STATEMENT OF CONGRESSMAN CHARLES E. BENNETT BEFORE THE JOINT HEARING OF THE SEAPOWER AND STRATEGIC AND CRITICAL MATERIALS AND INVESTIGATIONS SUBCOMMITTEES APRIL 18, 1985

Mr. Chairman, I appreciate the opportunity to appear here today in behalf of legislation long needed. Since 1951, I have persistently sponsored bills designed to help government employees avoid conflict-of-interest situations in the procurement process.

Congress has enacted some legislation in this area. The most recent occurred in 1978 after Senator Proxmire and I introduced legislation similar to my current bill. After extensive hearings in the Senate, the Senate voted unanimously to pass Senator Proxmire's bill. Unfortunately, all the House did was to enact the rather insufficient language of the Ethics in Government Act (Public Law 95-521), codified at 18 United States Code, section 207.

These provisions were designed to stop someone from using his former government position to influence decisions in favor of his present employer. However, a 1983 report by the General Accounting Office on the Ethics in Government Act stated:

"During our current review, ethics officials at several agencies and other individuals we talked with told us that agencies have made few referrals of post-employment violations to the Department of Justice, and Justice has prosecuted few violation cases. Agencies also have made little use of the administrative enforcement authority given them by the Ethics Act. In 33 agencies we surveyed, we found that the authority was used in one instance. Because of the lack of information, it is difficult to determine whether this represents an adherence by former employees to the provisions of the post-employment statute, or an inaction or inability on the part of agencies to identify violations, handle them administratively or refer them to the Department of Justice, and for Justice to prosecute."

As the result of an inquiry in January 1983, I received a letter from the Office of Government Ethics commenting on the enforcement of existing conflict of interest statutes. One point in particular from that letter is of interest now. It points out that Section 208 from Title 18 of the United States Code prohibits a government official from taking action on any government matter which affects a firm with whom that employee is negotiating for future employment. However, there is left the conflict-of-interest situation where a job is clearly a possibility, even if not openly stated. The letter notes that "unilateral efforts to please or impress

a contractor with whom one is dealing as a government official with an eye toward getting a job with the company are not covered by the existing criminal conflict of interest statutes."

My bill, H.R. 272, attacks this problem directly. It prohibits any former government employee who was personally and substantially involved in a procurement contract during his last three years of government employment from accepting, for a period of two years, any employment or compensation from a firm involved in that contract.

Former employees who violate the employment prohibitions established in this bill would be subject to a maximum fine of $5,000 and/or a maximum prison sentence of one year. Anyone employing such a person in violation of this bill would be subject to a maximum fine of $25,000 and/or a maximum prison sentence of one year.

I believe the prohibitions in this bill will help Federal employees by discouraging the unwanted advances of contractors who may try to influence the employee's decisions with offers of future employment. (or employee's own initiative.)

I should stress that this legislation does not prohibit all private employment for contracting officials and employees leaving the government. A major objection to this legislation has been that it would hamper the Department of Defense's ability to recruit individuals with

superior credentials because those individuals may fear a restricted future job market. However, the two-year ban only applies in those particular cases where the employee goes to work for a company with a direct interest in a contract in which that employee participated. The employee would not be barred from taking employment with other companies in the same field. There are some 20,00 prime contractors in the defense sector. The employee would only be barred from seeking employment from the few companies with which he or she directly dealt, and then only for a limited time.

Most government employees bring the highest integrity to their work. But temptation is often present. The purpose of my legislation is to remove this temptation and to secure public confidence in the process.

The need for legislation to deal with this kind of conflict of interest has long been apparent. In 1956, a report on the inquiry into aircraft production cost and profits stated:

"The presence of retired military personnel on payrolls, fresh from the 'opposite side of the desk' creates a doubtful atmosphere...companies whose business is so closely interwoven with the military establishment ought to lean over backward so that no suggestion of favoritism, influence or 'old school tie' could be read into their conduct."

In fact, these companies do not lean over backward, but often act in ways that encourage the suspicion of favoritism and influence on the part of former government officials.

In 1960, the New York City Bar Association issued an excellent report entitled, "Conflict of Interest and Federal Service" that noted:

"Interviews revealed a substantial body of opinion that government employees who anticipate leaving their agency someday are put under an inevitable pressure to impress favorably private concerns with which they officially deal."

In 1975, the Council on Economic Priorities published the first systematic review of Department of Defense personnel who had left for jobs with defense contractors. The study showed that many former DOD employees had gone to work for military contractors after playing an active part in negotiating defense contracts with those same contractors. It was reported that 27 percent of the employees who left the Defense Department to take positions with defense contractors were working in conflict of interest situations.

In 1983, the last year for which there are figures, almost 2200 people filed reports stating that they had left the Department of Defense within

the last three years for jobs with defense contractors. The problem may be even larger than is evident from the available statistics, since many transferees do not file any reports, as required by law, and the review of their reports is spotty when they do file.

To capsulate the matter: my bill will make it a crime , under the circumstances set out, for the employee to take a job with the company, and for the company to provide the job. This differs from the present law which requires proof of an intent to secure this employment, which is often very difficult to prove.

It is abundantly clear that the current legislation is not adequate, and that, in fact, it has scarcely reduced the problem.

The defense establishment must earn the complete confidence of the American people. We cannot let instances of corruption or favoritism--or even their appearance --lessen that confidence.

We need this reform because the present situation weakens public support for greatly needed, strengthened national defense measures. Finally, we need it because our government, like Caesar's wife, must be above reproach.