbled murrelet breeding habitat. Marbled murrelets are a seabird which breed in coastal forests and have extremely elusive nesting habits. Several Administrative initiatives, including the Forest Plan and proposals to provide

relief to private landowners under the Endangered Species Act could be at risk if these sales are released.

While there was clearly disagreement between Congress and the Administration about the definition of "known to be nesting" during the legislative debate, no statutory definition was ultimately adopted. Industry plaintiffs are suing the land management agencies at present to force the agencies to use a very narrow definition of "known to be nesting". The land management agencies are relying on the best scientific protocol for determining where murrelets are "known to be nesting". Our proposed amendment to Section 2001(k)(2) would [change the standard from "known to be nesting" to "occupy for nesting or breeding purposes] [explicitly authorize the agencies to rely on the current and best science as developed in the Pacific Seabird Protocol].

c) Protecting the President's Forest Plan: Our understanding of Congress' intent was that the timber rider in the Rescissions bill shielded the President's Forest Plan. However, the attorney representing industry plaintiffs in most of the litigation falling under Section 2001(k) has signalled his belief that Congress specifically overrode the Forest Plan in the Rescission Rider and that Section 2001(d) refers to timber sales in the geographic area of the Plan, but not to the Plan itself. Further, Section 2001(l) specifically prohibits the Administration from revising or amending the Plan to take into the account changes in the environmental baseline caused by green timber sales under Section 2001(k). In other words, it requires the land management agencies to assume trees that have been cut are still standing. This prohibition puts the Forest Plan at serious risk of being overturned by the courts.

Our proposed amendment would modify Section 2001(d) to clarify that the provisions of this section apply only to timber sales that conform with the requirements of the President's Forest Plan. The amendment would also delete the prohibition in Section 2001(l) that constrains needed modification to the Plan.

d) Securing Necessary Administrative Tools: Notwithstanding our proposed amendments, under this option, the government would still have to release certain timber sales under Section 2001(k1). Currently, the only environmental rationale for withholding sales is the "known to be nesting" bird provision in those instances, the government is obligated to offer replacement timber of equal volume, kind and value subject to the terms of the original contract for that replacement timber. The Forest Service in particular believes it is extremely constrained in the

amount of alternative timber it has available. We have developed several administrative tools which, if authorized, would give the

agencies flexibility in modifying or terminating sales, exchanging other kinds of timber configurations for harvest rights under Section 2001(k) or buying back (essentially, condemning) vested harvest rights.

Our proposed amendment would authorize the Secretaries to suspend, terminate or modify any of the timber contracts falling within the scope of Section 2001(k) where the Secretary finds that such termination or modification is necessary pursuant to the original contract terms (Forest Service contracts already carry modification and termination language for environmental issues) or to otherwise avoid damage to the environment or public resources. It would also authorize the Secretary to settle any claim by a contractor through compensation or exchange of timber sale contracts. (This authority could extend to sales under the Forest Plan, if so desired.)

e) "If for any other reason": Currently, Section 2001(k) (e) requires the Secretary to provide replacement timber of like volume, kind and value "if for any reason" a sale cannot be released and completed". While the only affirmative defense to the release of a sale is the "known to be nesting" provision of Section 2001(k) (2), there are cases of physical impossibility and there may be other circumstances beyond the agencies' control which could arguably require the agencies to offer replacement timber under this provision., This creates a further unanticipated burden on the agencies to provide scarce replacement timber (particularly under the district court's interpretation covering pre-?318 sales.)

Under our proposed amendment, the "for any reasons" language in Section 2001(k) (3) would be deleted and the requirement to offer replacement timber would apply only in instances in which the agencies invoked Section 2001(k) (2)..

===== END ATTACHMENT 1 =====

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME:14-NOV-1995 07:53:46.88

SUBJECT: Memo to Leon on Timber

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)
READ:14-NOV-1995 07:56:34.41

TO: Martha Foley (FOLEY_M) (WHO)
READ:14-NOV-1995 08:49:05.37

TO: Elena Kagan (KAGAN_E) (WHO)
READ:14-NOV-1995 08:38:24.79

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ:14-NOV-1995 08:11:37.66

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ:14-NOV-1995 08:52:05.06

TEXT:

I faxed to you earlier this morning a draft memo to Leon Panetta on timber legislation. If you didn't receive it, or if you have comments, you can reach me at my office (5-7415). Disregard my comment in the memo about my computer having problems -- it seems to be working fine now.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME:17-NOV-1995 07:40:45.56

SUBJECT: Final edits on timber background memo\

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ:17-NOV-1995 07:44:58.85

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)
READ:17-NOV-1995 08:17:10.01

TO: Elena Kagan (KAGAN_E) (WHO)
READ:17-NOV-1995 08:59:15.60

TO: Alice E. Shuffield (SHUFFIELD_A) (OMB)
READ:17-NOV-1995 11:16:02.79

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ:NOT READ

TO: Dinah Bear (BEAR_D) (CEQ)
READ:17-NOV-1995 08:24:54.53

TO: Martha Foley (FOLEY_M) (WHO)
READ:18-NOV-1995 16:05:59.89

TO: Ron Cogswell (COGSWELL_R) (OMB)
READ:17-NOV-1995 08:22:41.99

TO: Kris Balderston (BALDERSTON_K) (WHO)
READ:20-NOV-1995 09:20:32.61

TEXT:

I'll have final edits on the timber background memo in about an hour from now, around 8:30 or 9:00 a.m.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Marvin Krislov (KRISLOV_M) (WHO)

CREATION DATE/TIME:20-NOV-1995 10:43:30.13

SUBJECT: i take it you're not interested in interior person.

TO: Elena Kagan (KAGAN_E) (WHO)

READ:20-NOV-1995 11:09:59.68

TEXT:

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Ingrid M. Schroeder (SCHROEDER_I) (OMB)

CREATION DATE/TIME:21-NOV-1995 14:17:40.25

SUBJECT: H.R. 1058 - Securities Litigation

TO: Elena Kagan (KAGAN_E) (WHO)

READ:29-NOV-1995 08:50:46.97

TO: Ellen S. Seidman (SEIDMAN_E) (OPD)

READ:21-NOV-1995 16:05:28.15

TEXT:

Any reports regarding how the Administration will respond to the new draft of HR 1058? Did a decision memo go to the President on this? if so - do we have any readout?

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE:21-NOV-1995 13:33:00.00

ATT BODYPART TYPE:B

ATT CREATOR: James J. Jukes

ATT SUBJECT: DRE on HR 1058

ATT TO: Ingrid M. Schroeder (SCHROEDER_I)

TEXT:

SENATE CONFIRMS CONFEREES ON SECURITIES LITIGATION REFORM BILL

After weeks of delay, the Senate Nov. 17 approved conferees for the House-Senate conference on the proposed "Private Securities Litigation Reform Act of 1995" (HR 1058).

The appointment of Senate conferees followed shortly after the Securities and Exchange Commission Nov. 15--in a letter to Senate Banking Committee Chairman Alfonse D'Amato (R-NY)--expressed measured support for the Nov. 9 compromise version of the bill's safe harbor provisions.

The Nov. 9 version of the major securities litigation reform bill, which includes a safe harbor to protect some forward-looking corporate statements from liability under the securities laws. The safe harbor is the chief aspect of the bill that would affect high technology companies, Bruce Vanyo, a partner at Wilson, Sonsini, Goodrich & Rosati, Palo Alto, Calif., told BNA Nov. 20.

The Nov. 9 draft bill reflects changes that were requested by the SEC. The high technology sector remains fully supportive of the bill, Vanyo maintained. The SEC's concerns extend, to some extent, to areas beyond the scope of the legislation that might also be affected by it, the litigator noted. Vanyo said Nov. 20 that he expects the bill to go "as it stands today" to the conference committee.

The appointment of Senate conferees was delayed by in late October when Sen. Richard Bryan (D-Nev), who was opposed to elements of the draft bill, temporarily placed a "hold" on their appointment. This means that he indicated to other senators in advance that he would not give his consent to the appointment of any conferees, so they therefore did not request Senate confirmation. The appointment of conferees requires unanimous consent of the chamber appointing them.

The conference committee is expected to convene sometime during the week of Nov. 27, a Senate Banking Committee staff member told BNA. 'Hotly Contested'

In some quarters the bill is still viewed as controversial and 'hotly contested,' a source told BNA Nov. 20. Other aspects of the bill--such as its failure to extend the current statute of limitations for private fraud suits--would prevent adequate investor protection, the source argued. Further, the SEC has endorsed the safe harbor provisions, but has not 'flatly endorsed' the measure, according to the source, who opposes the bill. The original House and Senate (S 240) measures--each designed to curb frivolous securities litigation--differed significantly, impeding the reconciliation process. Following an Oct. 23 draft compromise, SEC Chairman Arthur Levitt told a legal gathering he had 'profound reservations' regarding some aspects of the draft bill, particularly about what the safe harbor for corporate forward-looking statements implied for investor protection.

The Nov. 9 draft bill's safe harbor for corporate forward-looking statements incorporates the judicially fashioned 'bespeaks caution' doctrine under which forward-looking statements are not fraudulent if they are accompanied by, in this case, 'meaningful cautionary statements.' Such statements must identify 'important factors that could cause actual results to differ materially from those in the forward-looking statement.' The use of the term 'important' was requested by the SEC in lieu of the word 'substantive,' Vanyo explained.

In addition, the Nov. 9 draft of the bill incorporates other diverse changes to the safe harbor provisions. Among a dozen or so discrete changes, some concern clarifying the nature of forward looking statements that may be made by an underwriter; including a definition of 'person acting on behalf of an issuer'; and changing certain 'boilerplate' language borrowed from 1934 Securities and Exchange Act Rule 10b-5 to 'false and misleading,' as part of a standard of proof for plaintiffs.

Conferees

The appointees to the conference committee confirmed by the Senate Nov. 17 are as follows: D'Amato, Sen. Phil Gramm (R-Texas), Sen. Robert Bennett (R-Utah), Sen. Rod Grams (R-Minn), Senate Appropriations Committee Chairman Peter Domenici (R-NM), Banking Committee ranking minority member Sen. Paul Sarbanes (D-Md), Sen. Christopher Dodd (D-Conn), Sen. John Kerry (D-Mass), and Sen. Richard Bryan (D-Nev).

Despite the confidence of some that the bill is in good shape to be taken up by the conference committee, sources indicated to BNA Nov. 20 that pending the convening of the committee, negotiators may still make changes to the bill. However, those opposed to the bill are not getting much access to the process, one source stated.

Groups that have opposed the measure include: the National League of Cities, National Association of Counties, the Municipal Treasurers' Association, the Conference of Mayors, the Government Finance Officers Association, and the National Association of Securities and Commercial Law Attorneys.

Strong proponents of the reform measure are the American Electronics Association, which has served as the leader for high technology firms who favor it; the National Association of Investors Corp.; and the 'Big Six' accounting firms.

Text of the safe harbor provision contained in the Nov. 9 draft is in section M.

European Union

===== END ATTACHMENT 1 =====

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: James A. Brown (BROWN_JA) (OMB)

CREATION DATE/TIME:22-NOV-1995 10:58:11.70

SUBJECT: Proposed Senate ICC SAP

TO: Kenneth L. Schwartz (SCHWARTZ_K) (OMB)

READ:22-NOV-1995 13:25:55.86

TO: Daniel M. Tangherlini (TANGHERLIN_D) (OMB)

READ:22-NOV-1995 11:52:59.52

TO: Edward H. Clarke (CLARKE_E) (OMB)

READ:22-NOV-1995 12:33:11.30

TO: Robert G. Damus (DAMUS_R) (OMB)

READ:22-NOV-1995 10:58:39.80

TO: Carolyn Frank (cfrank@ustr.gov@INET)

READ:NOT READ

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)

READ:22-NOV-1995 11:45:22.04

TO: David E. Tornquist (TORNQUIST_D) (OMB)

READ:22-NOV-1995 11:17:25.07

TO: Larry R. Matlack (MATLACK_L) (OMB)

READ:22-NOV-1995 11:01:56.56

TO: Michael D. Deich (DEICH_M) (OPD)

READ:22-NOV-1995 11:06:47.59

TO: Raymond P. Kogut (KOGUT_R) (OMB)

READ:22-NOV-1995 11:02:37.63

TO: Rosalyn J. Rettman (RETTMAN_R) (OMB)

READ:22-NOV-1995 11:02:47.73

TO: Edward M. Rea (REA_E) (OMB)

READ:22-NOV-1995 11:00:21.33

TO: Kim H. Burke (BURKE_K) (OMB)

READ:22-NOV-1995 10:58:50.33

TO: Arthur W. Stigile (STIGILE_A) (OMB)

READ:22-NOV-1995 11:35:50.55

TO: Elena Kagan (KAGAN_E) (WHO)

READ:29-NOV-1995 08:53:29.00

CC: James J. Jukes (JUKES_J) (OMB)

READ:22-NOV-1995 11:01:55.17

CC: James C. Murr (MURR_J) (OMB)

READ:22-NOV-1995 11:45:28.08

TEXT:

DRAFT
November 22, 1995
(Senate)

S. 1396 - Interstate Commerce Commission Sunset Act of 1995
(Pressler (R) Pennsylvania and 6 cosponsors)

The Administration strongly supports the termination of the Interstate Commerce Commission (ICC), and has proposed legislation (H.R. 1436) for this purpose. Eliminating those elements of economic regulation that no longer enhance productivity and competitiveness is a primary Administration priority.

S. 1396, however, would accomplish no genuine deregulation but would simply merge the ICC's most burdensome regulatory elements with the Federal Maritime Commission in a new Federal entity. The Administration therefore strongly opposes S. 1396 unless it is amended to:

- o Eliminate the proposed Intermodal Surface Transportation Board. Rather than abolish all non-productive economic regulatory functions currently performed by the ICC, S. 1396 simply merges them with the FMC in new independent agency. (Although the new organization would technically be located in the Department of Transportation, it would not be responsible to the Secretary and would function much like the ICC does today.) Any regulations which continue to serve a useful purpose (such as protection of captive shippers under the Staggers Act), should be enforced by the Department of Transportation, not a new ICC. Nonproductive economic regulations affecting the trucking, intercity bus, household goods freight forwarder, broker, pipeline, interstate water carrier, interstate rail passenger, and ferry industries should, as the Administration has proposed, be terminated.
- o Delete the extension of antitrust immunity for the railroad and motor-carrier industries. Consumers and rail and motor carriers should be permitted to benefit from the removal of unproductive economic regulatory burdens. This will not occur if rail and motor carriers are permitted to impose artificially high rates on consumers. Price-fixing is not tolerated in the economy as a whole, and should not be permitted in the rail and motor carrier industries.
- o Conform rail merger review standards to those which apply to other industries. Mergers in the railroad industry should be reviewed by the Department of Justice under the same standards which apply to other industries, rather than under a separate standard interpreted by a successor to the ICC.
- o Delete unilateral changes in rail labor protection provisions. The Administration

believes that the existing standards enable carriers to improve efficiency while protecting the interests of affected employees, and therefore should not be changed by Congress. Should a legislative solution be deemed necessary, however, the Administration believes that it should afford no less protection than comparable provisions in H.R. 2539, "The ICC Termination Act of 1995," as passed by the House. In addition, rail employee protection provisions should be administered by the Department of Labor which already administers several similar provisions, rather than by a new entity.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Cheryl L Sweitzer (SWEITZER_C) (WHO)

CREATION DATE/TIME:27-NOV-1995 18:22:33.56

SUBJECT: RWG meeting

TO: Elena Kagan (KAGAN_E) (WHO)

READ:29-NOV-1995 08:54:56.36

TEXT:

I received a notice late today (Monday) that says:
Because of the limited availability of the VP's Conference Room,
tomorrow's RWG meeting will be from 10:00-10:45 am. Consequently,
we will start promptly at 10:00 if not a few mintues earlier.
(The meeting is on November 28th - Tuesday.)

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME:27-NOV-1995 18:29:42.75

SUBJECT: Heads Up

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)
READ:28-NOV-1995 09:05:16.25

TO: Elena Kagan (KAGAN_E) (WHO)
READ:29-NOV-1995 08:55:29.13

TO: Barbara C. Chow (CHOW_B) (WHO)
READ:27-NOV-1995 19:45:53.75

CC: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ:27-NOV-1995 19:05:12.72

TEXT:

The Senate Energy Committee and the House timber task force are having a joint hearing Wednesday morning on the Administration's implementation of the timber provisions of the rescissions act. Apparently the hearing will focus primarily, but not exclusively, on timber salvage activities.

As of this moment, we're waiting for draft testimony from USDA/USFS and for clarification as to who the USDA witness will be. Katie and TJ both feel strongly that Lyons, not Thomas, should represent the Administration. TJ is trying to reach Greg Frazier now to make sure things are on track.

We're expecting the committee/task force members to use the event to grill our witnesses on the President's plans for amendments to the timber provisions of the rescissions bill.

I'll be following this closely, as will Ruth Saunders at OMB. If you'd like more info, give me a ring or e-mail and I'll try to get you what you need.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Kathleen M. Wallman (WALLMAN_KM) (WHO)

CREATION DATE/TIME:28-NOV-1995 12:05:41.65

SUBJECT: Shutdown Issues

TO: Elena Kagan (KAGAN_E) (WHO)

READ:29-NOV-1995 08:56:47.82

TEXT:

Elena, welcome back. This is probably one of 8,000 e-mails that you have to read. When you have a moment, could you and I please talk about some issues that Walter Dellinger has highlighted and suggested we think about in the event that there is another possible shutdown in December? I understand that this is more or less in your bailiwick (is this right?) and can fill you in on what's on Walter's mind. Many thanks. KW

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Melinda D. Haskins (HASKINS_M) (OMB)

CREATION DATE/TIME:28-NOV-1995 13:39:09.25

SUBJECT: Clearance of Labor's Testimony on S. 1423

TO: Janet L. Himler (HIMLER_J) (OMB)
READ:28-NOV-1995 13:53:44.78

TO: Barry White (WHITE_B) (OMB)
READ:28-NOV-1995 14:01:41.27

TO: Larry R. Matlack (MATLACK_L) (OMB)
READ:28-NOV-1995 14:13:19.05

TO: Lori R. Schack (SCHACK_L) (OMB)
READ:28-NOV-1995 13:45:05.16

TO: Ellen S. Seidman (SEIDMAN_E) (OPD)
READ:28-NOV-1995 15:00:23.30

TO: Daniel J. Chenok (CHENOK_D) (OMB)
READ:28-NOV-1995 13:50:44.21

TO: Elena Kagan (KAGAN_E) (WHO)
READ:29-NOV-1995 09:49:28.09

TO: Robert G. Damus (DAMUS_R) (OMB)
READ:28-NOV-1995 14:47:38.41

TO: Richard J. Turman (TURMAN_R) (OMB)
READ:28-NOV-1995 20:22:05.85

TO: Lydia Muniz (MUNIZ_L) (OMB)
READ:28-NOV-1995 14:01:37.41

TO: Lisa Kountoupes (KOUNTOUPES_L) (OMB)
READ:28-NOV-1995 14:15:26.01

TO: Charles S. Konigsberg (KONIGSBERG_C) (OMB)
READ:28-NOV-1995 13:40:46.46

TO: Jennifer M. O'Connor (OCONNOR_J) (WHO)
READ:28-NOV-1995 13:40:33.72

TO: Jeremy D. Benami (BENAMI_J) (WHO)
READ:28-NOV-1995 14:58:48.50

TO: Michael T. Schmidt (SCHMIDT_MT) (OPD)
READ:28-NOV-1995 14:20:36.78

TO: Michael Waldman (WALDMAN_M) (OPD)
READ:28-NOV-1995 14:08:27.95

TO: Arthur W. Stigile (STIGILE_A) (OMB)
READ:28-NOV-1995 17:31:16.09

CC: James C. Murr (MURR_J) (OMB)

READ:28-NOV-1995 14:00:01.66

CC: Janet R. Forsgren

(FORSGREN_J) (OMB)

READ:28-NOV-1995 14:25:52.47

TEXT:

You should be receiving a copy of the Department of Labor's proposed testimony before the Senate Labor and Human Resources Committee on S. 1423, The Occupational Safety and Health Reform Act (Kassebaum). The testimony is scheduled to be delivered by Joseph Dear tomorrow morning. As a result, we are on a tight deadline for clearance. Please review Dear's testimony and provide comments to me no later than 4:00 pm today. Thank you.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME:29-NOV-1995 11:26:56.08

SUBJECT: The memo you requested

TO: Elena Kagan (KAGAN_E) (WHO)

READ:29-NOV-1995 11:34:15.75

TEXT:

\d

PRINTER FONT 12_POINT_ROMAN

MEMORANDUM FOR KATIE MCGINTY AND T.J. GLAUTHIER

CC: SHELLEY FIDLER

RUTH SAUNDERS

JANET MINKLER

FR: TOM JENSEN

SUBJECT: OPTIONS FOR ADMINISTRATIVE ACTIONS TO ENCOURAGE

ADOPTION OF AMENDMENTS TO LOGGING PROVISIONS OF

RESCISSIONS ACT

As you requested, the following is a brief description of the principal options the Administration may wish to consider using to encourage the timber industry and some in Congress to accept the Administration's proposed amendments to the rescissions act. OMB and CEQ staff are collecting additional information about these measures in order to identify leverage points with greater precision.

We should discuss how the Administration might signal its intent to pursue these options so as to build momentum for our legislative efforts without unnecessarily antagonizing any significant parties.

Suspension or reconsideration of Administration efforts to help timber land owners comply with the Endangered Species Act
The Administration has made significant efforts to use discretionary authorities available under the Endangered Species Act (ESA) to help non

-federal Northwest timber land owners comply with ESA

-mandated protections for the northern spotted owl and marbled murrelet.

We could suspend these efforts or signal our intent to reconsider existing arrangements.

The Administration's initiatives, referred to generally as the "4(d) rule" and "habitat conservation plans," have benefitted or, if pending negotiations are completed, will benefit several of the largest private timber companies in the Northwest. State forests in Oregon and Washington (and the private companies who benefit from the forest products harvested from those lands) also have used or plan to take advantage of our ESA

-related initiatives. Suspension of Administration efforts in these areas would be a source of great concern to those timber companies, some members of congress, and to the governors and legislatures

of Oregon and Washington. It is noteworthy that the timber

companies who have benefited from the Administration initiatives in this area do not appear to be direct beneficiaries of the old growth provisions of the rescissions act, and thus may be more open to new legislation.

Suspension or delay in implementation of timber salvage program
The Administration has broad discretion over the pace and scope of the timber salvage programs operated by the Forest Service and Bureau of Land Management. The Administration has, as a matter of policy, set a priority on moving aggressively to release salvage sales on forests around the country. The Administration's policy could be changed in ways that would slow the salvage program. Depending on measures taken, this could affect the interests of timber companies and members of congress from around the country, most of whom do not benefit from the old growth provisions of the rescissions act. These parties, too, could be open to new legislation.

Suspension of timber sale program under Northwest Forest Plan

The Administration has discretion over the pace and scope of timber sales under the Northwest Forest Plan. As a matter of policy, the Administration has placed a high priority on reaching an average annual sale quantity of 1.1 billion board feet, although specific sale or harvest levels are not established under the plan. The rescissions act requires the Administration to move expeditiously to release sales under the plan, but does not set specific targets.

The Administration could change current policy in ways that would slow or suspend release of sales under the Forest Plan. Many (probably all) of the timber interests who benefit from the old growth provisions of the rescissions act expect also to benefit from timber sales under the Forest Plan.

Other measures

The federal government regulates the timber industry in a variety of ways, such as highway transportation, worker safety, helicopter logging (noise, aircraft safety), and import and export. We have not explored these regulatory regimes to determine the scope of administrative discretion available or the nexus to rescissions act logging.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Ingrid M. Schroeder (SCHROEDER_I) (OMB)

CREATION DATE/TIME:29-NOV-1995 12:51:53.69

SUBJECT: Conference Report on H.R. 1058

TO: William F. Wiggins (WIGGINS_W) (OMB)
READ:29-NOV-1995 13:29:21.93

TO: Ellen S. Seidman (SEIDMAN_E) (OPD)
READ:29-NOV-1995 12:54:36.46

TO: Elena Kagan (KAGAN_E) (WHO)
READ:29-NOV-1995 12:52:53.80

TO: David J. Haun (HAUN_D) (OMB)
READ:29-NOV-1995 13:15:51.41

TO: Ellen J. Balis (BALIS_E) (OMB)
READ:29-NOV-1995 15:11:03.05

TO: Jefferson B. Hill (HILL_J) (OMB)
READ:29-NOV-1995 13:11:39.39

TO: Daniel Tate (TATE_D) (WHO)
READ: 1-DEC-1995 08:35:45.67

CC: Edward Brigham (BRIGHAM_E) (OMB)
READ:29-NOV-1995 14:16:16.17

CC: James J. Jukes (JUKES_J) (OMB)
READ:29-NOV-1995 13:11:09.27

TEXT:

Last night H.R. 1058 was reported from conference. The conference bill language is in the 11/28/95 Congressional Record on pages H13692 - H13705.

This bill could be taken up at any time in the House and Senate. If you do not have access to the Congressional Record please let me know and I will make you a copy of the bill language.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: James Castello (CASTELLO_J) (WHO)

CREATION DATE/TIME:29-NOV-1995 13:13:21.64

SUBJECT: Monday Meeting

TO: Elena Kagan (KAGAN_E) (WHO)

READ:29-NOV-1995 13:15:51.87

TEXT:

I believe Odetta has already told you about this meeting, but just as a reminder....

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE:29-NOV-1995 12:58:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Barbara D. Woolley

ATT SUBJECT: Meeting with Choice Working Group

ATT TO: Jeremy D. Benami (BENAMI_J)

ATT TO: Deborah L. Fine (FINE_D)

ATT TO: Nancy-Ann E. Min (MIN_N)

ATT TO: James Castello (CASTELLO_J)

ATT TO: Barbara C. Chow (CHOW_B)

ATT TO: Martha Foley (FOLEY_M)

ATT TO: Janet Murguia (MURGUIA_J)

ATT CC: Betsy Myers (MYERS_B)

ATT CC: Ruby G. Moy (MOY_R)

TEXT:

A meeting has been set up with 17 members of the Choice Coalition for Monday, December 4, 1995, Room 180, OEOP, 11:00 am - 12:00 noon. Participating in the meeting will be Ann Lewis, Jack Quinn, and Alexis Herman. The purpose of the meeting is to discuss the broad issue of choice--from the budget perspective to the constitutionality of third trimester legislation.

If third trimester legislation comes up in the Senate on Monday we will move the meeting.

Please let me know if you cannot make the meeting at 62155.

===== END ATTACHMENT 1 =====

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. email	James Castello to Elena Kagan. Subject: A's for Q's [partial] (1 page)	11/29/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO ([Kagan])
OA/Box Number: 500000

FOLDER TITLE:

[11/8/1995 - 12/7/1995]

2009-1006-F
ke712

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: James Castello (CASTELLO_J) (WHO)

CREATION DATE/TIME:29-NOV-1995 13:30:37.14

SUBJECT: A's for Q's

TO: Elena Kagan (KAGAN_E) (WHO)

READ:29-NOV-1995 13:33:55.78

TEXT:

1. Walter's testimony was filed with the Committee on Monday, in a modified form. A copy is on its way to you.
2. I'm in a spacious attic, room 566.

P6/(b)(6)

[003]

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME:29-NOV-1995 13:49:50.48

SUBJECT: RE: timber

TO: Elena Kagan (KAGAN_E) (WHO)

READ:29-NOV-1995 13:53:40.84

CC: T J Glauthier (GLAUTHIER_T) (OMB)

READ:29-NOV-1995 14:24:12.17

TEXT:

I would be available at 5:00, and am happy to meet with you. I'd like to include Katie, if possible. She's got strong views on this matter.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Alice E. Shuffield (SHUFFIELD_A) (OMB)

CREATION DATE/TIME:29-NOV-1995 14:11:39.62

SUBJECT: RE: timber meeting

TO: Elena Kagan (KAGAN_E) (WHO)

READ:29-NOV-1995 14:14:54.69

TEXT:

Elena, T.J. will be in a meeting until 5:00, but he could do it
AT 5. Would that work for the rest of the group?

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME:29-NOV-1995 15:22:42.88

SUBJECT: RE: timber meeting

TO: Elena Kagan (KAGAN_E) (WHO)

READ:29-NOV-1995 15:29:01.79

CC: Jennifer M. O'Connor (OCONNOR_J) (WHO)

READ:29-NOV-1995 15:47:30.27

TEXT:

That's OK with me, but I wonder whether it might make sense to invite one of TJ's marching hordes, perhaps Mark Weatherly or Ruth Saunders? Not politicals, of course, but they have been involved in discussions on this topic and TJ looks to them for advice.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. email	Mail Link Monitor to Elena Kagan. Subject: Confirmation [partial] (1 page)	11/29/1995	P6/b(6), b(7)(C), b(7)(E), b(7)(F)

COLLECTION:

Clinton Presidential Records
 Automated Records Management System (Email)
 WHO ([Kagan])
 OA/Box Number: 500000

FOLDER TITLE:

[11/8/1995 - 12/7/1995]

2009-1006-F
ke712

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (WAVES RECEIPT)

CREATOR: Mail Link Monitor (MAILMGT) (SYS)

CREATION DATE/TIME:29-NOV-1995 18:03:03.07

SUBJECT: CONFIRMATION: APPT. REQUEST FOR KAGAN, ELENA

TO: Elena Kagan (KAGAN_E) (WHO)

READ:29-NOV-1995 18:10:21.11

TEXT:

FROM: WAVES OPERATIONS CENTER - ACO:
Date: 11-29-1995
Time: 17:55:37

P6/(b)(6), (b)(7)(c), (b)(7)(e), (b)(7)(f)

[004]

This message serves as confirmation of an appointment for the visitors listed below.

Appointment With: KAGAN, ELENA
Appointment Date: 11/30/95
Appointment Time: 9:00:00 AM
Appointment Room: 125
Appointment Building: OEOB
Appointment Requested by: KAGAN ELENA
Phone Number of Requestor: 67594

Comments:

WAVES APPOINTMENT NUMBER: U36925

If you have any questions regarding this appointment, please call the WAVES Center at 456-6742 and have the appointment number listed above available to the Access Control Officer answering your call.

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 1

TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 1

SCHIFFER, LOIS

P6/(b)(6)

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Charles S. Konigsberg (KONIGSBERG_C) (OMB)

CREATION DATE/TIME: 6-DEC-1995 19:41:42.24

SUBJECT: SENDING AGAIN....

TO: Charles S. Konigsberg (KONIGSBERG_C) (OMB)
READ: 6-DEC-1995 19:50:36.73

TO: Charles E. Kieffer (KIEFFER_C) (OMB)
READ: 6-DEC-1995 19:43:55.80

TO: Lisa Kountoupes (KOUNTOUPES_L) (OMB)
READ: 6-DEC-1995 21:39:07.37

TO: Robert G. Damus (DAMUS_R) (OMB)
READ: 7-DEC-1995 08:24:50.57

TO: Joseph Minarik (MINARIK_J) (OMB)
READ: 7-DEC-1995 08:27:48.00

TO: Barry B. Anderson (ANDERSON_B) (OMB)
READ: 6-DEC-1995 21:44:31.23

TO: James J. Jukes (JUKES_J) (OMB)
READ: 6-DEC-1995 19:54:47.97

TO: Jill M. Blickstein (BLICKSTEIN_J) (OMB)
READ: 7-DEC-1995 15:46:21.60

TO: James C. Murr (MURR_J) (OMB)
READ: 6-DEC-1995 19:42:32.26

TO: Jacob J. Lew (LEW_J) (OMB)
READ:NOT READ

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 7-DEC-1995 08:52:41.39

TO: Patrick J. Griffin (GRIFFIN_P) (WHO)
READ:NOT READ

TO: Barbara C. Chow (CHOW_B) (WHO)
READ: 7-DEC-1995 09:10:37.38

TO: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)
READ: 7-DEC-1995 10:10:24.54

TO: Laura D. Tyson (TYSON_L) Autoforward to: Thomas O'Donnel
READ:NOT READ

TO: John C. Angell (ANGELL_J) (WHO)
READ: 6-DEC-1995 19:59:40.13

TO: Martha Foley (FOLEY_M) (WHO)
READ: 6-DEC-1995 21:11:56.18

TO: Robert E. Litan (LITAN_R) (OMB)

READ: 6-DEC-1995 21:06:03.68

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ: 6-DEC-1995 23:10:06.52

TO: Gordon Adams (ADAMS_G) (OMB)
READ: 7-DEC-1995 14:41:08.54

TO: Kenneth S. Apfel (APFEL_K) (OMB)
READ: 6-DEC-1995 19:44:41.95

TO: Nancy-Ann E. Min (MIN_N) (OMB)
READ: 6-DEC-1995 20:08:41.41

TO: Stacey L. Rubin (RUBIN_S) (WHO)
READ: 6-DEC-1995 20:45:03.19

TO: Dena B. Weinstein (WEINSTEIN_D) (WHO)
READ: 6-DEC-1995 19:53:02.43

TEXT:

===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 6-DEC-1995 18:52:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Charles S. Konigsberg

ATT SUBJECT: ITEM VETO

ATT TO: Charles S. Konigsberg (KONIGSBERG_C)

ATT TO: Charles E. Kieffer (KIEFFER_C)

ATT TO: Lisa Kountoupes (KOUNTOUPES_L)

ATT TO: Robert G. Damus (DAMUS_R)

ATT TO: Joseph Minarik (MINARIK_J)

ATT TO: Barry B. Anderson (ANDERSON_B)

ATT TO: James J. Jukes (JUKES_J)

ATT TO: Jill M. Blickstein (BLICKSTEIN_J)

ATT TO: James C. Murr (MURR_J)

ATT TO: Jacob J. Lew (LEW_J)

ATT TO: Elena Kagan (KAGAN_E)

ATT TO: Patrick J. Griffin (GRIFFIN_P)

ATT TO: Barbara C. Chow (CHOW_B)

ATT TO: Paul J. Weinstein, Jr (WEINSTEIN_P)

ATT TO: Laura D. Tyson (TYSON_L)

ATT TO: John C. Angell (ANGELL_J)
ATT TO: Martha Foley (FOLEY_M)
ATT TO: Charles S. Konigsberg (KONIGSBERG_C)
ATT TO: Robert E. Litan (LITAN_R)
ATT TO: T J Glauthier (GLAUTHIER_T)
ATT TO: Gordon Adams (ADAMS_G)
ATT TO: Kenneth S. Apfel (APFEL_K)
ATT TO: Nancy-Ann E. Min (MIN_N)
ATT CC: Stacey L. Rubin (RUBIN_S)
ATT CC: Dena B. Weinstein (WEINSTEIN_D)

TEXT:

Attached are the informal line-item veto comments I hope to take to the Senate late on Thursday. Senate staff are this week preparing a counter-offer to the House item veto proposal. Our best opportunity to affect the legislation is to give our comments -- this week -- to Senate staff who are preparing the counter-offer. Several key staffers have indicated an interest in our substantive comments. Note that the comments are NOT labeled as Administration comments. Please let me know by 3pm Thursday if you have any additional comments. (This has been vetted by Treasury, DOJ, OMB, DPC, AND WH/COUNSEL.) I know that everyone is very busy right now, but this is our best opportunity to affect the process. (Since this is not a formal conference letter, we can certainly communicate additional comments later on.) Thanks.

===== END ATTACHMENT 1 =====

===== ATTACHMENT 2 =====

ATT CREATION TIME/DATE: 6-DEC-1995 18:52:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Charles S. Konigsberg

TEXT:

WPCd.

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□Summary of comments on House item veto offer #1□:

1. Provide a special rule for FY 1996 appropriations so that amounts may be rescinded in bills enacted prior to enactment of lineitem veto authority.
2. Drop the Senate's mandatory "lockbox" language; the language is technically unclear and could impair the ability to pay for necessary supplementals.
3. In order to make the application to tax benefits more workable and effective, use the more generic definition of targeted tax benefit recommended in the attachment.
4. Constitutional concern: In applying the authority to direct spending and taxes, use "suspend" instead of "veto," and include language explaining the effect of suspension.
5. Constitutional concern: giving JCT authority to determine targeted tax benefits raises Chadha concerns.
6. In applying the authority to direct spending, use the terminology "new direct spending."
7. The language defining "item" is unnecessary and confusing.
8. Drop the Senate provision prohibiting the inclusion of nonemergency items in an emergency bill.
9. Add conforming amendments to the BEA to clarify that OMB discretionary spending reports and PAYGO reports, required under current law to be issued 5 days after enactment of legislation, need to be adjusted following a rescission of discretionary appropriations or suspension of new direct spending or targeted tax benefits.
10. Enhance the ability of the Administration to review carefully all tax and spending provisions by increasing the window for transmittal of special messages from 10 days to 20 days.
11. Delete the 3-judge court judicial review mechanism but retain the requirement for expedited consideration (considerable litigation experience has shown that 3-judge courts are often inefficient and cumbersome and can actually cause co

nsiderable
delay).

12. Include a severability provision in the legislation.

%,**□

Comments on the House Offer:

□□

□? □□ HOUSE OFFER: Include new direct spending□□.□

XThe attached legislative language reflects two technical corrections. First, the authority should be applied to "new direct spending" rather than "any item of direct spending."

The legislative draft defines "item of direct spending" as "any section that increases direct spending." This definition is problematic because direct spending is often the result of the interactive effects of many provisions and cannot be isolated in a section or sections of a bill. It is therefore more workable to permit the President simply to identify and suspend "new direct spending." (#

XSecond, the Department of Justice continues to urge, for constitutional reasons, that the bill use the term "suspend" in lieu of "veto". The Presentment Clause of the Constitution provides that the President only can exercise his "veto" power before a provision becomes law, i.e. when a bill is presented for approval or disapproval whereas this legislation which calls for a "veto" after a bill is signed. By contrast, the Supreme Court has long upheld the constitutionality of provisions that delegate to the President the power to suspend the operation of particular laws. This alternative approach is reflected in the attached language. (#

□?p□□ HOUSE OFFER: Use JCT approved compromise language on new targeted tax benefits.□

XThe Justice Department continues to urge that the bill use the term "suspend" in lieu of "veto" (for the reasons described above); and the Treasury Department urges that a provision be added to authorize the IRS to take enforcement acti

on against
 individuals or entities seeking to use a targeted tax benefit
 when t
 hat benefit has been suspended. Language reflecting
 these suggestions is set f
 orth in the attachment. (#

XThe House offer would define targeted tax benefit as "any
 revenue losing provis
 ion that provides a federal income tax
 deduction, credit, exclusion or preferen
 ce to 100 or fewer
 beneficiaries" with several exceptions; the definition also
 includes transition rules that provide special treatment to 5
 or fewer taxpaye
 rs, with exceptions. (#

XThe Treasury Department notes that it will be difficult, if
 not impossible for
 anyone, including JCT, to determine the
 number of persons affected by any part
 icular tax provision.
 This test requires too much precision and is too easy to
 avoid
 or manipulate in the drafting process and by taxpayers. It
 creates an i
 ncentive for tax benefit provisions to be drafted
 too broadly. In addition, it
 provides no time limit within 0*, **which this "100 or fewer" standard must be m
 et. (#

XA definition of targeted tax benefit closer to the Senate
 definition is prefer
 able i.e., causing a revenue loss and
 "having the practical effect of providin
 g more favorable tax
 treatment to a particular taxpayer or limited group of
 tax
 payers when compared with other similarly situated
 taxpayers." Language to acc
 omplish this is set forth in the
 attachment. (#

XIn addition, the Justice Department notes that the language of
 the House offer
 presents a constitutional problem. The JCT
 determinations of what is a "targe
 ted tax benefit" would
 apparently not be incorporated into bills. As a result,
 the
 scope of the President's "veto" authority would be established
 by JCT alon
 e. In short, law would be made by a committee of
 Congress in a report, not by
 Congress as a whole in
 legislation. This would appear to violate the "[e]xplic
 it and
 unambiguous provisions" of the Constitution that prescribe "a
 single, fi

nely wrought and exhaustively considered, procedure," by which laws are to be made: bicameral passage by both Houses of Congress followed by presentment to the President for his approval. *INS v. Chadha*, 462 U.S. 919, 945 (1983). This problem is remedied in the attached legislative draft which would give the President authority to determine when an item is a targeted tax benefit. However, even if this determination is to be made by the Congress it would, at a minimum, have to be made through the normal legislative process not by a committee of Congress acting unilaterally. (#

HOUSE OFFER: Use Senate definition of "item" (including specific exceptions for limitations and reductions in BA) unnumbered paragraph numbered section allocation or suballocation within an unnumbered paragraph or numbered section

This proposal appears to be unnecessary and problematic. It was necessary as part of the Senate's separate enrollment legislation to very carefully identify "items" which were to be separately enrolled by congressional clerks. However, no such necessity exists under the House enhanced rescission legislation, since the President would be sending detailed messages to Congress identifying amounts of budget authority being rescinded, as well as new direct spending and targeted tax benefits being suspended. (#

Moreover, the Senate definition is problematic. "Allocation or suballocation within an unnumbered paragraph or numbered section" is unclear. (#

HOUSE OFFER: Accept Senate lockbox language.

The Senate approach would require the President to reduce the statutory discretionary spending caps to reflect rescissions of discretionary budget authority and to reduce PAYGO balances under the Budget Enforcement Act to reflect suspended direct spending or targeted tax benefits. This proposal is unclear and unworkable. (#

Technical concern: The bill language is unclear on two

counts. First, it requires a reduction in discretionary caps "by the amount by which the Act would have increased the deficit...." Since the rescission authority is applied to items of discretionary spending, what does it mean to refer to the amount by which "the Act" increases the deficit? Second, since the amount of the cap reduction is tied to a deficit calculation, does this mean that only the outlay caps are to be affected?#(#

XPolicy concern: With regard to discretionary spending a mandatory cap reduction would make it very difficult for Congress to provide necessary supplemental appropriations later in the year (as it did this year in response to the Oklahoma City bombing and the Northridge earthquake). Or, it could have the perverse effect of encouraging the increased use of emergency designations. (#
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XThe language of the Housepassed bill, which authorizes the President to propose reductions in the discretionary caps without making the reductions automatic, is preferable. (#

XIn addition, since the caps on total discretionary spending are carefully negotiated as part of multiyear budget plans, serious thought should be given as to whether it makes sense for an automatic budget mechanism to be changing the caps on an ad hoc basis. (#

XWith regard to the mandatory reductions in PAYGO balances, the House conferees are apparently proposing that any amounts saved by the President by suspending new direct spending or targeted tax benefits should not be added back to the PAYGO balances, and would thereby not be available to offset other legislation. However, this is contrary to the payasyougo concept of the Budget Enforcement Act, which has operated effectively, now, for 5 years. If mandatory funds or revenues are saved by reason of suspending tax benefits or new direct spending, it would be consistent with the BEA for those savings to be credited to the PAY

GO scorecard to be available
as offsets for other legislation. (#

□?§□□ HOUSE OFFER: Accept Senate emergency spending point of order,
□?%□with a
majority waiver requirement.□

XThis refers to the Senate provision prohibiting the inclusion
of nonemergency
items in an emergency bill (except for
rescissions and reductions to pay for th
e emergency
provisions) and providing a point of order against legislation
that
includes such items. This would impair an0*,**Administration's ability to dev
elop appropriations packages
which include both supplemental and emergency prov
isions, as
was the case in the FY 1995 supplemental/rescission bill. (#

□□

□?□□Additional Comments□:!!U

In addition to the issues raised in the House conferees' proposal
to the Senate
, the following changes to the Housepassed bill are
recommended (and are reflec
ted in the attached legislative
language):

1. Enhance the ability of the Administration to review carefully
all tax and s
pending provisions by increasing the window for
transmittal of special messages
from 10 days to 20 days.
2. Include a severability provision in the legislation.
3. Delete the 3judge court judicial review mechanism but retain
the requiremen
t for expedited consideration (considerable
litigation experience has shown tha
t 3judge courts are often
inefficient and cumbersome and can actually cause con
siderable
delay).
4. Provide a special rule for FY 1996 appropriations so that
amounts may be re
scinded in bills enacted prior to enactment of
lineitem veto authority (similar
to the Housepassed provision for
FY 1995 appropriations). Provide twenty days
following enactment
for such authority to be exercised.
5. Make conforming changes to the Budget Enforcement Act to clarify
that OMB di

cretionary spending reports and PAYGO reports, required under current law to be issued 5 days after enactment of legislation, need to be adjusted following a rescission of discretionary appropriations or suspension of new direct spending or targeted tax benefits. This is reflected in the attached language.

,**Recommended amendments to House Offer Number 1 Regarding S. 4
(Line
item veto):

(Following is the legislative language proposed by the House conferees; proposed changes are indicated with linetype and boldface.)

#d6X`70e#
104TH CONGRESS
1ST SESSION

S. 4

=====

AN ACT

An Act to give the President item veto authority respecting appropriations,

increases in new direct spending, and tax benefits.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Line Item Veto Act of 1995".

SEC. 2. LINE ITEM VETO AUTHORITY.

(a) IN GENERAL.--Notwithstanding the provisions of part B of title X of The Congressional Budget and Impoundment Control Act of 1974, and subject to the provisions of this section, the President may rescind in whole or in part any dollar amount of any item of

discretionary budget authority provided in an appropriation act, veto

suspend any item of new direct spending, or veto suspend any targeted tax

ben

efit which is subject to the terms of this Act if the President

(1) determines that--

□s5F□ (A) such rescission or

item veto

□suspension□ would help red

uce

the Federal budget deficit;

□s5□ (B) such rescission or

item veto

□suspension□ will not impair

any essential Government functions; and

□s5□ (C) such rescission or

item veto

□suspension□ will not harm t

he

national interest; and

(2) notifies the Congress of such rescission or

item veto

□s5□□suspen

sion□ by a special message not later than

ten

□twenty□ calendar days

(not inc

luding Sundays) after the date of enactment of an appropriation or

authorizatio

n Act providing such budget authority or a revenue or

□s5□

reconciliation

□oth

er□ Act containing a targeted tax benefit □or new direct

□s5x□spending□.

□s5 □ (b) DEFICIT REDUCTION.--□In each special message, the President may

□s

4o!□also propose to reduce the □□appropriate discretionary spending limit set

□

s4"□forth in section 601(a)(2) □□of the Congressional Budget Act of 1974 by an

□s4"□amount that does not □□exceed the total amount of discretionary budget

□s5

d#□authority rescinded by □□that message.□

(1) IN GENERAL. Not later than 45 days of continuous session

after the Presid

ent rescinds an item in an appropriations Act or vetoes an

item in an authoriza

tion, revenue, or reconciliation Act, the President

shall

(A) with respect to appropriations Acts, reduce the

discretionary spending limits under section 601 of the

Congressional Budget Act of 1974 for the budget year and each

outyear by the amount by which the Act would have increased

the deficit in each respective year;

),**

(B) with respect to a v
eto of direct spending or of a targeted tax

benefit, reduce the balances
for the budget year and each outyear

under section 252(b) of the Bal
anced Budget and Emergency Deficit

Control Act of 1985 by the amount
by which the Act would have

increased the deficit in each respect
ive year.

(2) EXCEPTIONS.--

(A) This subsection shall not apply if the rescinded item in an

appropriation Act or the vetoed item in an authorization, revenue,

or reconciliation Act becomes law, over the objections of the

Pre
sident, before the President orders the reduction required by

paragr
aph (1) (A) or (1) (B).

(B) If the rescinded item in an appropriation Act or the vetoed

item in an authorization, revenue, or reconciliation Act becomes law

ov
er the objections of the President, after the President has ordered

the r

eductions required by paragraph (1) (A) or (1) (B), then the

Presiden

t shall restore the discretionary spending limits under section

601 of th

e Congressional Budget Act of 1974 or the balances under

section 252(

b) of the Balanced Budget and Emergency Deficit Control Act

of 1985 to re

flect the limits and balances existing before the

reduction ordere

d by the President in compliance with paragraph (1).

(c) SEPARATE MESSAGES.--(1) The President shall submit a separate special message for each appropriation Act, for each authorization Act, and for

each revenue or reconciliation Act under this section.

(2) In the case of any such special message regarding an appropriation Act

that message shall specify

(A) the amount of budget authority which he proposes to be

rescinded,

the direct spending to be suspended, or the

targeted tax benefit to be suspended;

(B) any account, department, or establishment of the

Government to which such budget authority is available for

obligation, or which has jurisdiction over the direct spending or

targeted tax benefit affected, and the specific project or

governmental functions involved;

(C) the reasons why the budget authority should be rescinded, or

the direct spending or targeted tax benefit should be suspended;

(D) to the maximum extent practicable, the estimated fiscal,

economic, and budgetary effect of the proposed rescission or

suspension; and

(E) all facts, circumstances, and considerations relating to or

bearing upon the proposed rescission or suspension and the decision to

effect the proposed rescission or suspension and to the maximum extent

practicable, the estimated effect of the proposed rescission or

§ 501 suspension upon the objects, purposes, and programs for which the
 § 502 budget authority, direct spending, or tax benefit is provided.

§ 503 (d) SPECIAL RULE FOR FISCAL YEAR 1995 and FISCAL YEAR 1996
 APPROPRIATION MEASURES.--

Notwithstanding subsection (a)(2), in the case of any unobligated

discretionary budget authority provided by any

§ 504 appropriation Act for fiscal

year 1995 and for fiscal year 1996, the

President may rescind all or part

of that discretionary budget authority

under the terms of this Act if the President

notifies the Congress of such

§ 505 rescission by a special message not later than

ten

§ 506 twenty calendar days

(not including Sundays) after the date of

enactment of this Act.

§ 507 (e) Amendments to the Budget Enforcement Act.

§ 508 (1) Section 251(a)(7) of the Balanced Budget and Emergency Deficit

Control

§ 509 Act of 1985 is amended by inserting in the second sentence,

the

§ 510 following "within 5 calendar days after the enactment of any

§ 511 discretionary appropriations," the following: "or following a

special

§ 512 message rescinding any amount of discretionary spending

§ 513

§ 514 pursuant to the Line Item Veto Act of 1995 or after a

disapproval

§ 515 bill relating thereto is enacted."

§ 516 (2) Section 252(d) of the Balanced Budget and Emergency Deficit Act, *

§ 517 Control Act of 1985 is amended by inserting in the second sentence,

§ 518 following "within 5 calendar days after the enactment of any

§ 519 direct spending or receipts legislation enacted after the date of

enactment

§ 520 of this section," the following: "or following a

§ 521 special message suspending any new direct spending or targeted

tax

§ 522 benefit pursuant to the Line Item Veto Act of 1995 or after

a

§ 523 disapproval bill relating thereto is enacted."

§ 524

§ 525

§ 526 SEC. 3. LINE ITEM VETO EFFECTIVE UNLESS DISAPPROVED.

§ 527 (a)(1) Discretionary Budget Authority. Any amount of discretionary

budget

§ 528 authority rescinded under this Act as set forth in a special

§ 529 message by the

§ 530 President shall not be made available unless, during the

period described in subsection (b), a disapproval bill making available all or part of the amount rescinded is enacted into law.

§ 5 (2) New Direct Spending and Targeted Tax Benefits.

§ 5 (A) Any provision of law which increases direct spending or provides a targeted tax benefit

§ 5 (B) which has been suspended under this Act, as set forth in a special message by the President, shall take effect only if a disapproval bill restoring that provision is enacted into law during the period described in subsection (b).

§ 5 (C) For purposes of this Act, the suspension of new direct spending or targeted tax benefits shall be deemed to extinguish any legal entitlement to benefits or other rights deriving therefrom.

§ 5 (D) In the case of a suspension of a targeted tax benefit, the Internal Revenue Service is authorized and directed to take appropriate enforcement actions against individuals or entities seeking to use a targeted tax benefit that has been suspended.

§ 5 (E) (b) The period referred to in subsection (a) is--

(1) a congressional review period of twenty calendar days of session, beginning on the first calendar day of session after the date of submission of the special message, during which Congress must complete action on the disapproval bill and present such bill to the President for approval or disapproval;

(2) after the period provided in paragraph (1), an additional ten days (not including Sundays) during which the President may exercise his authority to sign or veto the disapproval bill; and

(3) if the President vetoes the disapproval bill during the period provided in paragraph (2), an additional five calendar days of session after the date of the veto is provided for congressional review.

§ 5 (F) (c) If a special message is transmitted by the President under this Act and the last session of the Congress adjourns sine die before the expiration of the period described in subsection (b), the

Internal Revenue Service is authorized and directed to take appropriate enforcement actions against individuals or entities seeking to use a targeted tax benefit that has been suspended.

§ 5 (G) (b) The period referred to in subsection (a) is--

(1) a congressional review period of twenty calendar days of session, beginning on the first calendar day of session after the date of submission of the special message, during which Congress must complete action on the disapproval bill and present such bill to the President for approval or disapproval;

(2) after the period provided in paragraph (1), an additional ten days (not including Sundays) during which the President may exercise his authority to sign or veto the disapproval bill; and

(3) if the President vetoes the disapproval bill during the period provided in paragraph (2), an additional five calendar days of session after the date of the veto is provided for congressional review.

§ 5 (H) (c) If a special message is transmitted by the President under this Act and the last session of the Congress adjourns sine die before the expiration of the period described in subsection (b), the

Internal Revenue Service is authorized and directed to take appropriate enforcement actions against individuals or entities seeking to use a targeted tax benefit that has been suspended.

□s5 □rescission or
veto

□suspension□, as the case may be, shall not take effe
ct.

The message shall be deemed to have been retransmitted on the first
calendar day of session in February of the succeeding Congress and the
review p

eriod referred to in subsection (b) (with respect to such message)

□r5P#□shall

run beginning after such first day.] (The House offer displays

□r5#□this para

graph in brackets.]

SEC. 4. DEFINITIONS.

As used in this Act:

(1) The term "item" means

(A) with respect to an appropriation Act

(i) any numbered section, or

(ii) any unnumbered paragraph;

but shall not include a provision which does not appropriate funds,
) ,**

direct the President to expend funds for any specified project, or

create an express or implied obligation to expend funds and shall not

include a provision that

(I) rescinds or cancels existing budget authority;

(II) only limits, conditions, or otherwise restricts

the President's authority to spend otherwise appropriated

funds; or

(III) imposes conditions on an item of appropriation not

involving a positive allocation of funds by explicitly

prohibiting the use of any funds; and

(B) with respect to an authorization, revenue, or

□r5-□

reconciliation Act, any section that increases direct spending or provides a targeted tax benefit.

(2) The term "direct spending" means (A) budget authority provided by law other than appropriation

Acts;

(B) entitlement authority as defined in section 3(9) of the Congressional Budget and Impoundment Control Act of 1974; and

(C) the food stamp program.

(3) (A) Except as otherwise provided in this paragraph, the term "targeted tax benefit" means any revenue losing tax provision which is

identified by the Joint Committee on Taxation (President) as

(i) a provision which provides a Federal tax

deduction, credit, exclusion, or preference to 100 or fewer

beneficiaries,

(a) a particular taxpayer or limited group of taxpayers, or

(ii) a transitional rule or other provision which provides

special treatment for 5 or fewer beneficiaries to a particular taxpayer or limited group of taxpayers, or any portion of a provision that has substantially the same effect.

(B) A provision shall be treated as not described in subparagraph

(A) (i) if the Joint Committee on Taxation (President) determines that (i) all persons engaged in the same type of activity receive

the same treatment under the provision, (ii) all persons owning the same type of property, or issuing

the same type of investment, receive the same treatment under

the provision, or (iii) any difference in the treatment of persons is based

solely on

- (I) in the case of entities, the size or type of the entities involved,
- (II) in the case of individuals, their filing status,
- (III) the amount involved, or
- (IV) a generally available election made by taxpayers.

(C) A provision shall be treated as not described in subparagraph

□s5□ (

A)(ii) if the

Joint Committee on Taxation

□President□ determines that

it

provides for the retention of prior law with respect to all binding

contr

acts in existence on the date of first public notice that a

change in

law is actively being considered by a committee of either

House of Congre

ss, either House of Congress, or a conference

committee.

(D) For purposes of subparagraph (A)

(i) all entities which are related shall be treated as 1

entity;

(ii) all qualified plans of an employer shall be treated as

1 plan;

(iii) all holders of taxexempt bonds which are part of the

same issue shall be counted as 1 beneficiary, and

(iv) shareholders of a corporation, partners in a

partnership, and beneficiaries of a trust or estate, shall not be

treated as beneficiaries if the corporation, partnership, trust,

or estate is treated as a beneficiary.

□s5□

□ (D) For purposes of subparagraph (A), a provision is "revenue□

) ,**□s5□□□ □losing" when the Secretary of the Treasury determines that the

□

□s5□ □provision, when compared to the rest of the bill if the provi

sion were

not included, reduces governmental receipts for any one of the four

following periods--

(1) the first fiscal year for which the most recent budget has been submitted by the President;

(2) the fiscal year immediately preceding the first fiscal year for which the most recent budget has been submitted by the President;

(3) the period comprised of the first fiscal year for which the most recent budget has been submitted by the President and the four immediately succeeding fiscal years; or

(4) the period comprised of the five fiscal years immediately succeeding the period described in paragraph (3).

(4) The term "disapproval bill" means a bill or joint resolution which only disapproves, in whole, rescissions of discretionary budget authority;

only disapproves vetoes

suspensions of increases in new direct spending or of targeted tax benefits in a special message transmitted by the President under this Act and--

(A) which does not have a preamble;

(B) (i) in the case of a special message regarding rescissions, the matter after the enacting clause of which is as follows: "That Congress disapproves each rescission of discretionary budget authority of the President as submitted by the President in a special message on _____", the blank space being filled in with the appropriate date and the public law to which the message relates; and

(ii) in the case of a special message regarding item vetoes of

increases in suspensions of new direct spending, the matter after the enacting clause of which is as follows: "That Congress disapproves each item veto of increases in suspension of new direct spending of the President as submitted by the President in

only disapproves, in whole, rescissions of discretionary budget authority;

only disapproves vetoes

suspensions of increases in

new

direct spending or of targeted tax benefits in a special message

transmitted by the President under this Act and--

(A) which does not have a preamble;

(B) (i) in the case of a special message regarding rescissions, the matter after the enacting clause of which is as follows: "That Congress disapproves each rescission of discretionary budget authority of the President as submitted by the President in a special message on _____", the blank space being filled in with the appropriate date and the public law to which the message relates; and

(ii) in the case of a special message regarding item vetoes of

increases in suspensions of new direct spending, the matter after

the enacting clause of which is as follows: "That Congress

disapproves each

item veto of increases in

suspension of new

direct spending

of the President

as submitted by the President in

a special message on _____", the blank space being filled in with the appropriate date and the public law to which the message relates; and

(iii) in the case of a special message regarding item vetoes

□s52□ suspensions□ of targeted tax benefits□, the matter after the enacting clause of which is as follows: "That Congress disapprove

s □s5□ each item veto

□suspension□ of targeted tax benefits □ of the

President

as submitted by the President in a special message on

_____", the blank space being filled in with the appropriate

□r5w□ date and the public law to which the message relates; □□□□and (C) the title of which is as follows: "A bill disapproving the recommendations submitted by the President on _____", the blank space being filled in with the date of submission of the relevant special message and the public law to which the message relates.

(5) The term "calendar days of session" shall mean only those days on which both Houses of Congress are in session.

(6) The term "appropriation Act" means any general or special appropriation Act, or any Act or joint resolution making supplemental, deficiency, or continuing appropriations.

SEC. 5. CONGRESSIONAL CONSIDERATION OF LINE ITEM VETOES.

(a) TRANSMISSION OF MESSAGES TO HOUSE AND SENATE.--

(1) Each special message transmitted under this Act shall be transmitted to the House of Representatives and the Senate on the same day, and shall be delivered to the Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session. Each) ,** special message so transmitted shall be referred to the appropriate committees of the House of Representatives and the Senate. Each such message shall be printed as a document of each House.

(2) Any special message transmitted under this Act shall be printed in the first issue of the Federal Register published after such transmittal.

(b) INTRODUCTION OF DISAPPROVAL BILLS.--The procedures set forth in subsect

ion (c) shall apply to any disapproval bill introduced in the House of Represen tatives not later than the third calendar day of session

beginning on the day after the date of submission of a special message by the President under section 2.

(c) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.--(1) The committee of the House of Representatives to which a disapproval bill is referred shall report it without amendment, and without recommendation, not later than the seventh calendar day of session after the date of its introduction. If the committee fails to report the bill within that period, it is in order to move that the House discharge the committee from further consideration of the bill. A motion to discharge may be made only by an individual favoring the bill (but only at a time or place designated by the Speaker in the legislative schedule of the day after the calendar day on which the Member offering the motion announces to the House his intention to do so and the form of the motion). The motion is highly privileged. Debate thereon shall be limited to not more than one hour, the time to be divided in the House equally between a proponent and an opponent. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order.

(2) After a disapproval bill is reported or the committee has been discharged from further consideration, it is in order to move that the House resolve in favor of the bill. If the bill is reported by a committee, it shall not be considered in the House until the first calendar day (excluding Saturdays, Sundays, and legal holidays) on which the report of that committee has been available to the Members of the House. All points of order against the bill and against consideration of the bill are waived. The motion is highly privileged. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. During consideration of the bill in the Committee of the Whole, the first reading of the bill shall be dispensed with. General debate shall proceed, shall be confined to the bill, and shall not exceed two hours equally divided and controlled by a proponent and an opponent of the

he bill. One motion to rise shall be in order. No amendment
 to the bill i
 s in order, except any Member may move except from [unclear
 what is inten
 ded here?] the disapproval bill any item or items if
 supported by one-fifth of
 the Members of the Committee of the Whole (a
 quorum being present). At the co
 nclusion of the consideration of the bill
 for amendment, the Committee shall ri
 se and report the bill to the House.
 The previous question shall be considered
 as ordered on the bill and
 amendments thereto to final passage without interven
 ing motion. A motion
 to reconsider the vote on passage of the bill shall not be
 in order.

(3) Appeals from the decisions of the Chair relating to the
 application of the rules of the House of Representatives to the
 procedure relating to a bill described in subsection (b) shall be
 decided without debate.

(4) It shall not be in order to consider more than one bill
 described in subsection (b) or more than one motion to discharge
 described in paragraph (1) with respect to a particular special
 message.),**

(5) Consideration of any disapproval bill under this subsection is
 governed
 by the rules of the House of Representatives except to the extent
 specifically
 provided by the provisions of this Act.

(d) CONSIDERATION IN THE SENATE.--

(1) Any disapproval bill received in the Senate from the House
 s
 hall be considered in the Senate pursuant to the provisions of this
 Act.

(2) Debate in the Senate on any disapproval bill and debatable
 m
 otions and appeals in connection therewith, shall be limited to not
 more t
 han ten hours. The time shall be equally divided between, and
 controlled
 by, the majority leader and the minority leader or their
 designees.

(3) Debate in the Senate on any debatable motions or appeal
 in connection with such bill shall be limited to one hour, to be
 equally divided between, and controlled by the mover and the
 manager of the bill, except that in the event the manager of the
 bill is in favor of any such motion or appeal, the time in
 opposition thereto shall be controlled by the minority leader or
 his designee. Such leaders, or either of them, may, from the
 time under their control on the passage of the bill, allot
 additional time to any Senator during the consideration of any
 debatable motion or appeal.

(4) A motion to further limit debate is not debatable. A
 motion to recommit (except a motion to recommit with
 instructions to report back within a specified number of days
 not to exceed one, not counting any day on which the Senate is

not in session) is not in order.

(e) CONSIDERATION IN CONFERENCE

(1) In the case of any disagreement between the two Houses of Congress with respect to a disapproval bill passed by both Houses, conferees shall all be promptly appointed and a conference promptly convened. If the committee of conference makes and files a report with respect to the bill not later than two calendar days before the expiration of the 20 calendar days of session period set forth in this section for congressional consideration, the conference report on the bill shall be highly privileged for consideration in both Houses until the expiration of the 20day period. Notwithstanding any other rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such 20day period.

(2) Debate in the House of Representatives on the conference report on any disapproval bill shall be limited to not more than one hour equally divided and controlled by a proponent and an opponent. A motion to further limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

(3) The conference report on the disapproval bill shall be highly privileged for consideration in the Senate. Debate in the Senate on any conference report on a disapproval bill shall be limited to no more than 2 hours equally divided and controlled by the majority leader and the minority leader or their designees.

(4) Complete congressional consideration of the disapproval bill and any conference report thereon shall not exceed the expiration of the 20 calendar days of session provided for this purpose as set forth in this section.

(f) POINTS OF ORDER.--

(1) It shall not be in order in the Senate to consider any disapproval bill that relates to any matter other than the rescission

□s5)

□ of budget authority or veto

□suspension□ of the provision of law)

□,** transmitted by the President under this Act.

(2) It shall not be in order in the Senate to consider any amendment to a disapproval bill.

(3) Paragraphs (1) and (2) may be waived or suspended in the Senate only by a vote of three-fifths of the members duly chosen and sworn.

SEC. 6. REPORTS OF THE GENERAL ACCOUNTING OFFICE.

Beginning on January 6, 1997, and at one-year intervals thereafter, the Comptroller General shall submit a report to each House of Congress which provides the following information:

(1) A list of each proposed Presidential rescission of

□s5{□ discretionary budget authority and veto

□suspension□ of an increase

in

□

□s5# □□ □new□ direct spending or of a targeted tax benefit □□submitted through

special messages for the fiscal year ending during the preceding

calendar year, together with their dollar value, and an indication

of whether each rescission of discretionary budget authority or veto

□s5□ □suspension□ of an increase in

□new□ direct spending or of a targeted tax

benefit was accepted or rejected by Congress.

(2) The total number of proposed Presidential rescissions

□s5

□ of discretionary budget authority and vetoes

□suspensions□ of an

□s5^□

increase in

□new□ direct spending or of a targeted tax benefit □□submitted

through special messages for the fiscal year ending during the

preceding calendar year, together with their total dollar value.

(3) The total number of Presidential rescissions of

□s5□ discretionary budget authority or vetoes

□suspensions□ of an increase in

in

§5 new direct spending or of a targeted tax benefit submitted through special messages for the fiscal year ending during the preceding calendar year and approved by Congress, together with their total dollar value.

(4) A list of rescissions of discretionary budget authority or §5

veto

suspensions of an increase in new direct spending or of a

targeted tax benefit initiated by Congress for the fiscal year ending during the preceding calendar year, together with their dollar value,

and an indication of whether each such rescission was accepted or rejected by Congress.

(5) The total number of rescissions of discretionary budget authority or §5

veto

suspensions of an increase in new direct spending or of a

targeted tax benefit initiated and accepted by Congress for the fiscal

year ending during the preceding calendar year, together with their total dollar value.

(6) A summary of the information provided by paragraphs (2), (3) and (5) for each of the ten fiscal years ending before the fiscal year during this calendar year.

SEC. 7. DUTIES OF CONGRESSIONAL COMMITTEES.

(a) IN GENERAL. Any report accompanying a bill or joint resolution or a joint explanatory statement accompanying a conference report in which there is any Federal income tax benefit shall include a determination

whether the report by the Joint Committee on Taxation of whether it contains any targeted tax benefit and an identification of each such benefit.

(b) STATEMENT BY JOINT COMMITTEE ON TAXATION. The Joint Committee on Taxation shall determine whether any bill, joint resolution, or conference report described in subsection (a) contains a targeted tax benefit.

(c) LEGISLATION SUBJECT TO POINT OF ORDER. It shall not be in order in the Senate or the House of Representatives to consider any bill, joint

resolution, or
 conference report that is not in compliance with subsection
 (a).

[(d) CONFORMING AMENDMENT TO THE RULES OF THE HOUSE OF
 REPRESENTATIVES.]

Section 2(1) of rule XI of the Rules of the House of

Representatives is amended
 by redesignating subparagraphs (5), (6), and
 (7) as subparagraphs (6), (7), and
 (8), respectively, and by inserting
 after subparagraph (4) the following new
 subparagraph:

"(5) Each report of a committee that includes any Federal income tax
 benefit shall comply with section 7(a) of the Line Item Veto Act."

SEC. 8. TREATMENT OF EMERGENCY SPENDING.

(a) EMERGENCY APPROPRIATIONS.--Section 251(b)(2)(D)(i) of the
 Balanced Budget and Emergency Deficit Control Act of 1985 is amended
 by adding at the end the following new sentence: "However, OMB shall
 not adjust any discretionary spending limit under this clause for
 any statute that designates appropriations as emergency requirements
 if that statute contains an appropriation for any other matter,
 event, or occurrence, but that statute may contain rescissions of
 budget authority."

(b) EMERGENCY LEGISLATION.--Section 252(e) of the Balanced
 Budget and Emergency Deficit Control Act of 1985 is amended by
 adding at the end the following new sentence: "However, OMB shall
 not designate any such amounts of new budget authority, outlays, or
 receipts as emergency requirements in the report required under
 subsection (d) if that statute contains any other provisions that
 are not so designated, but that statute may contain provisions that
 reduce direct spending."

(c) NEW POINT OF ORDER.--Title IV of the Congressional Budget
 Act of 1974 is amended by adding at the end the following new
 section:

"POINT OF ORDER REGARDING EMERGENCIES

"SEC. 408. It shall not be in order in the House of
 Representatives or the Senate to consider any bill or joint
 resolution, or amendment thereto or conference report thereon,
 containing an emergency designation for purposes of section
 251(b)(2)(D) or 252(e) of the Balanced Budget and Emergency Deficit
 Control Act of 1985 if it also provides an appropriation or direct
 spending for any other item or contains any other matter, unless it
 rescinds budget authority or reduces direct spending, or reduces an amount
 for a designated emergency."

(d) CONFORMING AMENDMENT.--The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the item relating to section 407 the following new item:

"Sec. 408. Point of order regarding emergencies."

SEC. 9. JUDICIAL REVIEW.

(a) EXPEDITED REVIEW.--

(1) Any Member of Congress may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that any provision of this Act violates the Constitution.

(2) A copy of any complaint in an action brought under paragraph (1) shall be promptly delivered to the Secretary of the Senate and the Clerk of the House of Representatives, and each House of Congress shall have the right to intervene in such action.

(3) Any action brought under paragraph (1) shall be heard

and determined by a three-judge court in accordance with section

2284 of title 28, United States Code.

),**

Nothing in this section or in any other law shall infringe upon the right of the House of Representatives to intervene in an action brought under paragraph (1) without the necessity of adopting a resolution to authorize such intervention.

(b) APPEAL TO SUPREME COURT.--Notwithstanding any other provision of law, any order of the United States District Court for the District of Columbia which is issued pursuant to an action brought under paragraph (1) of subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeals shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under paragraph (1) of subsection (a) shall be issued by a single Justice of the Supreme Court.

(c) EXPEDITED CONSIDERATION.It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection

(a).

(d) SEVERABILITY.If any provision of this Act, an amendment made by this A

ct, or the application of such provision or amendment, is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of this Act shall not be affected thereby.

===== END ATTACHMENT 2 =====

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME: 7-DEC-1995 13:25:11.48

SUBJECT: Draft 2 of POTUS letter on S.605

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)
READ: NOT READ

TO: Martha Foley (FOLEY_M) (WHO)
READ: 7-DEC-1995 13:40:31.24

TO: Sally Katzen (KATZEN_S) (OMB)
READ: 7-DEC-1995 16:39:18.44

TO: Tracey E. Thornton (THORNTON_T) (WHO)
READ: 7-DEC-1995 13:33:26.96

TO: Elena Kagan (KAGAN_E) (WHO)
READ: 7-DEC-1995 13:25:30.34

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ: 7-DEC-1995 22:59:34.46

TO: Shelley N. Fidler (FIDLER_S) (CEQ)
READ: 7-DEC-1995 15:15:48.53

TO: Brian J. Johnson (JOHNSON_BJ) (CEQ)
READ: 7-DEC-1995 14:24:07.67

TO: Dinah Bear (BEAR_D) (CEQ)
READ: 7-DEC-1995 13:26:53.97

TO: Carol R. Dennis (DENNIS_C) (OMB)
READ: 7-DEC-1995 13:57:39.37

TO: Michael L. Goad (GOAD_M) (OMB)
READ: 7-DEC-1995 13:25:21.94

CC: Alice E. Shuffield (SHUFFIELD_A) (OMB)
READ: 7-DEC-1995 14:08:29.20

CC: Robert C. Vandermark (VANDERMARK_R) (CEQ)
READ: 7-DEC-1995 13:37:20.61

TEXT:

Attached is a WP 5.2 file with a redrafted version of the POTUS letter on S.605.

This version incorporates edits from Katie and Sally.

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 7-DEC-1995 13:18:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Thomas C. Jensen

TEXT:

Unable to convert OA\$SHARE1213:ZWBJJ5MOA.FGN to ASCII,

Dear Chairman Hatch,

I am advised that the Senate Committee on the Judiciary may begin consideration of S. 605 soon.

I am writing to inform you that I will veto S. 605, or any similar compensation entitlement legislation, that may be presented for my signature.

S. 605 is styled as a measure to protect private property rights. I support this laudible goal, and believe that legitimate property interests should be adequately protected. Indeed, my Administration has undertaken numerous reforms to address specific problems in the administration of federal laws affecting private property.

S. 605, however, does not protect legitimate property rights. At best, the bill creates a spoils system of rewards for the least responsible, most dangerous users and abusers of property. At worst, it is a thinly disguised effort to block implementation and enforcement of existing laws protecting public health, safety, and the environment. In short, S. 605 is not the right way to protect private property.

S. 605 departs from our Constitution and runs counter to more than two centuries of jurisprudence by turning the very notion of citizenship -- that our freedoms go hand-in-hand with our responsibilities to each other and to the community -- on its head. It places the property interests of most Americans *at risk* by threatening the laws that protect our citizens from pollution, dangerous products, and irresponsible behavior

Finally, at the very time we are working to balance the budget and streamline the size of government, S. 605 moves in the opposite direction. It creates new bureaucracies and innumerable opportunities for litigation, and will impose billions of dollars of costs on society.

I remain committed to work with Congress to craft bipartisan legislation that improves those few regulatory arenas where private property interests may be unfairly burdened. My Administration's continuing efforts to reform our regulatory system, and the recent passage of the Safe Drinking Water Act, demonstrate that we can reach common ground solutions to these difficult issues.

Sincerely,

William J. Clinton

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Charles S. Konigsberg (KONIGSBERG_C) (OMB)

CREATION DATE/TIME: 8-DEC-1995 11:23:10.43

SUBJECT: ITEM VETO

TO: Alice M. Rivlin (RIVLIN_A) (OMB)

READ: 8-DEC-1995 16:10:16.33

TO: Charles E. Kieffer (KIEFFER_C) (OMB)

READ: 8-DEC-1995 14:36:59.43

TO: Lisa Kountoupes (KOUNTOUPES_L) (OMB)

READ: 8-DEC-1995 13:23:24.40

TO: Robert G. Damus (DAMUS_R) (OMB)

READ: 8-DEC-1995 11:41:59.34

TO: Joseph Minarik (MINARIK_J) (OMB)

READ: 8-DEC-1995 11:42:28.34

TO: Barry B. Anderson (ANDERSON_B) (OMB)

READ: 8-DEC-1995 11:26:54.62

TO: James J. Jukes (JUKES_J) (OMB)

READ: 8-DEC-1995 11:49:43.13

TO: Jill M. Blickstein (BLICKSTEIN_J) (OMB)

READ: 8-DEC-1995 12:57:19.25

TO: James C. Murr (MURR_J) (OMB)

READ: 8-DEC-1995 11:48:04.81

TO: Jacob J. Lew (LEW_J) (OMB)

READ:NOT READ

TO: Elena Kagan (KAGAN_E) (WHO)

READ: 8-DEC-1995 11:23:45.77

TO: Patrick J. Griffin (GRIFFIN_P) (WHO)

READ:NOT READ

TO: Barbara C. Chow (CHOW_B) (WHO)

READ: 8-DEC-1995 14:18:56.33

TO: Paul J. Weinstein, Jr (WEINSTEIN_P) (OPD)

READ: 8-DEC-1995 14:24:32.14

TO: Laura D. Tyson (TYSON_L) Autoforward to: Thomas O'Donnel

READ: 8-DEC-1995 11:45:06.77

TO: John C. Angell (ANGELL_J) (WHO)

READ: 8-DEC-1995 11:57:14.34

TO: Martha Foley (FOLEY_M) (WHO)

READ: 8-DEC-1995 16:37:34.87

TO: Robert E. Litan (LITAN_R) (OMB)

READ: 8-DEC-1995 14:18:05.04

TO: T J Glauthier (GLAUTHIER_T) (OMB)
READ: 8-DEC-1995 13:27:10.97

TO: Gordon Adams (ADAMS_G) (OMB)
READ: 8-DEC-1995 13:41:41.41

TO: Kenneth S. Apfel (APFEL_K) (OMB)
READ: 8-DEC-1995 11:27:22.31

TO: Nancy-Ann E. Min (MIN_N) (OMB)
READ: 8-DEC-1995 12:01:49.53

TO: Stacey L. Rubin (RUBIN_S) (WHO)
READ: 8-DEC-1995 11:36:39.19

TO: Dena B. Weinstein (WEINSTEIN_D) (WHO)
READ: 8-DEC-1995 11:44:01.28

TO: Chantale Wong (WONG_C) (OMB)
READ: 9-DEC-1995 13:38:44.76

TO: Charles S. Konigsberg (KONIGSBERG_C) (OMB)
READ: 8-DEC-1995 11:23:42.92

TEXT:

Attached are the item veto recommendations I'm delivering this morning to staff for Domenici, Stevens, Exon, and Glenn -- on the understanding that this is for their use as they respond to the House and is NOT intended, at this time, for distribution as an official Administration position. (The idea is that these recommendations have more chance of acceptance by the House if presented to them as part of a Senate counter-offer -- rather than as Administration recommendations in a conference letter.)

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 8-DEC-1995 11:15:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Charles S. Konigsberg

TEXT:

PRINTER FONT 10_POINT_COURIER

TOP ODD

DRAFT -- \d

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Summary of comments on House item veto offer #1:

1. Update the "special rule for fiscal year 1995," so that item veto authority also applies to FY 1996 appropriations.
2. Drop the Senate's mandatory "lockbox" language; the language is technically unclear and could impair the ability to pay for necessary supplementals.
3. In order to make the application to tax benefits more workable and effective, use the more generic definition of targeted tax benefit recommended in the attachment.
4. Constitutional concern: In applying the authority to direct spending and taxes, use "suspend" instead of "veto".
5. Constitutional concern: giving JCT authority to determine targeted tax benefits raises Chadha concerns.

6. In applying the authority to direct spending, use the terminology "new direct spending."

7. The language defining "item" is unnecessary and confusing.

8. Drop the Senate provision prohibiting the inclusion of non

-emergency items
in an emergency bill.

9. Add conforming amendments to the BEA to clarify that OMB discretionary spending reports and PAY

-GO reports, required under current law to be issued 5 days after enactment of legislation, need to be adjusted following a rescission of discretionary appropriations or suspension of new direct spending or targeted tax benefits.

10. Enhance the ability of the Administration to review carefully all tax and spending provisions by increasing the window for transmittal of special messages from 10 days to 20 days.

11. Delete the 3

-judge court judicial review mechanism but retain the requirement for expedited consideration (considerable litigation experience has shown that 3

-judge courts are often inefficient and cumbersome and can actually cause considerable delay).

12. Include a severability provision in the legislation.

TOP EVEN

DRAFT -- \d

Comments on the House Offer:

? HOUSE OFFER: Include new direct spending.

The attached legislative language reflects two technical corrections. First, the authority should be applied to "new direct spending" rather than "any item of direct spending." The legislative draft defines "item of direct spending" as "any section that increases direct spending." This definition is problematic because direct spending is often the result of the interactive effects of many provisions and cannot be isolated in a section or sections of a bill. It is therefore more workable to permit the President simply to identify and suspend "new direct spending."

Second, the Department of Justice continues to urge, for constitutionality reasons, that the bill use the term "suspend" in lieu of "veto". The Presentment Clause of the Constitution provides that the President only can exercise his "veto" power before a provision becomes law, i.e. when a bill is presented for approval or disapproval -- whereas this legislation calls for a "veto" after a bill is signed. By contrast, the Supreme Court has long upheld the constitutionality of provisions that delegate to the President the power to suspend the operation of particular laws. This alternative approach is reflected in the attached language.

? HOUSE OFFER: Use JCT approved compromise language on new targeted tax benefits.

The Justice Department continues to urge that the bill use

the term "suspend" in lieu of "veto" (for the reasons described above); and the Treasury Department urges that a provision be added to authorize the IRS to take enforcement action against individuals or entities seeking to use a targeted tax benefit when that benefit has been suspended. Language reflecting these suggestions is set forth in the attachment.

The House offer would define targeted tax benefit as "any revenue

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-losing provision that provides a federal income tax deduction, credit, exclusion or preference to 100 or fewer beneficiaries" with several exceptions; the definition also includes transition rules that provide special treatment to 5 or fewer taxpayers, with exceptions.

The Treasury Department notes that it will be difficult, if

not impossible for anyone, including JCT, to determine the number of persons affected by any particular tax provision. This test requires too much precision and is too easy to avoid or manipulate in the drafting process and by taxpayers. It creates an incentive for tax benefit provisions to be drafted too broadly. In addition, it provides no time limit within which this "100 or fewer" standard must be met.

A definition of targeted tax benefit closer to the Senate definition is preferable -- i.e., causing a revenue loss and "having the practical effect of providing more favorable tax treatment to a particular taxpayer or limited group of taxpayers when compared with other similarly situated taxpayers." Language to accomplish this is set forth in the attachment.

In addition, the Justice Department notes that the language of the House offer presents a constitutional problem. The JCT determinations of what is a "targeted tax benefit" would apparently not be incorporated into bills. As a result, the scope of the President's "veto" authority would be established by JCT alone. In short, law would be made by a committee of Congress in a report, not by Congress as a whole in legislation. This would appear to violate the "[e]xplicit and unambiguous provisions" of the Constitution that prescribe "a single, finely wrought and exhaustively considered, procedure," by which laws are to be made: bicameral passage by both Houses of Congress followed by presentment to the President for his approval. *INS v. Chadha*, 462 U.S. 919, 945 (1983). This problem is remedied in the attached legislative draft which would give the President authority to determine when an item is a targeted tax benefit. However, even if this determination is to be made by the Congress it would, at a minimum, have to be made through the normal legislative process -- not by a committee of Congress acting unilaterally.

? HOUSE OFFER: Use Senate definition of "item" (including specific exceptions for limitations and reductions in BA)

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-unnumbered paragraph

□

-numbered section

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-allocation or suballocation within an unnumbered paragraph or numbered section

This proposal appears to be unnecessary and problematic. It was necessary -- as part of the Senate's separate enrollment legislation -- to very carefully identify "items" which were to be separately enrolled by congressional clerks. However, no such necessity exists under the House enhanced rescission legislation, since the President would be sending detailed

messages to Congress identifying amounts of budget authority being rescinded, as well as new direct spending and targeted tax benefits being suspended.

Moreover, the Senate definition is problematic. "Allocation or suballocation within a an unnumbered paragraph or numbered section" is unclear.

? HOUSE OFFER: Accept Senate lockbox language.

The Senate approach would require the President to reduce the statutory discretionary spending caps to reflect rescissions of discretionary budget authority and to reduce PAY

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-GO balances under the Budget Enforcement Act to reflect suspended direct spending or targeted tax benefits. This proposal is unclear and unworkable.

Technical concern: The bill language is unclear on two counts. First, it requires a reduction in discretionary caps "by the amount by which the Act would have increased the deficit..." Since the rescission authority is applied to items of discretionary spending, what does it mean to refer to the amount by which "the Act" increases the deficit? Second, since the amount of the cap reduction is tied to a deficit calculation, does this mean that only the outlay caps are to be affected?

Policy concern: With regard to discretionary spending -- a mandatory cap reduction would make it very difficult for Congress to provide necessary supplemental appropriations later in the year (as it did this year in response to the Oklahoma City bombing and the Northridge earthquake). Or, it could have the perverse effect of encouraging the increased use of emergency designations.

In addition, since the caps on total discretionary spending are carefully negotiated as part of multiyear budget plans, serious thought should be given as to whether it makes sense for an automatic budget mechanism to be changing the caps on an ad hoc basis.

Therefore, the language of the House

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-passed bill, which authorizes the President to propose reductions in the discretionary caps without making the reductions automatic, is preferable.

With regard to the mandatory reductions in PAYGO balances, the House conferees are apparently proposing that any amounts saved by the President by suspending new direct spending or targeted tax benefits should not be added back to the PAYGO balances, and would thereby not be available to

offset other legislation. However, this is contrary to the

pay

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-go concept of the Budget Enforcement Act, which has operated effectively, now, for 5 years. If mandatory funds or revenues are saved by reason of suspending tax benefits or new direct spending, it would be consistent with the BEA for those savings to be credited to the PAY

-GO

scorecard to be available as offsets for other legislation.

? HOUSE OFFER: Accept Senate emergency spending point of order, with a majority waiver requirement.

This refers to the Senate provision prohibiting the inclusion of non

-emergency items in an emergency bill (except for rescissions and reductions to pay for the emergency provisions) and providing a point of order against legislation that includes such items. This would impair an Administration's ability to develop appropriations packages which include both supplemental and emergency provisions, as was the case in the FY 1995 supplemental/rescission bill.

Additional Comments:

In addition to the issues raised in the House conferees' proposal to the Senate, the following changes to the House

-passed bill are recommended (and are reflected in the attached legislative language):

1. Enhance the ability of the Administration to review carefully all tax and spending provisions by increasing the window for transmittal of special messages from 10 days to 20 days.
2. Include a severability provision in the legislation.
3. Delete the 3

-judge court judicial review mechanism but retain the requirement for expedited consideration (considerable litigation experience has shown that 3

-judge courts are often inefficient and cumbersome and can actually cause considerable delay).

4. Update the "special rule for fiscal year 1995," so that item veto authority also applies to FY 1996 appropriations (i.e. bills enacted prior to enactment of line

-item veto authority). Provide twenty days following enactment for such authority to be exercised.

5. Make conforming changes to the Budget Enforcement Act to clarify that OMB discretionary spending reports and PAY

-GO

reports, required under current law to be issued 5 days after enactment of legislation, need to be adjusted following a rescission of discretionary appropriations or suspension of new direct spending or targeted tax benefits. This is reflected in the attached language.

RECOMMENDED AMENDMENTS TO HOUSE OFFER NUMBER 1
REGARDING S. 4 (Line

-item veto):
(Following is the legislative language proposed by the House conferees; proposed changes are indicated with line

-type and
bold

-face.)

PRINTER FONT 10_POINT_COURIER
104TH CONGRESS
1ST SESSION

S. 4

=====

AN ACT

An Act to give the President item veto authority respecting appropriations, increases in new direct spending, and tax benefits.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Line Item Veto Act of 1995".

SEC. 2. LINE ITEM VETO AUTHORITY.

(a) IN GENERAL.--

-Notwithstanding the provisions of part B of title X of The Congressional Budget and Impoundment Control Act of 1974, and subject to the provisions of this section, the President may rescind in whole or in part any dollar amount of any item of discretionary budget authority provided in an appropriation act, veto suspend any item of new direct spending, or veto suspend any targeted tax benefit which is subject to the terms of this Act if the President--

(1) determines that--

- (A) such rescission or item veto suspension would help reduce the Federal budget deficit;
- (B) such rescission or item veto suspension will not impair any essential Government functions; and
- (C) such rescission or item veto suspension will not harm

the

national interest; and

(2) notifies the Congress of such rescission or item veto suspension by a special message not later than ten twenty calendar days

(not including Sundays) after the date of enactment of an appropriation or authorization Act providing such budget authority or a revenue or reconciliation other Act containing a targeted tax benefit or new direct spending.

(b) DEFICIT REDUCTION.--In each special message, the President may also propose to reduce the appropriate discretionary spending limit set forth in section 601(a)(2) of the Congressional Budget Act of 1974 by an amount that does not exceed the total amount of discretionary budget authority rescinded by that message.

(1) IN GENERAL.--

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-Not later than 45 days of continuous session after the President rescinds an item in an appropriations Act or vetoes

an item in an authorization, revenue, or reconciliation Act, the President shall--

(A) with respect to appropriations Acts, reduce the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 for the budget year and each outyear by the amount by which the Act would have increased the deficit in each respective year;

(B) with respect to a veto of direct spending or of a targeted tax benefit, reduce the balances for the budget year and each outyear under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 by the amount by which the Act would have increased the deficit in each respective year.

(2) EXCEPTIONS.--

(A) This subsection shall not apply if the rescinded item in an appropriation Act or the vetoed item in an authorization, revenue, or reconciliation Act becomes law, over the objections of the President, before the President orders the reduction required by paragraph (1)(A) or (1)(B).

(B) If the rescinded item in an appropriation Act or the vetoed item in an authorization, revenue, or reconciliation Act becomes law over the objections of the President, after the President has ordered the reductions required by paragraph (1)(A) or (1)(B), then the President shall restore the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 or the balances under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect the limits and balances existing before the reduction ordered by the President in compliance with paragraph (1).

(c) SEPARATE MESSAGES.--(1) The President shall submit a separate special message for each appropriation Act, for each authorization Act, and for each revenue or reconciliation Act under this section.

(2) In the case of any such special message regarding an appropriation Act, that message shall specify--

(A) the amount of budget authority which he proposes to be rescinded, the direct spending to be suspended, or the targeted tax benefit to be suspended;

(B) any account, department, or establishment of the Government to which such budget authority is available for obligation, or which has jurisdiction over the direct spending or targeted tax benefit affected, and the specific project or governmental functions involved;

(C) the reasons why the budget authority should be rescinded, or the direct spending or targeted tax benefit should be suspended;

(D) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed rescission or suspension; and

(E) all facts, circumstances, and considerations relating to or bearing upon the proposed rescission or suspension and the decision to effect the proposed rescission or suspension and to the maximum extent practicable, the estimated effect of the proposed rescission or suspension upon the objects, purposes, and programs for which the budget authority, direct spending, or tax benefit is provided.

(d) SPECIAL RULE FOR FISCAL YEAR 1995 and FISCAL YEAR 1996 APPROPRIATION MEASURES.-- Notwithstanding subsection (a) (2), in the case of any unobligated discretionary budget authority provided by any appropriation Act for fiscal year 1995 and for fiscal year 1996, the

President may rescind all or part of that discretionary budget authority under the terms of this Act if the President notifies the Congress of such rescission by a special message not later than ten twenty calendar days (not including Sundays) after the date of enactment of this Act.

(e) Amendments to the Budget Enforcement Act.--

(1) Section 251(a)(7) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by inserting in the second sentence, following "within 5 calendar days after the enactment of any discretionary appropriations," the following: "or following a special message rescinding any amount of discretionary spending pursuant to the Line Item Veto Act of 1995 or after a disapproval bill relating thereto is enacted,".

(2) Section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by inserting in the second sentence, following "within 5 calendar days after the enactment of any direct spending or receipts legislation enacted after the date of enactment of this section," the following: "or following a special message suspending any new direct spending or targeted tax benefit pursuant to the Line Item Veto Act of 1995 or after a disapproval bill relating thereto is enacted,".

SEC. 3. LINE ITEM VETO EFFECTIVE UNLESS DISAPPROVED.

(a) (1) Discretionary Budget Authority.--Any amount of discretionary budget authority rescinded under this Act as set forth in a special message by the President shall not be made available unless, during the period described in subsection (b), a disapproval bill making available all or part of the amount rescinded is enacted into law.

(2) New Direct Spending and Targeted Tax Benefits.--

(A) Any provision of law which increases provides new direct spending or provides a targeted tax benefit vetoed which has been suspended under this Act, as set forth in a special message by the President, shall take effect only if a disapproval bill restoring that provision is enacted into law during the period described in subsection (b). [Should "suspend" be further defined?]

(B) In the case of a suspension of a targeted tax benefit, the Internal Revenue Service is authorized and directed to take appropriate enforcement actions against individuals or entities seeking to use a targeted tax benefit that has been suspended.

(b) The period referred to in subsection (a) is--

(1) a congressional review period of twenty calendar days of session, beginning on the first calendar day of session after

the date of submission of the special message, during which Congress must complete action on the disapproval bill and present such bill to the President for approval or disapproval;

(2) after the period provided in paragraph (1), an additional ten days (not including Sundays) during which the President may exercise his authority to sign or veto the disapproval bill; and

(3) if the President vetoes the disapproval bill during the period provided in paragraph (2), an additional five calendar days of session after the date of the veto is, provided for congressional review.

[(c) If a special message is transmitted by the President under

this Act and the last session of the Congress adjourns sine die before the expiration of the period described in subsection (b), the rescission or veto suspension, as the case may be, shall not take effect. The message shall be deemed to have been retransmitted on the first calendar day of session in February of the succeeding Congress and the review period referred to in subsection (b) (with respect to such message) shall run beginning after such first day.] (The House offer displays this paragraph in brackets.)

SEC. 4. DEFINITIONS.

As used in this Act:

(1) The term "item" means--

(A) with respect to an appropriation Act--

(i) any numbered section, or

(ii) any unnumbered paragraph;

but shall not include a provision which does not appropriate funds, direct the President to expend funds for any specified project, or create an express or implied obligation to expend funds and shall not include a provision that--

(I) rescinds or cancels existing budget authority;

(II) only limits, conditions, or otherwise restricts

the President's authority to spend otherwise appropriated

funds; or

(III) imposes conditions on an item of appropriation not involving a positive allocation of funds by explicitly prohibiting the use of any funds; and

(B) with respect to an authorization, revenue, or reconciliation Act, any section that increases direct spending or provides a targeted tax benefit.

(2) The term "direct spending" means--

(A) budget authority provided by law other than appropriation Acts;

(B) entitlement authority as defined in section 3(9) of the Congressional Budget and Impoundment Control Act of 1974; and

(C) the food stamp program.

(3) (A) Except as otherwise provided in this paragraph, the term "targeted tax benefit" means any revenue

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-losing tax provision which is identified by the Joint Committee on Taxation President as--

(i) a provision which provides a Federal tax deduction, credit, exclusion, or preference to 100 or fewer beneficiaries, a particular taxpayer or limited group of

taxpayers, or

(ii) a transitional rule or other provision which provides a special treatment for 5 or fewer beneficiaries to a particular taxpayer or limited group of taxpayers, or any portion of a provision that has substantially the same effect.

(B) A provision shall be treated as not described in subparagraph (A) (i) if the Joint Committee on Taxation President determines that--

(i) all persons engaged in the same type of activity receive the same treatment under the provision,
 (ii) all persons owning the same type of property, or issuing the same type of investment, receive the same treatment under the provision, or
 (iii) any difference in the treatment of persons is based solely on--

(I) in the case of entities, the size or type of the entities involved,

(II) in the case of individuals, their filing status,

(III) the amount involved, or

(IV) a generally

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-available election made by

taxpayers. (C) A provision shall be treated as not described in subparagraph (A) (ii) if the Joint Committee on Taxation President determines that it provides for the retention of prior law with respect to all binding contracts in existence on the date of first public notice that a change in law is actively being considered by a committee of either House of Congress, either House of Congress, or a conference committee.

(D) For purposes of subparagraph (A)--

(i) all entities which are related shall be treated as 1 entity;

(ii) all qualified plans of an employer shall be treated as 1 plan;

(iii) all holders of tax

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-exempt bonds which are part of the

same issue shall be counted as 1 beneficiary, and

(iv) shareholders of a corporation, partners in a partnership, and beneficiaries of a trust or estate, shall not be treated as beneficiaries if the corporation, partnership, trust, or estate is treated as a beneficiary.

(D) For purposes of subparagraph (A), a provision is "revenue-losing" when the Secretary of the Treasury determines that the provision, when compared to the rest of the bill if the provision were not included, reduces governmental receipts for any one of the four following periods--

(1) the first fiscal year for which the most recent budget has been submitted by the President;

(2) the fiscal year immediately preceding the first fiscal year for which the most recent budget has been submitted by the President;

(3) the period comprised of the first fiscal year for which the most recent budget has been submitted by the President and the four immediately succeeding fiscal years; or

(4) the period comprised of the five fiscal years immediately succeeding the period described in paragraph (3).

(4) The term "disapproval bill" means a bill or joint resolution which only disapproves, in whole, rescissions of discretionary budget authority or only disapproves vetoes suspensions of increases in new direct spending or of targeted tax benefits in a special message transmitted by the President under this Act and--

(A) which does not have a preamble;

(B) (i) in the case of a special message regarding rescissions, the matter after the enacting clause of which is as follows: "That Congress disapproves each rescission of discretionary budget authority of the President as submitted by the President in a special message on _____", the blank space being filled in with the appropriate date and the public law to which the message relates; and

(ii) in the case of a special message regarding item vetoes of increases in suspensions of new direct spending, the matter after the enacting clause of which is as follows: "That Congress disapproves each item veto of increases in suspension of new direct spending of the President as submitted by the President in a special message on _____", the blank space being filled in with the appropriate date and the public law to which the message relates; and

(iii) in the case of a special message regarding item vetoes

suspensions of targeted tax benefits, the matter after the enacting clause of which is as follows: "That Congress disapproves each item veto suspension of targeted tax benefits of the President as submitted by the President in a special message on _____", the blank space being filled in with the appropriate date and the public law to which the message relates; and

(C) the title of which is as follows: "A bill disapproving the recommendations submitted by the President on _____", the blank space being filled in with the date of submission of the relevant special message and the public law to which the message relates.

(5) The term "calendar days of session" shall mean only those days on which both Houses of Congress are in session.

(6) The term "appropriation Act" means any general or special appropriation Act, or any Act or joint resolution making supplemental, deficiency, or continuing appropriations.

SEC. 5. CONGRESSIONAL CONSIDERATION OF LINE ITEM VETOES.

(a) TRANSMISSION OF MESSAGES TO HOUSE AND SENATE.--

(1) Each special message transmitted under this Act shall be transmitted to the House of Representatives and the Senate on the same day, and shall be delivered to the Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session. Each special message so transmitted shall be referred to the appropriate committees of the House of Representatives and the Senate. Each such message shall be printed as a document of each House.

(2) Any special message transmitted under this Act shall be printed in the first issue of the Federal Register published after such transmittal.

(b) INTRODUCTION OF DISAPPROVAL BILLS.--

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-The procedures set forth in

subsection (c) shall apply to any disapproval bill introduced in the House of Representatives not later than the third calendar day of session beginning on the day after the date of submission of a special message by the President under section 2.

(c) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.--(1) The committee of the House of Representatives to which a disapproval bill is referred shall report it without amendment, and with or without recommendation, not later than the seventh calendar day of session after the date of its introduction. If the committee fails to report the bill within that period, it is in order to move that the House discharge the committee from further consideration of the bill. A motion to discharge may be made only by an individual favoring the bill (but only at a time or place designated by the Speaker in the legislative schedule of the day (typo?) after the calendar day on which the Member offering the motion announces to the House his intention to do so and the form of the motion). The motion is highly privileged. Debate thereon shall be limited to not more than one hour, the time to be divided in the House equally between a proponent and an opponent. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order.

(2) After a disapproval bill is reported or the committee has been discharged from further consideration, it is in order to move that the House resolve into the Committee of the Whole House on the State of the Union for consideration of the bill. If the bill is reported by a committee, it shall not be considered in the House until the first calendar day (excluding Saturdays, Sundays, and legal holidays) on which the report of that committee has been available to the Members of the House. All points of order against the bill and against consideration of the bill are waived. The motion is highly privileged. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. During consideration of the bill in the Committee of the Whole, the first reading of the bill shall be dispensed with. General debate shall proceed, shall be confined to the bill, and shall not exceed two hours equally divided and controlled by a proponent and an opponent of the bill. One motion to rise shall be in order. No amendment to the bill is in order, except any Member may move except from [unclear what is intended here?] the disapproval bill any item or items if supported by one

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-fifth of the Members of the Committee of the Whole (a quorum being present). At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion. A motion to reconsider the vote on passage of the bill shall not be in order.

(3) Appeals from the decisions of the Chair relating to the application of the rules of the House of Representatives to the procedure relating to a bill described in subsection (b) shall be decided without debate.

(4) It shall not be in order to consider more than one bill

described in subsection (b) or more than one motion to discharge described in paragraph (1) with respect to a particular special message.

(5) Consideration of any disapproval bill under this subsection is governed by the rules of the House of Representatives except to the extent specifically provided by the provisions of this Act.

(d) CONSIDERATION IN THE SENATE.--

(1) Any disapproval bill received in the Senate from the House shall be considered in the Senate pursuant to the provisions of this Act.

(2) Debate in the Senate on any disapproval bill and debatable motions and appeals in connection therewith, shall be limited to not more than ten hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motions or appeal in connection with such bill shall be limited to one hour, to be equally divided between, and controlled by the mover and the manager of the bill, except that in the event the manager of the bill is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from the time under their control on the passage of the bill, allot additional time to any Senator during the consideration of any

debatable motion or appeal.

(4) A motion to further limit debate is not debatable. A motion to recommit (except a motion to recommit with instructions to report back within a specified number of days not to exceed one, not counting any day on which the Senate is not in session) is not in order.

(e) CONSIDERATION IN CONFERENCE--

(1) In the case of any disagreement between the two Houses of Congress with respect to a disapproval bill passed by both Houses, conferees shall be promptly appointed and a conference promptly convened. If the committee of conference makes and files a report with respect to the bill not later than two calendar days before the expiration of the 20 calendar days of session period set forth in this section for congressional consideration, the conference report on the bill shall be highly privileged for consideration in both Houses until the expiration of the 20

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-day period. Notwithstanding any other rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such 20

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-day period.

(2) Debate in the House of Representatives on the conference report on any disapproval bill shall be limited to not more than one hour equally divided and controlled by a proponent and an opponent. A motion to further limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

(3) The conference report on the disapproval bill shall be

highly privileged for consideration in the Senate. Debate in the Senate on any conference report on a disapproval bill shall be limited to no more than 2 hours equally divided and controlled by the majority leader and the minority leader or their designees.

(4) Complete congressional consideration of the disapproval bill and any conference report thereon shall not exceed the expiration of the 20 calendar days of session provided for this purpose as set forth in this section.

(f) POINTS OF ORDER.--

(1) It shall not be in order in the Senate to consider any disapproval bill that relates to any matter other than the rescission of budget authority or veto suspension of the provision of law transmitted by the President under this Act.

(2) It shall not be in order in the Senate to consider any amendment to a disapproval bill.

(3) Paragraphs (1) and (2) may be waived or suspended in the Senate only by a vote of three

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-fifths of the members duly chosen and sworn.

SEC. 6. REPORTS OF THE GENERAL ACCOUNTING OFFICE.

Beginning on January 6, 1997, and at one

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-year intervals

thereafter, the Comptroller General shall submit a report to each House of Congress which provides the following information:

(1) A list of each proposed Presidential rescission of discretionary budget authority and veto suspension of an increase in new direct spending or of a targeted tax benefit submitted through special messages for the fiscal year ending during the preceding calendar year, together with their dollar value, and an indication of whether each rescission of discretionary budget

authority or veto suspension of an increase in new direct spending or of a targeted tax benefit was accepted or rejected by Congress.

(2) The total number of proposed Presidential rescissions of discretionary budget authority and vetoes suspensions of an increase in new direct spending or of a targeted tax benefit submitted through special messages for the fiscal year ending during the preceding calendar year, together with their total dollar value.

(3) The total number of Presidential rescissions of discretionary budget authority or vetoes suspensions of an increase in new direct spending or of a targeted tax benefit submitted through special messages for the fiscal year ending during the preceding calendar year and approved by Congress, together with their total dollar value.

(4) A list of rescissions of discretionary budget authority or vetoes suspensions of an increase in new direct spending or of a targeted tax benefit initiated by Congress for the fiscal year ending during the preceding calendar year, together with their dollar value, and an indication of whether each such rescission was accepted or rejected by Congress.

(5) The total number of rescissions of discretionary budget authority or vetoes suspensions of an increase in new direct spending or of a targeted tax benefit initiated and accepted by Congress for the fiscal year ending during the preceding calendar year, together with their total dollar value.

(6) A summary of the information provided by paragraphs (2), (3) and (5) for each of the ten fiscal years ending before the fiscal year during this calendar year.

SEC. 7. DUTIES OF CONGRESSIONAL COMMITTEES ADVISORY REPORT ON TARGETED TAX BENEFITS.

(a) IN GENERAL.-

-Any report accompanying a bill or joint resolution or a joint explanatory statement accompanying a conference report in which there is any Federal income tax benefit shall include a determination report by the Joint Committee on Taxation of whether it contains any targeted tax benefit and an identification of each such benefit.

(b) STATEMENT BY JOINT COMMITTEE ON TAXATION.-

-The Joint Committee on Taxation shall determine whether any bill, joint resolution, or conference report described in subsection (a) contains a targeted tax benefit.

(c) LEGISLATION SUBJECT TO POINT OF ORDER.-

-It shall not be in order in the Senate or the House of Representatives to consider any bill, joint resolution, or conference report that is not in compliance with subsection (a).

[(d) CONFORMING AMENDMENT TO THE RULES OF THE HOUSE OF REPRESENTATIVES.-

-Clause 2(1) of rule XI of the Rules of the House of Representatives is amended by redesignating subparagraphs (5), (6), and (7) as subparagraphs (6), (7), and (8), respectively, and by inserting after subparagraph (4) the following new subparagraph:

"(5) Each report of a committee that includes any Federal income tax benefit shall comply with section 7(a) of the Line Item Veto Act."]

[House offer shows this paragraph in brackets.]

SEC. 8. TREATMENT OF EMERGENCY SPENDING.

(a) EMERGENCY APPROPRIATIONS.-

-Section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following new sentence: "However, OMB shall not adjust any discretionary spending limit under this clause for any statute that designates appropriations as emergency requirements if that statute contains an appropriation for any other matter, event, or occurrence, but that statute may contain rescissions of budget authority.".

(b) EMERGENCY LEGISLATION.-

-Section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following new sentence: "However, OMB shall not designate any such amounts of new budget authority, outlays, or receipts as emergency requirements in the report required under subsection (d) if that statute contains any other provisions that are not so designated, but that statute may contain provisions that reduce direct spending.".

(c) NEW POINT OF ORDER.-

-Title IV of the Congressional Budget Act of 1974 is amended by adding at the end the following new section:

"POINT OF ORDER REGARDING EMERGENCIES

"SEC. 408. It shall not be in order in the House of Representatives or the Senate to consider any bill or joint resolution, or amendment thereto or conference report thereon, containing an emergency designation for purposes of section 251(b)(2)(D) or 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 if it also provides an appropriation or direct spending for any other item or contains any other matter, unless it rescinds budget authority or reduces direct spending, or reduces an amount for a designated emergency."

(d) CONFORMING AMENDMENT.-

-The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the item relating to section 407 the following new item:

"Sec. 408. Point of order regarding emergencies."

SEC. 9. JUDICIAL REVIEW.

(a) EXPEDITED REVIEW.--

(1) Any Member of Congress may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that any provision of this Act violates the Constitution.

(2) A copy of any complaint in an action brought under paragraph (1) shall be promptly delivered to the Secretary of the Senate and the Clerk of the House of Representatives, and each House of Congress shall have the right to intervene in such action.

(3) Any action brought under paragraph (1) shall be heard and determined by a three

-judge court in accordance with section 2284 of title 28, United States Code.

Nothing in this section or in any other law shall infringe upon the right of the House of Representatives to intervene in an action

brought under paragraph (1) without the necessity of adopting a resolution to authorize such intervention.

(b) APPEAL TO SUPREME COURT.-

-Notwithstanding any other provision of law, any order of the United States District Court for the District of Columbia which is issued pursuant to an action brought under paragraph (1) of subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall

be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under paragraph (1) of subsection (a) shall be issued by a single Justice of the Supreme Court.

(c) EXPEDITED CONSIDERATION.-

□

-It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

(d) SEVERABILITY.-

□

-If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment, is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of this Act shall not be affected thereby.

===== END ATTACHMENT 1 =====