

June 21, 1984

## CONGRESSIONAL RECORD — SENATE

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ties sold pursuant to subsections (j) and (g) of this section; and

"(2) disclose to purchasers information describing the offer and sale of portions of loans or interests therein, which have been guaranteed by the Administration under this section, as the Administration determines to be necessary and appropriate for a prudent investment decision."

(b) Section 4(c)(1)(B) and section 4(c)(2)(B) of such Act are such amended by inserting "5(g)" before "7(b)(1)".

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

### NATIONAL ARCHIVES AND RECORDS ADMINISTRATION ACT

Mr. BAKER. Mr. President, I would next propose to proceed to Calendar Order No. 736, S. 905, if the minority leader can agree.

Mr. BYRD. Mr. President, there is no objection.

Mr. BAKER. I thank the minority leader.

I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 736.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 905) entitled the "National Archives and Records Administration Act of 1983," which had been reported from the Committee on Governmental Affairs with amendments.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs with amendments:

On page 7, strike lines 19 through 25 and lines 1 and 2 of page 8, and insert:

"The Archivist shall submit to the Congress, in January of each year, a report concerning the administration of the National Archives and Records Administration, the National Historic Publications and Records Commission, and the National Archives Trust Fund. Such report shall describe program administration and expenditure of funds, both appropriated and non-appropriated, by the Administration, Commission, and the Trust Fund Board. It shall describe research projects and publications undertaken by Commission grantees, and by Trust Fund grantees, including detailed information concerning the receipt and use of all appropriated and non-appropriated funds."

On page 12, after line 4, insert "(t) Section 2507 of title 44, United States Code, is deleted."

So as to make the bill read:

S. 905

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Archives and Records Administration Act of 1983".

#### AMENDMENTS TO TITLE 44, UNITED STATES CODE

Sec. 2. (a) Sections 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, and 2114 of title 44, United States Code, are redesignated as sections 2102, 2103, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, and 2119, respectively.

(b) Title 44, United States Code, is amended by inserting before section 2102 (as redesignated by subsection (a)) the following new section:

#### "§ 2101. Purpose

"The purpose of this chapter is to establish an independent National Archives and Records Administration due to the unique importance of the tasks of creating, identifying, and preserving the records of the Nation which have permanent value and making such records available to the public, to Federal agencies, and to the Congress for historical and other research purposes."

(c) Section 2102 of title 44, United States Code (as redesignated by subsection (a)), is amended—

(1) by striking out "sections 2103-2113 of";

#### "§ 2103. Establishment

"There is established an independent establishment in the executive branch of the Government to be known as the National Archives and Records Administration. The Administration shall be administered under the supervision and direction of the Archivist."

(e) Title 44, United States Code, is further amended by inserting before section 2108 (as redesignated by subsection (a)) the following new sections:

#### "§ 2104. Officers

"(a) The Archivist of the United States shall be appointed by the President by and with the advice and consent of the Senate. The Archivist shall be appointed for a term of ten years, but may continue to serve until his successor is appointed and confirmed. The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist.

"(b) The Archivist shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5.

"(c) There shall be in the Administration a Deputy Archivist of the United States, who shall be appointed by and who shall serve at the pleasure of the Archivist. The Deputy Archivist shall be established as a career reserved position in the Senior Executive Service within the meaning of section 3132(a)(8) of title 5. The Deputy Archivist shall perform such functions as the Archivist shall designate. During any absence or disability of the Archivist, the Deputy Archivist shall act as Archivist. In the event of a vacancy in the office of the Archivist, the Deputy Archivist shall act as Archivist until an Archivist is appointed under subsection (a).

#### "§ 2105. Administrative provisions

"(a) The Archivist shall prescribe such policies, standards, criteria, procedures, rules, and regulations as he finds necessary or appropriate to carry out his functions. The head of each Federal agency shall issue such orders and directives as may be necessary to conform the activities of the agency with the policies, standards, criteria, procedures, rules, and regulations prescribed by the Archivist.

"(b) Except as otherwise expressly provided by law, the Archivist may delegate any of his functions to such officers and employees of the Administration as he may designate,

and may authorize such successive delegations of such functions as he may deem to be necessary or appropriate. A delegation of functions by the Archivist shall not relieve the Archivist of responsibility for the administration of such functions.

"(c) The Archivist may organize the administration as he finds necessary or appropriate.

"(d) The Archivist is authorized to establish, maintain, alter, or discontinue such regional, local, or other field offices as he finds necessary or appropriate to perform the functions of the Archivist or the Administration.

"(e) The Archivist shall cause a seal of office to be made for the Administration of such design as he shall approve. Judicial notice shall be taken of such seal.

"(f) Each Federal agency is authorized to furnish to the Archivist, upon his request, any information or other data which the Archivist finds necessary to carry out his duties.

"(g) The Archivist may establish advisory committees to advise him with respect to any function of the Archivist or the Administration. Members of any such committee shall serve without compensation but shall be entitled to transportation expenses and per diem in lieu of subsistence in accordance with section 5703 of title 5.

"(h) The Archivist shall advise and consult with interested Federal agencies with a view to obtaining their advice and assistance in carrying out the purposes of this chapter.

"(i) If authorized by the Archivist, officers and employees of the National Archives and Records Administration having investigatory functions are empowered, while engaged in the performance of their duties in conducting investigations, to administer oaths.

#### "§ 2106. Personnel and services

"(a) The Archivist is authorized to select, appoint, employ, and fix the compensation of such officers and employees, pursuant to part III of title 5, as are necessary to perform the functions of the Archivist and the Administration.

"(b) The Archivist is authorized to obtain the services of experts and consultants under section 3109 of title 5.

"(c) Notwithstanding the provisions of section 973 of title 10 or any other provision of law, the Archivist, in carrying out the functions of the Archivist or the Administration, is authorized to utilize in the Administration the services of officials, officers, and other personnel in other executive agencies, including personnel of the armed services, with the consent of the head of the agency concerned.

"(d) The Archivist is authorized to accept and utilize voluntary and uncompensated services.

#### "§ 2107. Reports to Congress

"The Archivist shall submit to the Congress, in January of each year, a report concerning the administration of the National Archives and Records Administration, the National Historic Publications and Records Commission, and the National Archives Trust Fund. Such report shall describe program administration and expenditure of funds, both appropriated and non-appropriated, by the Administration, Commission, and the Trust Fund Board. It shall describe research projects and publications undertaken by Commission grantees, and by Trust Fund grantees, including detailed information concerning the receipt and use of all appropriated and non-appropriated funds."

(f)(1) The table of sections for chapter 21 of title 44, United States Code, is amended to read as follows:

**“Chapter 21—National Archives and Records Administration**

- “Sec.  
 “2101. Purpose.  
 “2102. Definitions.  
 “2103. Establishment.  
 “2104. Officers.  
 “2105. Administrative provisions.  
 “2106. Personnel and services.  
 “2107. Reports to Congress.  
 “2108. Acceptance of records for historical preservation.  
 “2109. Responsibility for custody, use, and withdrawal of records.  
 “2110. Preservation, arrangement, duplication, exhibition of records.  
 “2111. Servicing records.  
 “2112. Material accepted for deposit.  
 “2113. Presidential archival depository.  
 “2114. Depository for agreements between States.  
 “2115. Preservation of motion-picture films, still pictures, and sound recordings.  
 “2116. Reports; correction of violations.  
 “2117. Legal status of reproductions; official seal, fees for copies and reproductions.  
 “2118. Limitation on liability.  
 “2119. Records of Congress.”

(2) The item relating to chapter 21 in the table of chapters for title 44, United States Code, is amended to read as follows:

**“21. National Archives and Records Administration..... 2102”.**

(g)(1) Section 2103(4) of such title is amended by striking out “section 2107” and inserting in lieu thereof “section 2112”.

(2) Section 2108 of such title is amended by striking out “section 2107” each place it appears and inserting in lieu thereof “section 2112”.

(h) Chapters 7, 15, 17, 21 (as amended by this section), 22, 23, 25, 29, 31, and 33 of title 44, United States Code, are amended by striking out “Administrator of General Services” and “General Services Administration” wherever they appear and inserting in lieu thereof “Archivist of the United States” and “National Archives and Records Administration”, respectively.

(i)(1) Section 101 of the Presidential Recordings and Materials Preservation Act is amended—

(A) by striking out “section 2107” each place it appears and inserting in lieu thereof “section 2112”;

(B) by striking out “section 2101” and inserting in lieu thereof “section 2102”;

(C) by striking out “Administrator of General Services” and inserting in lieu thereof “Archivist of the United States”; and

(D) by striking out “Administrator” each place it appears and inserting in lieu thereof “Archivist”.

(2) Section 102 of such Act is amended—

(A) by striking out “section 2107” and inserting in lieu thereof “section 2112”, and

(B) by striking out “Administrator” each place it appears and inserting in lieu thereof “Archivist”.

(3) Section 103 of such Act is amended by striking out “Administrator” and inserting in lieu thereof “Archivist”.

(4) Section 104 of such Act is amended by striking out “Administrator” each place it appears and inserting in lieu thereof “Archivist”.

(j) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

“( ) Archivist of the United States.”.

(k) The item relating to chapter 29 in the table of contents for title 44, United States Code, is amended to read as follows:

“29. Records Management by Archivist of the United States..... 2901”.

(1) Sections 141-144 of title 4, Chapter 5, United States Code, are amended by striking out “Administrator of General Services,” and “General Services Administration” wherever they appear and inserting in lieu thereof “Archivist of the United States,” “Archivist,” and “National Archives and Records Administration” respectively.

(m) Section 199a, title 25, United States Code, is amended by striking out “Administrator of General Services” wherever it appears and inserting in lieu thereof “Archivist of the United States.”

(n) Sections 106a, 106b, and 112 of title 1, United States Code are amended by striking out “Administrator of General Services” wherever it appears and inserting in lieu thereof “Archivist of the United States.”

(o) Sections 6 and 11-13 of title 3, United States Code, are amended by striking out “Administrator of General Services” and “General Services Administration” wherever they appear and inserting in lieu thereof “Archivist of the United States,” and “National Archives and Records Administration,” respectively.

(p) Paragraphs (b)(6) and (l)(1) of the Privacy Act of 1974 are amended by striking out “Administrator of General Services” wherever it appears and inserting in lieu thereof “Archivist of the United States.”

(q) Section 2301 of title 44, United States Code, is amended by striking out the second sentence of the section.

(r) Section 2501 of title 44, United States Code is amended by striking out the last sentence of the section.

(s) Section 2504(a) of title 44, United States Code is amended by striking out “the Administrator” from the final sentence of the section and substituting in lieu thereof “the President and the Congress.”

(t) Section 2507 of title 44, United States Code, is deleted.

**DEFINITIONS**

Sec. 3. For purposes of sections 3 through 8—

(1) the term “Archivist” means the Archivist of the United States appointed under section 2104 of title 44, United States Code, as added by section 2 of this Act; and

(2) the term “Administration” means the National Archives and Records Administration established under section 2103 of such title (as amended by section 2 of this Act).

**TRANSFER OF FUNCTIONS**

Sec. 4. (a) All authorities and functions of the Administrator of General Services specified in chapters 7, 15, 17, 21, 22, 23, 25, 29, 31, and 33 of title 44, U.S.C., are transferred to the Archivist of the United States appointed under section 2104 of title 44, U.S.C.

(b) The National Archives and Records Service of the General Services Administration is transferred to the National Archives and Records Administration.

(c) The office of Office Information Systems of the Office of Information Resources Automated Data and Management of the General Services Administration is transferred to the National Archives and Records Administration.

(d) In the exercise of the functions transferred under this Act, the Archivist shall have the same authority as had the Administrator of General Services with respect to chapters 7, 15, 17, 21, 22, 23, 25, 29, 31, and 33 of title 44, U.S.C., and the actions of the Archivist shall have the same force and effect as when exercised by such Administrator.

(e) Prior to the appointment and confirmation of an individual to serve as Archivist of the United States under section 2104 of

title 44, United States Code, the individual holding the office of Archivist of the United States on the day before the effective date of this Act may serve as Archivist under such section, and while so serving shall be compensated at the rate provided under subsection (b) of such section.

**TRANSFER OF PERSONNEL**

Sec. 5. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed held, used, arising from, available to or to be made available in connection with the functions and agencies transferred by this Act, subject to section 202 of the Budget and Accounting Procedures Act of 1950, are transferred to the Archivist for appropriate allocation. A percentage of the funds and associated positions in the General Management and Administration appropriation for the General Services Administration, proportionate to the percentage of National Archives and Records Service employees in the General Services Administration, is transferred to the Archivist for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) The transfer pursuant to this title of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employees to be separated or reduced in grade or compensation for one year after such transfer or after the effective date of this Act, whichever is later.

**SAVINGS PROVISIONS**

Sec. 6. (a) All orders, determinations, rules, regulations, grants, contracts, agreements, permits, licenses, privileges, and other actions which have been issued, granted, made, undertaken, or entered into in the performance of any function transferred under this Act shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by any authorized officials, a court of competent jurisdiction, or by operation of law.

(b)(1) The transfer of functions under this Act shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending on the effective date of this Act before the General Services Administration; but such proceedings and applications, to the extent that they relate to functions transferred under this Act, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Archivist, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Archivist is authorized to promulgate regulations providing for the orderly transfer of proceedings continued under paragraph (1) from the General Services Administration to the Administration.

(c) Except as provided in subsection (e)—

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(1) the provisions of this Act shall not affect actions commenced prior to the effective date of this Act, and

(2) in all such actions, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) No action or other proceeding lawfully commenced by or against any officer of the United States acting in his official capacity shall abate by reason of any transfer under this Act. No cause of action by or against the General Services Administration or by or against any officer thereof in the official capacity of such officer shall abate by reason of any transfer of functions under this Act.

(e) If, before the date on which this Act takes effect, the General Services Administration or any officer thereof in the official capacity of such officer, is a party to an action, and under this Act any function in connection with such action is transferred to the Archivist or any other official of the Administration, then such action shall be continued with the Archivist or other appropriate official of the Administration substituted or added as a party.

(f) Orders and actions of the Archivist in the exercise of functions transferred under this Act shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the individual holding the office of Archivist of the United States on the day before the effective date of this Act or the Administrator of General Services in the exercise of such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this Act shall apply to the exercise of such function by the Archivist.

## REFERENCE

SEC. 7. With respect to any functions transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to the office of the Archivist of the United States as in existence on the date before the effective date of this Act or the National Archives and Records Service of the General Services Administration or any office or officer thereof shall be deemed to refer to the Archivist or the Administration.

## EFFECTIVE DATE

SEC. 8. The provisions of this Act shall take effect one hundred and twenty days after enactment.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I ask unanimous consent that the committee amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, the amendments are considered en bloc, and agreed to.

## AMENDMENT NO. 3320

(Purpose: To make technical amendments)

Mr. BAKER. Mr. President, I send to the desk an amendment on behalf of the distinguished Senator from Maryland [Mr. MATHIAS] and the Senator from Missouri [Mr. EAGLETON] and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. BAKER], for Mr. MATHIAS and Mr. EAGLETON, proposes an amendment numbered 3320.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following: That this Act may be cited as the "National Archives and Records Administration Act of 1944".

## AMENDMENTS TO TITLE 44, UNITED STATES CODE

SEC. 2. (a) Sections 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, and 2114 of title 44, United States Code, are redesignated as sections 2102, 2103, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, and 2119, respectively.

(b) Title 44, United States Code, is amended by inserting before section 2102 (as redesignated by subsection (a)) the following new section:

## "§ 2101. Purpose

"The purpose of this chapter is to establish an independent National Archives and Records Administration due to the unique importance of the tasks of creating, identifying, and preserving the records of the Nation which have permanent value and making such records available to the public, to Federal agencies, and to the Congress for historical and other research purposes."

(c) Section 2102 of such title (as redesignated by subsection (a)), is amended—

(1) by striking out "sections 2103-2113 of";

(2) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new paragraphs:

" 'Federal agency' means, notwithstanding section 2901(13) of this title, any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), and independent regulatory agency, or any establishment in the legislative or judicial branch of the Government (except the Supreme Court, the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol);

" 'Archivist' means the Archivist of the United States appointed under section 2104; and

" 'Administration' means the National Archives and Records Administration established under section 2103."

(d) Section 2103 of such title is amended to read as follows:

## "§ 2103. Establishment

"There is established an independent establishment in the executive branch of the Government to be known as the National Archives and Records Administration. The Administration shall be administered under the supervision and direction of the Archivist."

(e) Such title is further amended by inserting before section 2108 (as redesignated by subsection (a)) the following new sections:

## "§ 2104. Officers

"(a) The Archivist of the United States shall be appointed by the President by and with the advice and consent of the Senate. The Archivist shall be appointed for a term

of ten years, but may continue to serve until his successor is appointed and confirmed. The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist.

"(b) There shall be in the Administration a Deputy Archivist of the United States, who shall be appointed by and who shall serve at the pleasure of the Archivist. The Deputy Archivist shall be established as a career reserved position in the Senior Executive Service within the meaning of section 3132(a)(8) of title 5. The Deputy Archivist shall perform such functions as the Archivist shall designate. During any absence or disability of the Archivist, the Deputy Archivist shall act as Archivist. In the event of a vacancy in the office of the Archivist, the Deputy Archivist shall act as Archivist until an Archivist is appointed under subsection (a).

## "§ 2105. Administrative provisions

"(a) Except as otherwise expressly provided by law, the Archivist may delegate any of his functions to such officers and employees of the Administration as he may designate, and may authorize such successive redelegations of such functions as he may deem to be necessary or appropriate. A delegation of functions by the Archivist shall not relieve the Archivist of responsibility for the administration of such functions.

"(b) The Archivist may organize the Administration as he finds necessary or appropriate.

"(c) The Archivist is authorized to establish, maintain, alter, or discontinue such regional, local, or other field offices as he finds necessary or appropriate to perform the functions of the Archivist or the Administration.

"(d) The Archivist shall cause a seal of office to be made for the Administration of such design as he shall approve. Judicial notice shall be taken of such seal.

"(e) The Archivist may establish advisory committees to advise him with respect to any function of the Archivist or the Administration. Members of any such committee who are not officers or employees of the Government shall serve without compensation but shall be entitled, when performing the duties of the committee, to travel and transportation expenses and a per diem allowance in the same manner and under the same conditions as provided for employees under section 5702 of title 5.

"(f) The Archivist shall advise and consult with interested Federal agencies with a view to obtaining their advice and assistance in carrying out the purposes of this chapter.

"(g) If authorized by the Archivist, officers and employees of the Administration having investigatory functions are empowered, while engaged in the performance of their duties in conducting investigations, to administer oaths.

## "§ 2106. Personnel and services

"(a) The Archivist is authorized to select, appoint, employ, and fix the compensation of such officers and employees, pursuant to part III of title 5, as are necessary to perform the functions of the Archivist and the Administration.

"(b) The Archivist is authorized to obtain the services of experts and consultants under section 3109 of title 5.

"(c) Notwithstanding the provisions of section 973 of title 10 or any other provision of law, the Archivist, in carrying out the functions of the Archivist or the Administration, is authorized to utilize in the Administration the services of officers and employees in other executive agencies, includ-

ing personnel of the Armed Forces, with the consent of the head of the agency concerned.

(d) Notwithstanding section 1342 of title 31, the Archivist is authorized to accept and utilize voluntary and uncompensated services.

**"§ 2107. Reports to Congress**

"The Archivist shall submit to the Congress, in January of each year, a report concerning the administration of the Administration, the National Historical Publications and Records Commission, and the National Archives Trust Fund. Such report shall describe program administration and expenditure of funds, both appropriated and nonappropriated, by the Administration, the Commission, and the Trust Fund Board. The report shall describe research projects and publications undertaken by Commission grantees, and by Trust Fund grantees, including detailed information concerning the receipt and use of all appropriated and nonappropriated funds."

(f) Chapter 21 of such title is amended by adding at the end thereof the following new section:

**"§ 2120. Authorization of appropriations**

"There are authorized to be appropriated such sums as may be necessary to carry out the functions of the Archivist and the Administration under this title."

(g)(1) The table of sections for chapter 21 of such title is amended to read as follows:

**"CHAPTER 21—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

"Sec.

"2101. Purpose.

"2102. Definitions.

"2103. Establishment.

"2104. Officers.

"2105. Administrative provisions.

"2106. Personnel and services.

"2107. Reports to Congress.

"2108. Acceptance of records for historical preservation.

"2109. Responsibility for custody, use, and withdrawal of records.

"2110. Preservation, arrangement, duplication, exhibition of records.

"2111. Servicing records.

"2112. Material accepted for deposit.

"2113. Presidential archival depository.

"2114. Depository for agreements between States.

"2115. Preservation of motion-picture films, still pictures, and sound recordings.

"2116. Reports; correction of violations.

"2117. Legal status of reproductions; official seal, fees for copies and reproductions.

"2118. Limitation on liability.

"2119. Records of Congress.

"2120. Authorization of appropriations."

(2) The item relating to chapter 21 in the table of chapters for such title is amended to read as follows:

"21. National Archives and Records Administration..... 2101"

(h)(1) Section 1506 of such title is amended by striking out the third sentence.

(2) Section 2301 of such title is amended by striking out the second sentence.

(3) Section 2501 of such title is amended by striking out the last sentence.

(i) Section 2504(a) of such title is amended by striking out "the Administrator" in the last sentence and inserting in lieu thereof "the President and the Congress."

(j)(1) Section 2507 of such title is repealed.

(2) The table of sections for chapter 25 of such title is amended by striking out the item relating to section 2507.

(k)(1) Section 2108(4) of such title (as redesignated by section 2(a) of this Act) is amended by striking out "section 2107" and inserting in lieu thereof "section 2112".

(2) Section 2113 of such title (as redesignated by section 2(a) of this Act) is amended by striking out "section 2107" each place it appears and inserting in lieu thereof "section 2112".

(l)(1) Section 1501 of such title is amended—

(A) by striking out the period at the end of the last paragraph and inserting in lieu thereof a semicolon and "and"; and

(B) by adding at the end thereof the following new paragraph:

"National Archives of the United States" has the same meaning as in section 2901(11) of this title."

(2) Section 2109 of such title (as redesignated by section 2(a) of this Act) is amended—

(A) by striking out "Administrator, the Archivist of the United States," in the second sentence and inserting in lieu thereof "Archivist";

(B) by striking out "the Administrator shall, if he concurs, and in consultation with the Archivist of the United States," in the third sentence and inserting in lieu thereof "the Archivist shall, if the Archivist concurs,"; and

(C) by striking out "Administrator of General Services, by order, having consulted with the Archivist and" in the fifth sentence and inserting in lieu thereof "Archivist, by order, having consulted with".

(3) Section 2204(c)(1) of such title is amended by striking out "Service of the General Services".

(4) Section 2205(1) of such title is amended by striking out "Service of the General Services".

(5) Section 2110 of such title (as redesignated by section 2(a) of this Act) is amended by inserting "and Records" after "Historical Publications" in the last sentence.

(6) Section 2504(a) of such title is amended by inserting "and Records" after "Historical Publications" in the fourth sentence.

(7) Chapters 7, 15, 17, 21, 22, 23, 25, 29, 31, and 33 of such title (as amended by this section) are further amended by striking out "Administrator of General Services", "Administrator", "General Services Administration" each place they appear and inserting in lieu thereof "Archivist of the United States", "Archivist", and "National Archives and Records Administration", respectively.

(8) Section 3504 (e) of such title is amended by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States".

(9) Section 3513 (a) of such title is amended by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist of the United States".

(m) The item relating to chapter 29 in the table of contents for such title is amended to read as follows:

"29. Records Management by Archivist of the United States..... 2901"

(n)(1) Section 2901 of such title is amended by striking out paragraph (13) and inserting in lieu thereof the following:

"(13) the term 'executive agency' shall have the meaning given such term by section 3 (a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472 (a)); and

"(14) the term 'Federal agency' means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Supreme Court, the Senate, the House of Representatives, and the Architect of the Capitol and any activi-

ties under the direction of the Architect of the Capitol;"

(2) Section 2103 (1) of such title is amended by striking out "or of the Congress" and inserting in lieu thereof a comma and "the Congress, or the Supreme Court".

(o)(1) Section 101 of the Presidential Recordings and Materials Preservation Act is amended—

(A) by striking out "section 2107" each place it appears and inserting in lieu thereof "section 2112";

(B) by striking out "section 2101" and inserting in lieu thereof "section 2102";

(C) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist of the United States"; and

(D) by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist".

(2) Section 102 of such Act is amended—

(A) by striking out "section 2107" and inserting in lieu thereof "section 2112"; and

(B) by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist".

(3) Section 103 of such Act is amended by striking out "Administrator" and inserting in lieu thereof "Archivist".

(4) Section 104 of such Act is amended—

(1) by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist";

(2) by striking out subsection (b);

(3) by redesignating subsection (c) and (d) as subsections (b) and (c), respectively; and

(4) by striking out "under subsection (b)" in subsection (b) (as redesignated by paragraph (3) of this subsection).

(p) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following "Archivist of the United States."

(q) Sections 141 through 145 of title 4, United States Code, are each amended by striking out "Administrator of General Services", "Administrator", and "General Services Administration" each place they appear and inserting in lieu thereof "Archivist of the United States", "Archivist", and "National Archives and Records Administration", respectively.

(r) The Act of March 27, 1934 (48 Stat. 501, chapter 93; 25 U.S.C. 199a) is amended—

(1) by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States"; and

(2) by striking out "section 2112(b)" and inserting in lieu thereof "section 2117(b)".

(s)(1) Sections 106a, 106b, 112, and 113 of title 1, United States Code are each amended by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States."

(2) Section 106b of such title (as amended by paragraph (1) of this subsection) is further amended by striking out "General Services Administration" and inserting in lieu thereof "National Archives and Records Administration".

(t)(1) Sections 6, 11, 12, and 13 of title 3, United States Code, are amended by striking out "Administrator of General Services" and "General Services Administration" each place they appear and inserting in lieu thereof "Archivist of the United States," and "National Archives and Records Administration," respectively.

(2)(A) The heading of section 6 of such title is amended to read as follows:

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"§ 6. Credentials of electors; transmission to Archivist of the United States and to Congress; public inspection".

(B) The heading of section 12 of such title is amended to read as follows:

"§ 12. Failure of certificates of electors to reach President of the Senate or Archivist of the United States; demand on State for certificate".

(C) The table of sections for chapter 1 of such title is amended by striking out "Administrator of General Services" each place it appears in the items pertaining to sections 6 and 12 and inserting in lieu thereof "Archivist of the United States".

(u) Section 552a of title 5, United States Code is amended—

(1) by striking out subsection (b)(6) and inserting in lieu thereof the following:

"(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;" and

(2) by striking out "Administrator of General Services" each place it appears in subsection (1)(1) and inserting in lieu thereof "Archivist of the United States".

## DEFINITIONS

Sec. 3. For purposes of sections 3 through 8—

(1) the term "Archivist" means the Archivist of the United States appointed under section 2104 of title 44, United States Code (as added by section 2 of this Act); and

(2) the term "Administration" means the National Archives and Records Administration established under section 2103 of such title (as amended by section 2 of this Act).

## TRANSFER OF FUNCTIONS

Sec. 4. (a) All functions of the Administrator of General Services under chapters 7, 15, 17, 21, 22, 23, 25, 29, 31, and 33 of title 44, United States Code, are transferred to the Archivist.

(b) The National Archives and Records Service of the General Services Administration is transferred to the Administration.

(c) The Office of Office Information Systems of the Office of Information Resources Management of the General Services Administration is transferred to the Administration.

(d) In the exercise of the functions transferred under this Act, the Archivist shall have the same authority as had the Administrator of General Services prior to the transfer of such functions, and the actions of the Archivist shall have the same force and effect as when exercised by such Administrator.

(e) Prior to the appointment and confirmation of an individual to serve as Archivist of the United States under section 2104 of title 44, United States Code, the individual holding the office of Archivist of the United States on the day before the effective date of this Act may serve as Archivist under such section, and while so serving shall be compensated at the rate provided under subsection (b) of such section.

## TRANSFERS

Sec. 5. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions and agencies transferred by this Act, subject to section 1531 of title 31, United States Code, are transferred to the Archivist

for appropriate allocation. A percentage of the funds and associated positions in the General Management and Administration appropriation for the General Services Administration, proportionate to the percentage of National Archives and Records Service employees in the General Services Administration, is transferred to the Archivist for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) The transfer pursuant to this title of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employees to be separated or reduced in grade or compensation for one year after such transfer or after the effective date of this Act, whichever is later.

## SAVINGS PROVISIONS

Sec. 6. (a) All orders, determinations, rules, regulations, grants, contracts, agreements, permits, licenses, privileges, and other actions which have been issued, granted, made, undertaken, or entered into in the performance of any function transferred under this Act shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Archivist, a court of competent jurisdiction, or by operation of law.

(b)(1) The transfer of functions under this Act shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending on the effective date of this Act before the General Services Administration; but such proceedings and applications, to the extent that they relate to functions transferred under this Act, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act has not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Archivist, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Archivist is authorized to promulgate regulations providing for the orderly transfer of proceedings continued under paragraph (1) from the General Services Administration to the Administration.

(c) Except as provided in subsection (e)—

(1) the provisions of this Act shall not affect actions commenced prior to the effective date of this Act, and

(2) in all such actions, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) No action or other proceeding lawfully commenced by or against any officer of the United States acting in his official capacity shall abate by reason of any transfer under this Act. No cause of action by or against the General Services Administration or by or against any officer thereof in the official capacity of such officer shall abate by reason of any transfer of functions under this Act.

(e) If, before the date on which this Act takes effect, the General Services Administration or any officer thereof in the official capacity of such officer, is a party to an action, and under this Act any function in

connection with such action is transferred to the Archivist or any other official of the Administration, then such action shall be continued with the Archivist or other appropriate official of the Administration substituted or added as a party.

(f) Orders and actions of the Archivist in the exercise of functions transferred under this Act shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the individual holding the office of Archivist of the United States on the day before the effective date of this Act or the Administrator of General Services in the exercise of such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this Act shall apply to the exercise of such function by the Archivist.

## REFERENCE

Sec. 7. With respect to any function transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to the office of the Archivist of the United States as in existence on the date before the effective date of this Act or the National Archives and Records Service of the General Services Administration or any office or officer thereof shall be deemed to refer to the Archivist or the Administration, respectively.

## EFFECTIVE DATE

Sec. 8. The provisions of this Act shall take effect one hundred and twenty days after enactment.

Amend the title so as to read: "A bill to establish the National Archives and Records Administration as an independent agency."

Mr. MATHIAS. Mr. President, the reestablishment of a separate National Archives and Records Administration has been a subject of debate ever since 1949, when the then independent agency was incorporated into the newly created General Services Administration. At that time, in a major reorganization, several independent operations of Government were consolidated into the GSA superagency in an effort to achieve governmental efficiency.

Over the past 34 years, it has become clear that the mission of the National Archives—to preserve the Nation's documentary history—is fundamentally incompatible with that of GSA—to provide housekeeping services to the Federal Government. The result has been exactly the opposite of what was intended. Governmental inefficiency, confused lines of responsibility and authority, duplication of effort, and prolonged decisionmaking have hampered and increased the cost of operations of both the Archives and the General Services Administration. The preservation of the Federal Government's important historical records has been hampered because of the odd-couple arrangement between the two agencies.

S. 905, the bill before us, will cure this problem by reestablishing an independent agency, the National Archives and Records Administration. The agency is to be headed by the Archivist of the United States, a Presi-



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dential appointee, confirmed by the Senate for a 10-year term.

The bill returns authority, now with the Administrator of General Services, to the Archivist of the United States, with respect to the creation, management, appraisal, disposition, accession, and preservation of Federal records.

It transfers responsibility from GSA to the Archivist for the Federal Register, the Presidential Libraries, the National Archives Trust Fund, the National Historical Publications and Records Commission, and the regional records centers. It provides for a transfer of personnel, funds, contracts, property, liabilities, and records now employed in those activities from GSA to the new independent agency. In addition, a percentage of the funds and associated positions in the general management and administration appropriation for GSA proportionate to the percentage of NARS employees in GSA is transferred to the Archivist for appropriate allocation. The Congressional Budget Office estimates the net cost of this reorganization to be zero.

The sponsors of this legislation want to make clear that the savings provision of this legislation is intended to continue in full force and effect the current union-management agreement between American Federation of Government Employees Local 2578 and GSA/NARS. We also emphasize that the National Archives Trust Fund Board and the National Historical Publications and Records Commission should limit their independent hiring to those positions which cannot be filled in a practicable and timely way through civil service competitive hiring.

We recognize the unique expertise needed for certain positions such as financial and cash management; marketing and product development; publication, sales, and distribution; and reproduction of special works; as well as the museum functions of the Archives and Presidential libraries. We also recognize the need for flexibility in hiring for part-time, intermittent employees.

The sponsors of this bill on the Governmental Affairs Committee will continue to monitor these activities closely and will take appropriate action where warranted. In addition, the bill requires an annual report to the Congress by the Archivist concerning the program administration and expenditure of funds by the National Archives and Records Administration, the Trust Fund, and NHPRC. The report shall also describe research projects and publications undertaken by Commission and Trust Fund grantees. So the Committee on Governmental Affairs intends to continue its oversight of Archives operations and make adjustments as needed.

Mr. President, this bill has been before the Senate since 1980. The Committee on Governmental Affairs has held two hearings on the bill during that time as well as a number of hearings related to the present or-

ganizational arrangement between Archives and GSA and the costs and size of Presidential libraries. The committee has reviewed at least six major studies on the organizational placement of the Nation's archival functions dating back to the 1949 Leahy task force of the Hoover Commission. All but one concluded that the National Archives should be restored to its former independent status. The other, while stopping short of separating GSA and Archives, called for transferring basic archival responsibilities from the GSA Administrator to the Archivist, ensuring more autonomy for the agency in its decision-making, and making the Archivist a Presidential appointee. All of these proposals are incorporated in this bill.

The organizational placement of national archives in other countries was also instructive to the Senate Governmental Affairs Committee. In a survey of 99 countries, 25 make the national archives directly responsible to the president, prime minister, cabinet, council of ministers, or an independent board. Nineteen countries place their archives in a ministry of culture, 17 in a ministry of education, and 15 in a ministry of interior or home affairs. It is apparent that foreign governments attach more prestige and importance to their national archives than do we.

Mr. President, this legislation enjoys the broad bipartisan cosponsorship of 45 Senators. It is the sponsors' intent, and the bill plainly states that this legislation simply designs a reorganization. No new powers are conferred on the Archivist that are not currently held by the GSA Administrator. Current law, with respect to records management, access, appraisal, disposition, and preservation, is continued unchanged under the authority of the Archivist.

The sponsors did not set out to settle any turf battles over which agency and which statute has preeminent rule. Our purpose was simply to reorganize sensibly and in a cost-effective way. We believe existing case law should prevail with respect to the lines of authority and controlling statutes between and among departments and agencies.

If interagency squabbles persist, as they are bound to do, and if the efficient and effective working of Government is impaired by such ongoing disputes, then the Congress should devote reasoned, careful thought to such problems separately in formal hearings and debate.

It is not our purpose here either to increase or to diminish the current authorities of the Archivist of the United States now vested in the GSA Administrator. Now I am aware of certain concerns that have been raised recently by the Department of Justice and the Department of the Treasury. These issues, which were brought to our attention for the first time on May 3, long after this legislation was

heard, marked up, and reported, are longstanding ones between those agencies and the GSA Administrator in his records management and archival role.

The concerns brought to us focus on access by the Archivist and, ultimately, the public to FBI records, grand jury records, electronic surveillance files, and IRS income tax returns and return information. In addition, national security concerns with respect to access by the Archivist have also been raised.

These are ongoing concerns of those two agencies and they are legitimate concerns. Nevertheless, those agencies' own statutes specifically protect those records from disclosure to other agencies except in very narrow circumstances.

Provisions for protecting Federal records for national security reasons are likewise contained both in the respective agencies' statutes and in the existing statutes governing the access, records management, and archival functions transferred by this bill from GSA to the Archivist.

Mr. President, I ask unanimous consent to have printed in the RECORD a memorandum by the American Law Division of the Congressional Research Service addressing these concerns.

There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,  
Washington, D.C., May 7, 1984.

To: Senate Governmental Affairs Subcommittee on Governmental Efficiency and the District of Columbia (Attention Marion Morris).

From: American Law Division.

Subject: Access To Confidential Records By Archivist Under Bill To Establish Archives as Independent Agency.

This memorandum briefly addresses concerns expressed by agencies over a provision in S. 905, a bill to establish the National Archives and Records Administration as an independent agency, that enables the Archivist to secure certain information from other agencies.

S. 905, 98th Cong., 2d Sess., would remove the Archives from the purview of the General Services Administration, make the Archivist a presidential appointee with a fixed ten-year term, and conform existing functions and powers of the Archivist to the new administrative structure. The basic functions of the Archivist presently exercised under delegations of authority from the Administrator of the General Services Administration would remain essentially intact but would be transferred to the administrative control of an independent, presidentially-appointed Archivist. See, S. Rept. No. 98-373, 98th Cong., 2d Sess. 29-57 (1984).

Both the Department of Justice and the Secretary of the Treasury have objected to one provision in the bill that in their view enhances the Archivist's ability to obtain unrestricted access to confidential records, such as tax return information, classified data, grand jury material, and wiretap records, that are protected from disclosure by other laws. The provision in question, section 2(e) of the bill, would add a new 44 U.S.C. 2105(f), and states that "[e]ach Federal agency is authorized to furnish to the Archivist, upon his request, any information

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or other data which the Archivist finds necessary to carry out his duties."

Currently, the Administrator of General Services or his designee (in this case, the Archivist) in the course of his records management functions "may inspect the records or the records management practices and programs of any Federal agency solely for the purpose of rendering recommendations for the improvement of records management practices and programs." 44 U.S.C. 2906(a)(1). However, the law further provides that "[r]ecords, the use of which is restricted by law or for reasons of national security or the public interest, shall be inspected, in accordance with regulations promulgated by the Administrator, subject to the approval of the head of the agency concerned or of the President." 44 U.S.C. 2906(a)(2). Thus, the Archivist's access to records containing such information as tax return information, grand jury material, and wiretap data, protected from disclosure by other statutes, is subject to agency head approval pursuant to 44 U.S.C. 2906(a)(2). *American Friends Service Committee v. Webster*, 720 F.2d 29, 69 (D.C. Cir. 1983). S. 905 would not change these provisions of law except to substitute the Archivist for the General Services Administrator as the operative official.

It would seem unlikely that the proposed 44 U.S.C. 2105(f) would be interpreted to override the explicit provisions governing Archivist access to restricted information. To read the proposed provision with such breadth would arguably swallow all other provisions that detail the access rights of the Archivist. See, 44 U.S.C. 2906, 2103(2) (transfer of historical records), 3303a (schedules of records disposal); *American Friends Service Committee*, supra, 720 F.2d at 37, 77. The placement of the provision as one of several purely administrative provisions in the bill (proposed 44 U.S.C. 2105(a)-(i)) and the lack of explanatory material and attention in the Senate Report on the bill would seem to argue for a less expansive interpretation of the provision. See, S. Rept. No. 98-373, 98th Cong., 2d Sess. 24. Furthermore, the provision speaks of access to "information or other data" and not "records", the term used throughout the archival administration and records management laws to describe what it is the Archivist is to have access to and administer. See, 44 U.S.C. 2103, 2906, 3303. While semantically the terms "any information or other data" can conceivably encompass practically all records, such an interpretation would render meaningless the provisions that govern Archivist access to various records for particular purposes.

RICHARD C. EHLKE,

*Specialist in American Public Law.*

Mr. MATHIAS. Mr. President, the protection from disclosure of certain records and the national security concerns raised are ongoing ones for those agencies, as well they should be. But I believe, as do the other sponsors of this legislation, that the fears of those departments, that a change in the designation of the responsible Federal official for national archival functions brings with it a change in authority in those areas, are unfounded.

The courts have ruled recently on some of these very issues with respect to access for records management purposes by the Archivist to tax returns and tax return information, grand jury materials, and electronic surveillance materials. The U.S. Court of Appeals for the District of Columbia has

ruled that those records fall within the statutory description, "records, the use of which is restricted by law." The court interpreted section 2906(a)(2) of title 44 (inspection of agency records by the Archivist) to require approval by the FBI Director or the President for such records to be inspected by the Archivist for records management purposes. We believe such case law should remain undisturbed.

So the privacy safeguard already exists in current agency and Archives' statutes and has been reaffirmed by the courts.

The agency and Archives statutes also provide for protection of records for national security reasons. There is no intent to change such safeguards in this bill.

Section 2906 of the Record Management Chapter, which remains undisturbed by the bill before us, states, and I will read only the relevant parts:

Sec. 2906. (a)(1) "In carrying out his duties and responsibilities under this chapter the Archivist of the United States . . . may inspect the record or the records management practices and programs of any Federal agency solely for the purpose of rendering recommendations for the improvement of records management practices and programs. Officers and employees of such agency shall cooperate fully in such inspections, subject to the provisions of para. (2) and (3) of this subsection.

(2) "Records, the use of which is restricted by law or for reasons of national security or the public interest, shall be inspected, in accordance with regulations promulgated by the Archivist, subject to the approval of the head of the agency concerned or of the President. (emphasis added)

(3)(b) . . . "(b) In conducting the inspection of agency records provided for in subsection (a) of this section, the Archivist or his designee shall, in addition to complying with the provisions of law cited in subsec. (a)(3), comply with all other Federal laws and be subject to the sanctions provided therein. (emphasis added)

Both the Department of Justice and the Department of the Treasury have expressed concern about two provisions of S. 905. One is section 2105(a) which provides, as does the current title 44, for rulemaking by the Archivist to carry out his duties and for conforming activities by other Federal agencies. We have deleted that section in order to assure the Departments concerned that no new authority is contemplated for the Archivist than exists under the present title 44 for the GSA Administrator.

Second, the two Department objected to section 2105(f) of the bill which, again, tracks the current statute in authorizing other Federal agencies to voluntarily provide information and data to the Archivist to carry out his duties. We have deleted that section as well to assuage departmental concerns.

Mr. President, reestablishing the independent agency status of the National Archives is all that this bill seeks to do.

It can, we believe, restore professionalism to the archival appraisal, acqui-

sition, disposition, preservation, and public presentation of the Federal Government's records. It can achieve governmental efficiencies by focusing on a clear mission with direct lines of authority to the Archivist. It can insulate the preservation and presentation of our Government's activities from political influence. And it can reduce the backlog of records to be accessioned, appraised, preserved and made available for scholarly research by present and future historians, genealogists and the Federal Government itself. The end result of this reorganization will be better service to the public—to American citizens seeking to learn about their government and its history and a better institutional memory by public policymakers.

I urge my colleagues to act favorably on this measure.

AMENDMENT NO. 3321

Mr. BAKER. Mr. President, I send to the desk an amendment on behalf of the distinguished Senator from Kansas [Mr. DOLE] as a proposed substitute to the amendment by the Senator from Maryland [Mr. MATHIAS] and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. BAKER], for Mr. DOLE, proposes amendment numbered 3321.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At an appropriate place in the substitute insert the following: Notwithstanding any provision of this Title, no return or return information as defined in section 6103 of Title 26 of the United States Code may be disclosed except as authorized by Title 26.

Mr. DOLE. Mr. President, the Senator from Kansas offers an amendment to assure that section 6103 of the Internal Revenue Code will continue to control the access to tax returns and return information. I understand the distinguished Senator from Maryland is willing to accept this amendment and I wish to thank him for his willingness to adapt the measure to reflect the concerns of the Internal Revenue Service.

The bulk of the records received by the Internal Revenue Service are tax returns or return information. Since enactment of 26 U.S.C. 6103 in the Tax Reform Act of 1976, the Congress has consistently reflected the public's concern that these records are confidential in nature and are to be disclosed only as expressly provided in 26 U.S.C. 6103. Comprehensive disclosure and safeguard restrictions apply to these records whether in the possession of IRS or another agency as the result of a disclosure authorized by this statute.

It has been brought to my attention that the provisions of S. 905 might be misconstrued as indicating changed congressional intent regarding the confidentiality of tax records. Accordingly, I offer an amendment to S. 905 that insures the primacy of 26 U.S.C. 6103 on this issue. It's my understanding that the sponsors of S. 905 have reviewed my suggested amendment and have agreed to its inclusion in the legislation. Nothing in this amendment would prevent the acceptance by the archivist of returns donated by the taxpayer or of tax records that have become part of the public record through judicial or administrative proceedings.

Mr. MATHIAS. Mr. President, we are prepared to accept this amendment on this side.

Congress in the Tax Reform Act of 1976 rejected the concept which had prevailed since 1920 that individual income tax information was a general Government asset. It amended section 6103 of the code to provide that tax return information "shall be confidential" and no one with access to it shall disclose it "except as authorized by the code." The basic premise of that section of the Tax Code was to ensure no disclosure of individually identifiable tax returns and return information for uses other than tax administration unless Congress specifically authorized such disclosure.

Section 6103 of the Tax Code authorizes the following persons to receive information in which an individual's identity is revealed:

Persons designated by the taxpayer. State tax officials.

Persons having a material interest; for example, the taxpayer; a spouse; partners; certain shareholders.

Congressional committees.

The President.

White House personnel and the heads of Federal agencies in connection with "tax checks."

The Treasury Department and the Justice Department in civil and criminal cases.

Federal agencies in noncriminal tax cases.

GAO.

In addition, various other Federal agencies, such as the Bureau of the Census, can obtain tax return information for statistical use. But such access by these agencies is sharply circumscribed with respect to nontax purposes.

The Archivist is not one of those authorized by section 103 to see individually identifiable tax returns or tax information while in the possession of the custodial agency. He may request, as he has done in the past, to see such information for appraisal, records management, and disposition scheduling purposes under his own statute (see 44 U.S.C. 2906). But he may only gain access to such records to carry out these archival functions if the agency head or the President of the United States approves his request.

This amendment would restrict the Archivist in the performance of his duties even more than section 103. It not only precludes the Archivist from inspecting tax return and return information while in the possession of the agency, for records management purposes—that is, the responsibility to provide guidance to agencies with respect to records creation, records maintenance and use and records disposition—but it also precludes the Archivist from future access to such records for archival purposes—that is, the appraisal, accessioning, preservation, and making available to the public of permanently valuable historical Federal records.

There are three areas of Archives activities which this amendment affects about which we wish to be clear with respect to congressional intent. We share the views of the Chief Counsel to the National Archives that this amendment does not change the status of current records storage services—that is handling of records without seeing their contents—now performed for the IRS by GSA/Archives at regional records centers pursuant to a reimbursable agreement between the two agencies.

Furthermore, we believe this amendment is prospective in nature and would not affect the status of those IRS records now held as part of the permanently valuable records of the Archives and currently available to the public. For example, they include Civil War era Internal Revenue assessment lists by State and collection district, among others.

We note, however, that this amendment carries with it a small paperwork and administrative cost which should be recognized. The cost arises when the National Archives acquires Federal records from agencies other than IRS, which records may contain tax returns or return information. The cost of screening and segregating such information, unless it has been previously publicly disclosed, from those permanently valuable Federal records has been estimated by the Archives at approximately \$162,000 per year. The IRS would have to retain such tax return information in a retrievable form.

Mr. President, I ask unanimous consent to have printed in the RECORD the Archives Chief Counsel's memo on this amendment as well as a cost estimate by the Archives on the amendment.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

GENERAL SERVICES ADMINISTRATION,  
Washington, DC, June 1, 1984.

PROPOSED AMENDMENT TO S. 905

This is in response to your inquiry about the impact of proposed legislative language upon certain archival functions. The proposed amendment to Senate Bill 905 (the "National Archives and Records Administration Act of 1983") submitted by the Internal Revenue Service (IRS) states in pertinent part: "(j) Notwithstanding any provision of

this title, no return or return information as defined in section 6103 of title 26 of the United States, may be disclosed to the Archivist or to any officer or employee of the Administration by any Federal agency, except as authorized by title 26 . . ."

You have inquired what impact, if any, this language would have upon: (1) storage and reference services provided to the IRS in the Federal records centers; (2) future accessioning of permanently valuable records into the National Archives; and (3) status of accessioned records containing tax return information. In our opinion, the proposed amendment would have no impact upon (1) and (3) described above, but would adversely affect the archival function described in (2).

(1) FEDERAL RECORDS CENTERS

We understand that NARS currently stores and services IRS tax returns in Federal records centers. Indeed, NARS is involved in a dispute with IRS over the payment of standard level user charges for storage of IRS returns in these records centers.

In *American Friends Service Committee v. Webster*, 720 F.2d 29 (D.C. Cir. 1983), the court of appeals specifically addressed the issue of use of records containing tax return information and the prohibition of 26 U.S.C. § 6103. One of the disputes in this action involved whether NARS' archivists had the authority to inspect FBI files which contained tax return information. In general, the court held that, under 44 U.S.C. § 2906(a)(2), NARS archivists had no authority to review records containing tax return information unless approved by the Director of the FBI or the President. In its opinion, the court discussed expressly the use of Federal records centers by IRS and the prohibition of Section 6103.

"Section 6103 is a formidable law restricting the use of records. It contains many subsections listing persons and entities to whom disclosure may be made for specified purposes or under defined circumstances."<sup>68</sup> The district court regarded subsection (n) as authorizing the NARS inspection at issue.

Section 6103(n) provides:

Pursuant to regulations prescribed by the Secretary, returns and return information may be disclosed to any person . . . to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns and return information, and the programming, maintenance, repair, testing, and procurement of equipment, for purposes of tax administration.

"26 U.S.C. § 6103(n). The district court said of this provision: "On its face, the use of the word 'storage' appears to encompass the very sort of access envisioned by the archival statutes." Mem. op. of June 9, 1981, at 9, reprinted in App. at 47. The subsection does relate to one of the Archives' functions: returns and return information may be transferred for storage to a records center maintained and operated by NARS. See 44 U.S.C. § 2907, 3103.<sup>69</sup> But the Archives' storage or warehousing function is distinct from its records management function.<sup>70</sup> Section 6103(n) authorizes disclosure to any person to the extent necessary to the performance of the listed services."

<sup>68</sup> Congress made no specific reference to NARS in § 6103. It apparently sought, through § 6103(n), to provide statutory authorization for the Internal Revenue Service's practice of contracting with private companies for the various recordkeeping services listed in the subsection. The Senate Report referred to § 6103(n) as authorizing "disclosures to contractors who perform processing, storage, transmission, reproduction, programming, maintenance, testing, or procurement of equipment services for the IRS." S. Rep. No. 94-938, pt. I, *supra*, at 344. See also *id.* at 341.



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"Nor should NARS' storage function be confused with its "archival administration" function. Compare 41 C.F.R. § 101-11.410-7 (1982) (records stored in Federal Records Centers are "considered to be maintained by the agency which deposited them") with 41 C.F.R. § 101-11.411-1 (1982) ("NARS) is responsible for the custody, use, and withdrawal of records (accessioned into the Archives).")

Based upon the court's determination, quoted above, we conclude that 26 U.S.C. § 6103(n) provides authority for IRS tax return records to be stored and serviced in Federal records centers. Therefore, the provisions of the proposed amendment will not be violated because such a disclosure of IRS tax return records to Federal record center personnel is authorized by title 26.

### 2. FUTURE ACCESSIONING OF PERMANENTLY VALUABLE RECORDS

The second major archival function which could be affected by the proposed amendment to S. 905, quoted above, is that of accessioning permanently valuable records into the national archives. This function is presently outlined in 44 U.S.C. §§ 2103 and 2104. These provisions are carried over, with minor changes, in Sections 2108 and 2109 of S. 905. The first issue to be discussed herein is the present relationship between the NARS' authorities, set forth in Sections 2103 and 2104, and the prohibitions concerning tax return information, set forth in 26 U.S.C. § 6103. The second issue is whether this present relationship is affected by the proposed amendment.

The court in *American Friends Service Committee v. Webster, supra*, discussed the topic of restricted use records. First, the court determined that Section 6103 did not provide for access to NARS archivists to inspect for appraisal purposes tax return information in FBI records. In particular, the court concluded that under its records management function (44 U.S.C. Ch. 29), NARS had no authority to review tax return information unless approved by the Director of the FBI or the President. However, in its discussion the court stated further that its holding that NARS could not inspect restricted materials in FBI files did not deal with NARS' "archival administration" function, governed by 44 U.S.C. Ch. 21, 720 F.2d at 95.

Based upon the court's decision and the language of the respective statutes, it is our opinion that NARS may direct, under Section 2103, the transfer into the National Archives of records containing tax return information that are determined to have continuing value. It is also our opinion that, for these accessioned records, the restriction set forth under 26 U.S.C. § 6103 would be subject to the requirements of 44 U.S.C. § 2104.

The language of the proposed amendment to S. 905 would greatly affect NARS' present authorities under Sections 2103 and 2104. Because this added provision, by its own language, would apply to all of Chapter 21, the prohibitions of 26 U.S.C. § 6103 would then, for the first time, constrain NARS' authorities in accessioning new records under Sections 2103 and 2104. Thus, if this proposed amendment were adopted, permanently valuable records containing tax return information, from any agency, could not be disclosed to NARS. This new prohibition could require every agency to provide a document-by-document review of its records and withdraw documents containing tax return information before transferring them into the National Archives. Not only would this be a burdensome task upon all agencies but also it would result in many permanently valuable records being withheld from NARS and the American people. Obviously, this would gravely impair NARS' ability to perform its accessioning

function and administer the National Archives program.

### 3. ACCESSIONED RECORDS CONTAINING TAX RETURN INFORMATION

We understand that NARS may already have accessioned into the National Archives records which contain tax return information. Some of these records may have been processed and now publicly available. Other records may be temporarily closed to researchers for personal privacy or other reasons. The final issue to be resolved is whether the proposed amendment to S. 905 would affect the authority of NARS to continue to make publicly available accessioned records which contain tax return information.

NARS' authority to accept, store, preserve and eventually make available to the public permanently valuable records is found in Chapter 21 of Title 44 United States Code. The proposed amendment to S. 905 does not directly negate any of NARS' authorities with respect to records already accessioned. The purpose of the proposed amendment is to prohibit the future disclosure and transfer of records containing tax return information from Federal agencies to NARS. The proposed amendment makes no attempt to require the return of accessioned records. Unless a statute specifically states that it is effect is retroactive, the statute is presumed to be prospective. See *Union Pacific Railroad Co. v. Laramie Stock Yard Co.*, 231 U.S. 190 (1913); *Farmington River Power Co. v. FPC*, 455 F.2d 86 (2nd Cir. 1972).

We therefore conclude that the proposed amendment would not require the NARS return to transferring agencies all accessioned records which contain tax return information. This conclusion, however, does not mean that IRS would not argue for the return of such records on the ground they were improperly transferred to NARS. The basis for such a position by IRS would be Section 6103 rather than the proposed amendment.

### CONCLUSION

Based upon our review of the various statutes and pertinent caselaw, we have concluded that the proposed amendment to S. 905 would affect neither the storage of IRS records in Federal records centers nor the archival processing of accessioned records in the National Archives. However, this proposed amendment would gravely impair NARS' ability to administer its continuing program of accessioning permanently valuable records into the National Archives.

GARY L. BROOKS,  
Chief Counsel,

National Archives and Records Services.

GENERAL SERVICES ADMINISTRATION,  
Washington, DC, June 7, 1984.

HON. CHARLES MCC. MATHIAS, JR.,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR MATHIAS: Attached is the information you requested concerning the costs of screening incoming archival accessions for possible tax return/tax data information.

The cost is based on an analysis of records scheduled for accessioning in fiscal year 1985 plus records located in records centers which have previously been identified for accessioning but have been deferred, i.e., the accessioning backlog. The figures do not include any costs associated with retaining in a retrievable form segregated archival records which contain tax return/tax data information, which would presumably be kept in IRS custody for future access in accordance with Department of Treasury guidelines.

We should mention also that there are approximately 600,000 cubic feet of unsched-

uled records in the Washington National Records Center which NARS is currently appraising for accessioning into the National Archives. Some portion of these records may also require screening for tax return/tax data information. Since the project is ongoing, we are unable to determine at this time what portion of these records may require screening and, therefore, these costs are not included in the attachment.

Sincerely,

ROBERT M. WARNER,  
Archivist of the United States.

Attachment.

### ACCESSIONS

20,057 cubic feet—scheduled for accessioning in FY 1985 or deferred from agencies to which IRS is authorized to disclose tax return information.

1. Approximately 13,000 cubic feet are not likely to contain tax return information.

2. Approximately 5,000 probably do not contain tax return information but would have to be checked to ensure the accuracy of our analysis.

3. 2,000 cubic feet would require page-by-page screening to identify, remove, and insert an out-card notice for tax return information.

### SCREENING COSTS

2,000 cubic feet of records would require 7.5 staff years performed by GS-6 (step four) archives technicians.

FY 1985 cost for staff salaries, benefits, and supervision to screen accessions for tax return information is \$162,416.

Mr. MATHIAS. Mr. President, we will recognize the importance of protecting the confidentiality of individually identifiable tax records as well as trade secrets found in personal and corporate income tax returns. There also may be a national security interest in protecting certain aspects of some trade agreements and tax treaties and the negotiations proceeding them.

On the other hand, a great deal of important demographic information can be gleaned only from tax returns. U.S. business history will suffer because so few businesses keep archives on their own growth and activities. Corporate tax returns are one such invaluable source of data. This amendment will foreclose the possibility that future generations will have an opportunity to examine, at an appropriate time, key indicators of our Nation's social and economic history. The Nation's historical record will be incomplete as a result, but the right of privacy will prevail.

The amendment proposed by IRS and offered by Senator DOLE settles the question with respect to which statute—IRS's or Archives'—prevails governing access to tax records for archival purposes by the archivist.

It goes beyond existing case law and relies in part on an internal Justice Department memorandum which does not address the issue of access for archival purposes, but rather addresses the records management access question. I ask unanimous consent to have printed in the RECORD two memos on this amendment and one on the Justice Department internal memo.

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There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,  
THE LIBRARY OF CONGRESS,  
Washington, DC, May 17, 1984.

To: Senate Governmental Affairs, Attention: Marion Morris

From: American Law Division

Subject: Proposed Amendment to Bill Establishing Independent Archives Concerning Access to Tax Return Data

The Department of the Treasury has proposed an amendment to S. 905, a bill establishing an independent National Archives, that is designed to restrict access by the Archives to tax return information. This memorandum briefly analyzes the impact of the proposed amendment and its relationship to current law.

S. 905, 98th Cong., 2d Sess., would remove the Archives from the purview of the General Services Administration, make the Archivist a presidential appointee with a fixed ten-year term, and conform existing functions and powers of the Archivist to the new administrative structure. The basic functions of the Archivist—currently delegated by the Administrator of General Services and contained at chapters 21, 29 and 33 of Title 44 of the United States Code—would remain essentially unchanged by S. 905 but would be under the exclusive administrative purview of a presidentially-appointed Archivist.

## I

S. 905 would add a new 44 U.S.C. 2105 detailing various administrative provisions governing the Archivist, including the authority to issue regulations, to delegate functions, to make organizational changes, to establish advisory committees, and to seek data from other agencies pursuant to carrying out his duties. The Treasury Department proposal would add a provision, proposed 44 U.S.C. 2105(j), stating: "Notwithstanding any provision of this title, no return or return information as defined in section 6103 of Title 26 of the United States Code, may be disclosed to the Archivist or to any officer or employee of the Administration by any Federal agency, except as authorized by Title 26."

The proposed amendment would govern all provisions in Title 44 and would appear to bar access to tax return information pursuant to any access provision contained in Title 44 except in accordance with 26 U.S.C. 6103. The tax return confidentiality provisions would thus apply to any proposed access to such information by the Archivist pursuant to Title 44 authorities possessed by the Archivist to seek information from federal agencies. Those records access authorities are (1) the Archivist's authority, pursuant to his archival administration function to "direct and effect" the transfer to the Archives of records that are at least 30 years old and are determined to have sufficient historical or other value to warrant preservation. 44 U.S.C. 2103(2); and (2) his authority to inspect agency records for the purpose of evaluating the records management practices of federal agencies. 44 U.S.C. 2906(a). The Archivist also is required to regulate the records disposal practices of agencies, 44 U.S.C. 3302, but these provisions only require Archivist examination to lists and schedules of records lacking preservation value submitted to him and do not explicitly authorize Archivist inspection of the underlying records themselves. 44 U.S.C. 3303a; *American Friends Service Committee v. Webster*, 720 F.2d 29, 60-1 (D.C. Cir. 1983).

The confidentiality provisions of 26 U.S.C. 6103 currently apply to limit the Archivist

in inspecting agency records pursuant to his responsibility to oversee the records management practices of federal agencies. Agency head or presidential approval is required before inspection can be made of records governed by § 6103. 44 U.S.C. 2906(a)(2); *Webster*, *supra*, 720 F.2d at 71, 76-7. No such explicit limitation, however, appears in the archival administration provision authorizing the transfer of 30-year old records to the Archives. 44 U.S.C. 2103. See, *Webster*, *supra*, 720 F.2d at 77. The Archivist is governed, however, in his handling of such transferred records, by any restrictions or limitations imposed on the agency that transferred the records. 44 U.S.C. 2104(a).

The proposed amendment would subject both of the above access provisions to the limitations and procedures of 26 U.S.C. 6103. Its language ("Notwithstanding any provision of this title . . .") embraces all functions of the Archivist. It would thus answer the question left open in *Webster*, namely, the applicability of § 6103 to archival administration access pursuant to 44 U.S.C. 2104, by in effect prohibiting such access in the case of tax return information. The amendment's proviso "except as authorized by Title 26" would not enable Archivist access pursuant to 44 U.S.C. 2104 since access for such purposes is not provided for in 26 U.S.C. 6103.

With respect to the records management inspection authority, the proposed amendment would appear to override 44 U.S.C. 2906(a)(2) in that it would not permit inspection even with the approval of the agency head or the President, as currently allowed. The amendment thus would, given the absence of archivist access authority in 26 U.S.C. 6103, effectively bar inspection of tax return records by the Archivist pursuant to his records management functions. The court in *Webster* rejected the government's argument that 26 U.S.C. 6103 constituted an absolute restriction on archivist inspection and held instead that such records could be inspected pursuant to 44 U.S.C. 2906(a)(2) upon the approval of the agency head or the President. *Webster*, *supra*, 720 F.2d at 76 n. 75. In the court's view, the government's contention would "effectively nullify" 44 U.S.C. 2906(a)(2). The proposed amendment would appear to achieve that purpose by prohibiting inspection of tax records with no exception for agency head or presidentially approved inspections.

## II

*Webster* dealt with the question of the relationship of 26 U.S.C. 6103 and the records management inspection authority of the Archivist and held that such authority with respect to § 6103 records could only be exercised if the agency head or the President approved as provided for in 44 U.S.C. 2906(a)(2). It left open the question of the applicability of 26 U.S.C. 6103 to the authority of the Archivist to direct the transfer of 30-year old historically valuable records to the Archivist pursuant to 44 U.S.C. 2103(2). *Webster*, *supra* 672 F.2d at 77. The Department of Justice, in 1977, concluded that 26 U.S.C. 6103 was not overridden by the archival access provisions and that the detailed and stringent provisions of § 6103 barred transfer of tax records to the Archivist. 1977 Opinions of the Office of Legal Counsel 216 (1977). The question is a close one, as recognized in the Justice Department opinion. *Id.* 218.

26 U.S.C. 6103 is a comprehensive statute generally prohibiting disclosure of tax return information then proceeding to detail those instances in which disclosure is permissible. The statute covers disclosure to the taxpayer and his representatives, other

federal agencies, the President, congressional committees, state and local governments and even private persons involved in the processing, storage or maintenance of such information. 26 U.S.C. 6103(c)-(o). Disclosure to the Archives is not mentioned nor does the legislative history of the provision address the question of archival access. The Department of Justice therefore concluded in its 1977 opinion that "[t]he amount of attention that was paid to the formulation of the exceptions would allow for an inference that no exception was intended as to the Archives." OLC Opinion at 218.

An alternative interpretation is possible, however. With the exception possibly of the provision in 26 U.S.C. 6103(n) for private person access for storage or processing purposes, the various disclosure provisions in § 6103 relate to persons or agencies seeking to use the information contained in the tax return for some authorized purpose, usually investigatory. Archives access under 44 U.S.C. 2103, on the other hand, is unrelated to the contents of particular records per se but instead is for the purpose of historical preservation. Archives access is less document-specific than access by other agencies outlined in § 6103. The Archives does not seek the records in order to utilize the information contained therein for some administrative or investigatory purpose. The historical preservation and storage functions of the Archives do not entail action by the agency based on what is discovered in the records themselves; no taxpayer-related action results from the archival access and storage of the records, unlike the administrative or prosecutorial proceedings for which access is sought under the provisions of § 6103.

The 1978 amendments to the archival administration statutes (which occurred after the 1976 enactment of the tax record confidentiality law and the 1977 OLC opinion) bear this out and reinforce Congress' intent as to the breadth of the Archivist's authority under these provisions. The amendments, *inter alia*, changed from 50 years to 30 years the age of records that can be directed by the Archivist to be transferred to the Archives for historical preservation and the period during which agency-imposed restrictions on public access to transferred record can remain in place. Public Law 95-416; 92 Stat. 915. The purpose of the amendments was to enable "better and more professional protection for historical records" and to remove the unilateral authority of agency heads to impose public access restrictions on transferred records. See, H. Rept. No. 95-1522, 95th Cong., 2d Sess. 1, 2 (1978). The provisions thus strengthened the transfer authority of the Archivist.

No mention was made of the then two-year old tax return confidentiality law in the committee reports on the bills. However, the insertion of a provision governing census records is instructive as to how tax records might have been viewed if the subject had arisen and aids in reconciling 26 U.S.C. 6103 and the archival access statute. At the insistence of the Census Bureau, a provision was included that recognized the 1952 agreement that had been entered into between the Director of the Census Bureau and the Archivist (after enactment of the 1950 Federal Records Act) that personally identifiable census records transferred to the Archives be closed to public access for 72 years. H. Rept. No. 95-1522, *supra* at 3, 15. See, 44 U.S.C. 2104(b). Such census records are protected from disclosures under 13 U.S.C. 9 pursuant to which no officer or employee of the Department of Commerce may "permit anyone other than sworn officers and employees of the Department or

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bureau or agency thereof to examine the individual reports." 13 U.S.C. 9(a)(3). The census data provision is thus much more unqualified and protective of census records than 26 U.S.C. 6103 is of tax records. Furthermore, the tradition of census record confidentiality runs deeper than that of tax records even though the rationale for protection of census records—to encourage cooperation with the census—also underlies the tax return data provisions. See, *Baldridge v. Shapiro*, 455 U.S.C. 345, 356 (1982); S. Rept. No. 94-938, Part I, 94th Cong., 2d Sess. 315 (tax data); S. Doc. No. 94-266, 94th Cong., 2d Sess. 821 (1975) (evolution of concept of tax return confidentiality).

Despite the unqualified nature of the census records confidentiality provision and the strong public expectation of secrecy with respect to such records, all parties involved in both the 1952 agreement regarding transfer and subsequent public access to census records and the 1978 amendments embodying that agreement recognized that transfer to the Archives did not pose a problem under 13 U.S.C. 9 but that eventual public access would have to be restricted. See, H. Rept. No. 1522, *supra* at 15 (1952 agreement), 8-9 (1978 letter to committee from General Counsel, Department of Commerce). The Attorney General, in a 1944 opinion to the Secretary of Commerce, also assumed that transfer to the Archives of census records did not violate the census record confidentiality provision. 40 OP. A.G. 326 (1944). The Attorney General was asked by the Census Bureau whether the Archivist was bound by the confidentiality provision with respect to subsequent public disclosure of records the Bureau was proposing to transfer to the Archives. He held that the Archivist was bound, an opinion consistent with the practice of the Archivist. *Id.*, 327. No question was raised as to the propriety of the transfer to the Archives of the records and all parties seemed to assume that the transfer was not barred by the confidentiality provision.

Thus, Congress, the Attorney General, the Archives and the Census Bureau, appear to perceive no problem under the census records nondisclosure statute with transfer of such records to the Archives. Given the unqualified language of 13 U.S.C. 9, a similar accommodation of the tax data confidentiality provision and the archival transfer provision would seem possible. Such accommodation would also not seem inconsistent with the underlying purpose of the archival access statute and 26 U.S.C. 6103. The former is designed to preserve and store records and not gain access in order to glean from them data that might be useful for some agency administrative, investigatory, or prosecutorial action. Such a distinction was seemingly recognized with respect to census records and would seem equally pertinent to tax records.

## III

In conclusion, the proposed Treasury Department amendment to S. 905 would seem to effectively bar access by the Archivist to the type of tax return information described in 26 U.S.C. 6103 pursuant to both his archival and records management functions. The amendment would appear to govern access to historical records under 44 U.S.C. 2103 and override the provision for inspection of otherwise restricted data upon approval of the agency head or the President pursuant to 44 U.S.C. 2906(a)(2). Under current law, 26 U.S.C. 6103 does serve as a limitation on records management inspection authority but the restriction can be waived by agency head or presidential approval. The relationship of § 6103 and the transfer authority in 44 U.S.C. 2103 is less

certain. However, a case can be made that, given the underlying motivation for archival access and analogous practices with respect to confidential census records, 26 U.S.C. 6103 should not be held to bar transfer of historically valuable tax return information to the Archives.

RICHARD EHLMKE,

Specialist in American Public Law,  
American Law Division.GENERAL SERVICES ADMINISTRATION,  
OFFICE OF GENERAL COUNSEL.

Washington, DC, May 18, 1984 (Revised).

Subject: Status of IRS records under 44 U.S.C. 2103 and 2104.

This is in response to your inquiry about the current status of accessioned records in NARS containing tax return information. Based upon the court's opinion in *American Friends Service Committee v. Webster, et al.*, 720 F.2d 29 (D.C. Cir. 1983), it is our opinion that, after 30 years, permanently valuable records containing tax return information, or any other statutory restricted materials, may be transferred to NARS pursuant to 44 U.S.C. § 2103. Furthermore, once the records are transferred to NARS, NARS employees are responsible for applying all mandatory and permissive restrictions for access to these materials pursuant to 44 U.S.C. § 2104.

As you are aware, the Office of Legal Counsel (OLC) of the Department of Justice (DOJ), issued an opinion in 1977 which discussed the propriety of transferring to NARS Watergate Special Prosecution Force records which contained tax return information. In this opinion, the OLC concluded that, based upon the prohibitions in 26 U.S.C. § 6103, Congress did not intend that records containing tax return information should be transferred to NARS.

In 1978, one year after the OLC opinion and two years after the enactment of the prohibition in 26 U.S.C. § 6103, Congress amended sections 2103 and 2104 of title 44 United States Code. In general, Congress reduced the period for transferring records to NARS as well as reducing the statutory restriction period from 50 years to 30 years. In the legislative history of this amendment, Congress viewed this change as opening up records for research within an earlier period. See H. Rep. No. 95-1522 (1978). Nowhere in the statute nor its legislative history did Congress ever suggest that certain types of statutory restrictions would not only be carried on forever but also prevent NARS from receiving them. Unless Federal agencies utilize NARS authorities to preserve (44 U.S.C. Ch. 21) or dispose of these records (44 U.S.C. Ch. 33), agencies will retain with these records in perpetuity. Moreover, implementation of this OLC opinion would require breaking up records series and destroying historical accuracy. This was surely not contemplated by Congress when enacting the 1978 amendments.

In 1980, the OLC issued a second opinion regarding the non-disclosure provisions of 26 U.S.C. § 6103. In that opinion, OLC concluded that section 6103 prohibits NARS archivists from receiving tax return information in FBI files. This issue was eventually submitted to the Court of Appeals for resolution.

In 1983, in *American Friends Service Committee v. Webster*, 720 F.2d 29 (D.C. Cir. 1983), the Court of Appeals addressed this topic of restricted use records. First, the court determined, as had OLC, that section 6103 did not provide for access for NARS archivists to inspect tax return information in FBI records. The court similarly determined that NARS archivists were not authorized to inspect grand jury and electronic surveil-

lance materials by those respective restrictive use statutes.

These determinations, however, did not end the court's analysis of the problem. The court reviewed carefully the authority of NARS to inspect records under 44 U.S.C. § 2906. The court concluded that under 44 U.S.C. § 2906(a)(2), NARS had no authority to review those restricted use records unless approved by the Director of the FBI or the President. Implicit in this court's holding, however, is the premise that section 6103 does not provide the only means of access to records containing tax return information. The court clearly held that 44 U.S.C. § 2906(a)(2) provided an alternative authority for access to restricted use records not contemplated by section 6103 or the other restrictive statutes.

Following its discussion of NARS' authority under 44 U.S.C. § 2906, the court stated that its holding that NARS could not inspect restricted materials in FBI files did not deal in NARS' "archival administration" function, governed by 44 U.S.C. Ch. 21. The court held:

"Nothing we decide today bears on NARS' statutory authority to direct and effect the transfer to the National Archives of the United States of records of a Federal agency that have been in existence for more than thirty years and determined by the Archivist . . . to have sufficient history or other value to warrant their continued preservation." *Id.* 2103(2) (Supp. V 1981).

"77 'When records, the use of which is subject to statutory limitations and restrictions, are . . . transferred (to the National Archives), permissive and restrictions statutory provisions with respect to the examination and use of records applicable to the head of an agency from which records were transferred or to employees of that agency are applicable (to NARS personnel)." 44 U.S.C. § 2104.

These quoted provisions indicate that while NARS had no authority to inspect these restricted use records while at the FBI, NARS had additional authority to inspect these same records after they are transferred to NARS under 44 U.S.C. § 2103. Also, when these restricted use records are transferred to NARS, NARS personnel must follow the restrictive provisions that are then applicable.

The court also reviewed the authority of NARS under 44 U.S.C. Ch. 21 for purposes other than inspection. As for a NARS' general authority in this area, the court stated:

"Section 507 of the 1950 legislation (codified as amended at 44 U.S.C. 2201, 2103-2110), also reflects Congress' recognition that private parties such as some of these plaintiffs have an interest in agency records. Section 507 dealt in part with transferring records from agencies to the National Archives. It included 'a general repeal clause (for records in existence for 50 years) to statutory and other restrictions governing the use of records by scholars and the public generally.' 1950 S. Rep. at 16; 1950 H.R. Rep. at 15. If Congress did not expect the public to have access to and an interest in these records, there would be no reason for the restrictions on the use of some records and no purpose served by the general rule that restrictions should be removed after 50 years.

"This 50 year limit was reduced to 30 years in 1978, see Act of Oct. 5, 1978, Pub. L. No. 95-416, 92 Stat. 915 (amending 44 U.S.C. §§ 2103, 2104). At that time Congress reiterated the interest that researchers and the general public have in agency records. See H.R. Rep. No. 1522, 95th Cong., 2d Sess. 2, 3 (1978). In particular, the House Report explained that the change from 50 to 30 years

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was designed to make access by the public easier.

"The Archivist has no authority (under the pre-1978 law) to remove restrictions placed by agencies until the documents are 50 years old. As a result, requests for restricted documents must be made under the Freedom of Information Act, an inefficient way to deal with large numbers of historical documents.

"More careful scrutiny when restrictions are proposed should *simplify access problems for the researcher*, the agency, and the Archives.

"Id. at 2 (emphasis added). A letter from the Acting Administrator of GSA, expressing GSA's view on the bill to the House committee, also recognized the public's interest. This bill, he wrote, 'would assure a more equitable balance between protecting those records, which legitimately require greater protection for a period of time and providing greater public access to records of historical significance and interest.' Id. at 4 (appending letter of July 10, 1978, from Robert Griffin, Acting GSA Administrator, to the Hon. Jack Brooks, Chairman of the House Committee on Government Operations).

## "5. CONCLUSION

"In sum, the legislative history of the records acts supports a finding that Congress intended, expected, and positively desired private researchers and private parties whose rights may have been affected by government actions to have access is subject to various restrictions, including possibly an appropriate delay of time. At this date, however, even a 30-year wait would permit access to records on World War II, the Korean War, the Rosenbergs' investigation and trial, and the McCarthy era." 720 F.2d at 50-52.

Finally, it should be noted with respect to this ongoing litigation in *AFSC v. Webster*, the Government, through the DOJ, filed a retention plan for FBI records. This retention plan requires the transfer of permanently valuable records to NARS after 50 years. Certain of these records, to be transferred beginning in the 1980's, will include these restrictive use records. Neither the FBI nor the DOJ have raised any objection to the expected transfer of restricted use records. If such an objection were anticipated, it would be made to the District Court in our current litigation.

Based upon the foregoing, as well as a clear reading of 44 U.S.C. §§ 2103 and 2104, it is our opinion that restricted use records, including tax return information, should be accessioned into the National Archives. If you have any further questions, please call me at 566-1460.

GARY L. BROOKS,  
Chief Counsel,

National Archives and Records Service.

CONGRESSIONAL RESEARCH SERVICE,  
Washington, DC, June 5, 1984.

To: Senate Governmental Affairs Committee, Attention: Marion Morris.

From: American Law Division.

Subject: Department of Justice Opinion on Application of Tax Return Confidentiality Provisions to the National Archives.

This memorandum comments on a November 7, 1980, memorandum from the Department of Justice Office of Legal Counsel to the Assistant Attorney General, Civil Division, regarding the applicability of the nondisclosure provisions of the Tax Reform Act (26 U.S.C. 6103) to National Archives processing of tax returns under various records management statutes.

Initially, the memorandum does not purport to be a formal opinion. It was written

during the District Court proceedings in *American Friends Service Committee v. Webster*, 720 F.2d 29 (D.C. Cir. 1983), a case challenging the records management policies and practices of the FBI and the National Archives. Because of the pendency of judicial proceedings, the office, adhering to past practice, declined to issue a formal opinion. Instead, the memorandum represented "our informal views on the legal issue presented." Memo at 3.

The Office reiterated its view expressed in a 1977 formal opinion that 26 U.S.C. 6103 barred transfer of tax return records to the Archives. See, 1977 Opinions of the Office of Legal Counsel 216 (1977); see also our May 17 memorandum, "Proposed Amendment to Bill Establishing Independent Archives Concerning Access to Tax Return Data," at 4-8 for alternative arguments. What prompted this 1980 memorandum, however, was proposed inspection by Archives officials of tax returns at FBI offices pursuant to devising records retention plans and schedules. The two functions of the Archives are the subject of separate statutory authorization. See, 44 U.S.C. 2103 (authority to direct the transfer of 30-year old historically significant records) and 44 U.S.C. 2906(a) (authority to inspect records in order to evaluate agency records management practices). Despite the different authorities involved, the memorandum concludes that, given the breadth of 26 U.S.C. 6103, a different result is not warranted. Thus, in its view, § 6103 precluded the archivists from reviewing tax return or return information in the FBI files.

The memorandum notes the distinction between the two archival functions, but fails to address the effect of the proviso in 44 U.S.C. 2906(a)(2) regarding inspection of restricted records pursuant to the records management function. That provision states that "[r]ecords, the use of which is restricted by law or for reasons of national security or the public interest, shall be inspected in accordance with regulations promulgated by the Administrator, subject to the approval of the head of the agency concerned, or of the President."

The Court of Appeals in *Webster* held that, while § 6103 covered "records, the use of which is restricted by law," such records could be inspected, pursuant to 44 U.S.C. 2906(a)(2), with agency head or presidential approval. *Webster*, *supra*, 720 F.2d at 71, 76-7. It explicitly rejected the government's contention that § 6103 constituted an absolute restriction on archivist inspection of tax return records. Id. at 76 n. 75. Thus, the court has rejected the conclusion of the 1980 Office of Legal Counsel memorandum with respect to inspection of tax return records.

While the memorandum was concerned with records inspection, it reiterated the view that § 6103 also barred archival transfer of tax records. The court in *Webster* left that question open. Id., 672 F.2d at 77. Amendments proposed by the Treasury Department to S. 905 would resolve that question by barring all access by the Archivist to § 6103 data pursuant to any of his archival or record management functions.

In conclusion, the 1980 Office of Legal Counsel memorandum reiterated the conclusion that 26 U.S.C. 6103 barred the transfer of tax records to the Archives and applied that conclusion to also prohibit archivist inspection of such records at FBI offices. The court in *Webster*, however, rejected this latter interpretation of § 6103 and held that inspection of such records was permissible with agency head or presidential approval. The question of § 6103's appli-

cation to transfer of 30-year old records was not at issue in *Webster*.

RICHARD C. EHLKE,  
Specialist in American Public Law.

Mr. MATHIAS. Mr. President, it is important to make the distinction between records storage and archival purposes.

The former deals with the daily storage, handling, and retrieval of Federal records by the regional records centers for parent agencies, which retain legal custody of those records for 30 years. Many of these are semiactive records which agencies have occasion to need for referral purposes.

The later—archival purposes—has to do with determining which Federal records are of permanent historical value, ensuring their protection for the 30 years they remain in the legal custody of the parent agency, and ultimate transfer of custody of that relatively small percentage of records of permanent historical value to the Archives for preservation and public access.

Let us be clear about the current situation with respect to tax return information. Personal income tax returns, which are required by the IRS statute to be kept for 6 years, are kept for the IRS by the Archives in regional records centers. Those returns for 1981 numbered approximately 95 million.

Pursuant to a mutually agreed upon disposition schedule for tax returns, the Archives destroys tax returns when they are 6 years and 9 months old. So the individual income tax return is nonexistent long before the 30 year date established in the 1978 Records Management Act for transfer to the Archives. The only individually identifiable personal income tax returns which survive are those transferred to other Federal agencies, for regulatory, civil or criminal investigatory, or audit purposes. So a miniscule percentage of tax return information survives in other agency files as part of their larger case files.

Those files are usually accessioned by the Archivist after 30 years and only if he determines they are of permanent historical value.

Corporate, gift, and estate tax returns are on a 75-year disposition schedule. No tax returns from IRS of recent vintage are being accessioned by the Archivist because IRS resists and the Archivist is reluctant to press the issue.

In addition, the Archives holds and makes available individual assessment lists for the 19th century, particularly the Civil War period, and corporate assessment lists for 1910-15, and other lists of special returns and penalties primarily for the 1860's and 1870's

These are valuable to historians to substantiate, for example, the dynamics of change from an agrarian economy to an industrialized one; population shifts from a rural to urban society; and sex, age, and household size and composition characteristics.

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It is also instructive to look at how a sampling of State archives protect the privacy of their State tax returns for guidance in this matter. I ask unanimous consent to have printed in the RECORD a review of State-archives' treatment of tax return information.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

## STATE INCOME TAX INFORMATION

The following States have dealt with State income tax information as indicated.

**ALABAMA:** The State Department of Revenue has its own system of records retention and disposal, with no role played by the state archives.

**DELAWARE:** The state archives has determined that a sample of personal income tax returns is permanent. The records are restricted from public research for a period of 60 years. Since the state did not have an income tax until the 1920s, they have yet to release their first returns. As in the case of all of the states we contacted, any returns submitted as part of a court case would be open unless the court sealed them, which is quite rare. In addition to the income tax material, the archives has a large quantity of real and personal property tax data from the 18th through the 20th centuries. The archives has microfilmed these records and they remain one of the most popular series for researchers.

**FLORIDA:** No state income tax.

**GEORGIA:** Individual state income tax records are stored in the state archives' records center, where about 40% of the reference activity of the center is on those tax returns. Personal income tax records are scheduled for destruction after 7½ years; investigative files of the attorney general are permanent records and are opened after 75 years. The state taxation department and the state archives developed the records schedule jointly, and archivists are permitted to examine the records prior to disposition.

**ILLINOIS:** About four years ago, the state revenue department decided not to send tax information to the state archives, and the material is still in the agency. State archivists have been permitted to examine the records for appraisal purposes and have judged them to be disposable. Personal and real property tax information in Illinois is retained as property tax information in Illinois is retained as permanent at the local level.

**IOWA:** The state Department of Revenue has its own records center where it keeps individual tax returns for a period before destroying them. The State Records Commission must approve disposal actions, but in fact this is merely a formality. The state archives has executive journals, which contain appeal information; however, access to these records can only be granted by the State Department of Revenue. Because of the size of the taxation collection at the records center, the state archives has not made an issue of tax materials.

**KANSAS:** The archives has statutory authority to inspect state records, but in fact their resources are thin. No personal or corporate returns have been accessioned, and the state archives appraisers records only when they are offered or when they are scheduled to be destroyed. Archivist Terry Harmon could not recall seeing any tax information in state law enforcement files; access to these files is subject to some restrictions. The state archives has accessioned county-level personal and property tax assessment lists.

**MARYLAND:** The Maryland state archives has determined that personal and corporate income tax returns are disposable. They do retain as permanent records tax information in aggregate form. This material is restricted for 75 years. As in the case of most state archives, their court records contain tax information and it is usually open to researchers, unless the court seals it. There is an abundance of 18th through 20th century personal property tax data; it is open in its entirety through to the present.

**MICHIGAN:** The state treasury department income tax returns are scheduled and stored in the state records center until their disposal date. The state archives has not asked to inspect these records nor for them to be accessioned as permanent records. Business tax returns from the 1940s until the mid-1970s were abstracted by the treasury department, and the archives received composite computer printouts until the practice was discontinued because of budget cutbacks. Files of the state attorney general's office, which could contain tax investigation information, are in the state archives and have no access restrictions on them.

**MINNESOTA:** The retention period for state income tax returns are set by state statute. The question of the authority of the state archives to appraise state finance department records has not been raised.

**NEBRASKA:** The state archivist does sign off on the disposal of individual state income tax returns and has the right to inspect these records, although he has not exercised this right. Records of the state attorney general's office, which could contain tax investigation information, have no access restrictions. Personal and property tax assessments and lists are scheduled as permanent, and all of these records from the mid-19th century to 1960 are open to research.

**NEW YORK:** The New York State Archives has not accessioned any personal or corporate income tax returns. The state law is quite rigid about letting anyone but Department of Taxation and Finance employees have access to income tax returns. The Department has construed this to include archivists trying to do appraisal work; the state archives does not feel it has the clout to take on the Department over the issue. More recently, the archives has, however, appraised statistical reports prepared by the Department that are based on tax data. The archives is awaiting the Department's response to their appraisal.

**PENNSYLVANIA:** The archives has not accessioned any personal income tax returns. The returns have been scheduled as disposable by the archives. The archives has, however, accessioned 331 volumes of the Bureau of Corporate Taxes, 1850-1951, which includes detailed income data on Pennsylvania businesses. These records are open to public research. As in nearly all of the eastern states, there are considerable quantities of personal and real property tax data in the archives that is frequently used by the public.

**TEXAS:** No state income tax.

**VIRGINIA:** The state Department of Finance secured special legislation to establish its own records system, with no role played by the Virginia State Library. The library has an ongoing project of microfilming personal and real estate tax records in the localities. (For more information, contact Willie Ray.)

**WISCONSIN:** The state archives has accessioned all corporate returns from 1911-1973. These are closed, however, except with the permission of the Commissioner of Internal Revenue. They have negotiated an agreement with the revenue department to accession a machine-readable version of all

personal income tax returns, beginning in 1976. These, too, are closed except with the permission of the Commissioner of Internal Revenue. In appraising these machine-readable records, the state archives had unrestricted access.

Mr. MATHIAS. Mr. President, my own State of Maryland, which now has an independent State archives, retains aggregate data from tax information for future historical reference. Even then, the data, which is not individually identifiable, is restricted from public access for 75 years. The basic ground rule with most of the State archives is to prohibit release of individually identifiable information during the person's lifetime. Even after such records become available to the public there are restrictions on public access to prevent defamation of character or embarrassment to family members.

Likewise, the treatment of census bureau records by the Archives also is instructive. Pursuant to a 1952 agreement between the two agencies, census records are kept confidential for 72 years from the enumeration date in order to protect the rights of individuals concerned. The agreement goes on to describe specifically legitimate historical, genealogical, or other worthwhile research:

- (1) a searcher's reputation as, in fact, a research worker or professional genealogist;
- (2) a searcher's connection with an established institution of learning or research;
- (3) a searcher's connection with the person or family whose records are desired, either by immediate relationship or by authorization; and
- (4) the lapse of time since the appearance of possibly detrimental information, considered in conjunction with the legitimacy of public or scholarly interest in the factual data relating to a historical personage.

So, I believe there are some workable examples available which might guide the IRS and Archives in the development of a similar type of policy with respect to tax returns and return information. I encourage these two agencies to work together to come to a meeting of the minds on this issue which will protect the privacy of living individuals while ensuring that historically valuable information which cannot be derived from any other source is made available to the public after a reasonable passage of time. I think Congress would be open to suggestions by these two agencies to address through legislation the legitimate concerns of both agencies.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Kansas [Mr. Dole].

The amendment (No. 3321) was agreed to.



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## AMENDMENT NO. 3322

(Purpose: To include the Administrator of General Services and the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget as additional members of the Administrative Committee of the Federal Register)

Mr. BAKER. Mr. President, I send an amendment to the desk on behalf of the distinguished Senator from Oregon [Mr. HATFIELD] as a substitute for the Mathias amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. BAKER], for Mr. HATFIELD, proposes an amendment numbered 3322.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 8, line 8, strike out "(m)" and insert in lieu thereof "(10)".

On page 8, between line 10 and the matter following line 9, insert the following:

(m) The first sentence of section 1506 of such title is amended by striking out "and" after "Attorney General," and by inserting before the period a comma and "the Administrator of General Services, and the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget".

Mr. HATFIELD. Mr. President, it is exceedingly appropriate that today the Senate should be considering legislation to create an independent National Archives and Records Administration. Yesterday marked the 50th anniversary of the creation of the National Archives and the Institution could not receive a finer birthday present than passage of S. 905 by the Senate. Senator MATHIAS and Senator EAGLETON are to be congratulated for their tenacity in pursuing the important goal of giving our national documentary history proper attention.

I will not expound at length on the benefits to be derived as a result of the passage of this legislation except to point out that sometimes it happens that what appears to be a wise consolidation of functions to streamline the bureaucracy, can instead result in damage to the mission of the agencies involved. That has been the case with the inclusion of the National Archives and Records Service within the General Services Administration. The GSA, with its proper emphasis on space allocation and resource management could not give the attention necessary to care for the less tangible national heritage represented by the holdings of the National Archives.

The fact that the separation of the National Archives and Records Administration from GSA will add no new costs to the Federal budget reinforces my commitment to establish autonomy for the NARS once again. I am pleased to support the bill.

It is gratifying that the administration has understood the need for this legislation and has agreed to support it. Administration officials and I met to discuss concerns that they had over certain provisions of the bill as reported by the Governmental Affairs Committee. These discussions were fruitful and with the cooperation of Senators MATHIAS and EAGLETON a satisfactory agreement was reached on revisions that the administration felt were necessary for the GSA and NARS to carry out their respective functions as separate agencies. The managers of the bill have included most of those changes in their substitute amendment. Another change is included in the amendment proposed by Senator DOLE which I support. I would like to propose the remaining changes in the form of two amendments to the bill and request the support of the managers of the bill.

In bringing up these amendments, I ask unanimous consent that two letters which I have received from the Office of Management and Budget, clarifying the administration's position, be printed in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

EXECUTIVE OFFICE OF THE  
PRESIDENT,  
OFFICE OF MANAGEMENT AND BUDGET,  
Washington, DC, May 29, 1984.  
Hon. MARK HATFIELD,  
U.S. Senate, Washington, DC.

DEAR MARK: This is to confirm the substance of our discussion on May 23 regarding S. 905, a bill that would separate the National Archives and Records Services [NARS] from the General Services Administration [GSA].

The Administration will support enactment of S. 905, providing that certain changes are reflected in the final enacted version of the bill. Those revisions are outlined in the enclosure.

The Administration's proposed changes to S. 905 reflect our belief that the parameters of a bill to separate NARS from GSA should not permit changes to current archival authority, but rather, should be limited to reorganizational matters.

As you know, the Administration has serious concerns about certain provisions of H.R. 3987, the House counterpart to S. 905. The objectionable provisions of H.R. 3987 would modify or expand archival authorities. We therefore urge you to work in conference to assure that the final enacted bill conforms to the provisions of S. 905, with the technical changes we have proposed.

I believe this summary accurately reflects the major issues we discussed. I look forward to working closely with you in support of S. 905.

Sincerely,

JOSEPH R. WRIGHT,  
Deputy Director.

Enclosure.

ADMINISTRATION'S PROPOSED CHANGES TO  
S. 905

Delete proposed Section 2105(a), which would permit the Archivist to promulgate rules and regulations and would require agency heads to issue directives to conform with these regulations.

Delete proposed Section 2105(f), which would authorize agency heads to provide information and data to the Archivist.

Add language to require that the Office of the Federal Register be retained within the General Services Administration.

No revisions are offered at this time to proposed Section 2104(a), which provides for appointment of the Archivist by the President for a 10-year term. That provision in S. 905 is currently silent on the matter of removal of the Archivist. It is our understanding, however, that if disagreement between the House and Senate persists during conference, the House language will be added to Section 2104(a) to require the President to report to both Houses of Congress the reasons for removal of an Archivist, if such removal occurs.

EXECUTIVE OFFICE  
OF THE PRESIDENT,  
OFFICE OF MANAGEMENT AND BUDGET,  
Washington, D.C., June 9, 1984.  
Hon. MARK O. HATFIELD,  
U.S. Senate, Washington, DC

DEAR MARK: This is in further reference to S. 905, a bill which would separate the National Archives and Records Service [NARS] from the General Services Administration [GSA]. In my letter of May 29, I indicated that the Administration would support the enactment of the bill, provided that certain changes were reflected in the final enacted version.

One of the changes proposed in the letter of May 29, was to add language to S. 905 to require that the Office of the Federal Register be placed within GSA. We now believe that our concerns can also be addressed by leaving the Federal Register with NARS if the membership of the Administrative Committee of the Federal Register is expanded to include the Administrator of General Services and the Administrator of OMB's Office of Information and Regulatory Affairs.

GSA and NARS have advised me that there are some technical revisions to S. 905 which are necessary for GSA and NARS to carry out their responsibilities as separate agencies. These technical revisions, which are in addition to those described in the letter of May 29, are noted in the enclosure. We would again urge your efforts to incorporate these changes in the final enacted version of the NARS separation legislation.

Your efforts on these issues are greatly appreciated.

Sincerely,

JOSEPH R. WRIGHT, Jr.,  
Deputy Director.

Enclosure.

ADMINISTRATION'S ADDITIONAL PROPOSED  
CHANGES TO S. 905

1. Add language to S. 905 to amend 44 U.S.C. 1506 to include the Administrator of General Services and the Administrator of OMB's Office of Information and Regulatory Affairs as additional members of the Administrative Committee of the Federal Register. The letter of May 29 had proposed that the Office of the Federal Register remain with GSA. With the revision in committee membership, the provision in S. 905 retaining the office in NARS is acceptable to both GSA and NARS.

2. Amend S. 905 to (1) transfer to NARS only records management authorities with respect to ensuring adequate and proper documentation of the policies and transactions of the Federal Government and ensuring proper records disposition and (2) retain with GSA the authority to provide guidance and assistance to Federal agencies to ensure economical and effective records manage-

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ment. S. 905 would transfer to the Archives all authorities for records management, a transfer which would adversely affect GSA's ability to carry out its government-wide information management responsibilities. The division of authority noted above is contained in paragraphs 12 through 17 in subsection 107(b) of H.R. 3987 and is acceptable to GSA and NARS.

3. Amend S. 905 to provide for the transfer to NARS of such personnel, property, records, and unexpended balances of appropriation's available in connection with any authorities and responsibilities so transferred, as the Director of the Office of Management and Budget determines are necessary to carry out the responsibilities transferred pursuant to this Act. S. 905 currently provides for the transfer to NARS of a percentage of General Management Account funds and positions proportionate to the percentage of NARS employees in GSA. By improperly relating levels of administrative support to numbers of positions, the current provision could result in a transfer of an amount in excess of that requested or appropriated for NARS employees.

Mr. HATFIELD. My first amendment adds two members to the administrative committee of the Federal Register. Those new officers will be the Administrator of General Services and the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget. The purpose of the amendment is to broaden the input that is provided in administration of the publication of the Federal Register. It has the approval of the National Archivist.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3322) was agreed to.

## AMENDMENT NO. 3323

(Purpose: To eliminate provisions requiring the transfer of a percentage of the General Management and Administration appropriation for the General Services Administration.)

Mr. BAKER. Mr. President, I now send to the desk another amendment on behalf of the distinguished Senator from Oregon [Mr. HATFIELD] and ask that it be stated by the clerk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. BAKER], for Mr. HATFIELD, proposes an amendment numbered 3323.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 12, beginning with "A percentage" in line 26, strike out through the period in line 32.

Mr. HATFIELD. Mr. President, it is exceedingly appropriate that today the Senate should be considering legislation to create an independent National Archives and Records Administration. Today marks the 50th anniversary of the creation of the National Archives and the institution could not

receive a finer birthday present than passage of S. 905 by the Senate. Senator MATHIAS and Senator EAGLETON are to be congratulated for their tenacity in pursuing the important goal of giving our national documentary history proper attention.

I will not expound at length on the benefits to be derived as a result of the passage of this legislation except to point out that at times what appears to be a wise consolidation of functions to streamline a bureaucracy, can result instead in damage to the mission of an agency. That has been the case with the inclusion of the National Archives and Records Service within the General Services Administration. The GSA, with its proper emphasis on space allocation and resource management could not give the attention necessary to care for the less tangible national heritage represented by the holdings of the National Archives.

The fact that the separation of the National Archives and Records Service from GSA will add no new costs to the Federal budget reinforces my commitment to establish autonomy for the NARS once again. I am pleased to support the bill.

It is also gratifying that the administration has understood the need for this legislation and has agreed to support it. The administration has communicated with me through the Office of Management and Budget that it has two technical revisions that it feels are necessary for the GSA and NARS to carry out their respective functions as separate agencies. I would like to propose these changes as amendments to the bill and ask for the support of the managers of the bill.

The first amendment adds two members to the Administrative Committee of the Federal Register. Those new officers will be the Administrator of General Services and the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget. The purpose of the amendment is to broaden the input that is provided in administration of the publication of the Federal Register. It has the approval of the Archivist.

The second amendment reflects the results of conversations that were held between the Archivist, the Administrator of General Services, and representatives of the Office of Management and Budget concerning the method by which the General Services Administration and the National Archives and Records Administration will accomplish the separation of their responsibilities, personnel, budgets, property, and records. This amendment would delete from S. 905 language which calls for a proportionate transfer of these items from GSA to the Archives and permit the Administration to transfer such personnel, property, records, and unexpended appropriations connected with the authorities and responsibilities so transferred.

This is consistent with past reorganization legislation.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3323) was agreed to.

Mr. BAKER. Mr. President, I believe we are ready for third reading.

Mr. MATHIAS. Mr. President, we are prepared to accept these two amendments by Senator HATFIELD in the interests of moving this bill. I have spoken with Senator EAGLETON about these amendments and he concurs with accepting the amendments on behalf of the minority.

This legislation could not have come to the floor in a timely manner without the cooperation of several Senators and their staffs. I particularly want to applaud the efforts of my distinguished colleague, Senator EAGLETON, and his minority staff director, Mr. Ira Shapiro, for the yeoman's effort they have made in moving this bill along.

I would also like to acknowledge the courtesy and efficiency which the chairman of the Committee on Governmental Affairs, Senator ROY, and his staff, Mr. Lincoln Hoewing, have shown in convening a meeting of representatives of the Justice and Treasury Departments with committee staff which resulted in two of our technical amendments.

In our staff negotiations with the Internal Revenue Service regarding their concerns, Senator DOLE and his Finance Committee staff director, Mr. Rod DeArment, were most cooperative and courteous in convening the parties and working toward a mutually acceptable amendment.

Senator HATFIELD has played a key intermediary role between the administration and the committee sponsors of this legislation in smoothing the path to enactment of S. 905. His executive assistant, Mr. Jim Hemphill, has worked diligently to expedite consideration of this bill on this, the 50th anniversary of the founding of the National Archives.

All of our intentions with respect to the National Archives could not come into being without the expert and expeditious legal drafting of the Senate Legislative Counsel. Susan McNally of that staff had a very difficult job to do in a bill such as this because it required a fine tooth combing of at least 10 chapters of title 44 which governs the Archives as well as related other titles. Ms. McNally was of invaluable assistance in this regard and we extend our thanks to her.

The staff of the National Archives has been most helpful to us when we requested background information on their operations and holdings. And last, I must acknowledge the untiring efforts during the past 4 years of the National Coordinating Committee for the Promotion of History, composed of over 30 professional membership orga-

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nizations of historians, and the Coalition to Save our Documentary Heritage, with over 50 archival, geneological, and scholarly research organizations. All of these organizations, as users of our National Archives, know from first-hand experience the problems which this bill addresses and have effectively brought that message here today.

Mr. MOYNIHAN. Mr. President, I rise in support of S. 905, the National Archives Administration Act of 1983. In so doing, I join the Committee on Governmental Affairs in its effort to correct a 35 year-old error. Simply stated, the National Archives does not properly belong under the aegis of the General Services Administration.

During the committee's extension deliberations, there was almost unanimous support for returning the Archives to its prior status, as an independent Federal agency. The only voice of dissent belonged to the General Service Administration.

Senator ROTH, and his distinguished colleagues on the committee compiled a most persuasive case for restoring the independence of the Archives. I commend them, and commend their report to you. The case against the current arrangements encompasses financial, managerial, as well as intellectual considerations.

Let me cite but one paragraph from this report:

The subordination of NARS (The National Archives and Record Service) within GSA has created a situation characterized by divided authority, lack of accountability, and weak management in archival programs and record management. It has opened the door to the possibility that sensitive decisions about archival and record-keeping responsibilities will be politicized. Crucial tasks needed to insure the preservation of our priceless documentary history have been delayed or gone undone. The placement of NARS within the GSA has also handicapped NARS budget responsibility and control.

The conclusion is inescapable. The National Archives should and must be independent of GSA. I therefore join the committee and the cosponsors in voting for the public interest, now and in the future, served by an independent, accountable Archives, headed by a Presidentially-appointed Archivist.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill (S. 905) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 905

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

Act may be cited as the "National Archives and Records Administration Act of 1984".

## AMENDMENTS TO TITLE 44, UNITED STATES CODE

SEC. 2. (a) Sections 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, and 2114 of title 44, United States Code, are redesignated as sections 2102, 2103, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, and 2119, respectively.

(b) Title 44, United States Code, is amended by inserting before section 2102 (as redesignated by subsection (a)) the following new section:

## "§ 2101. Purpose

"The purpose of this chapter is to establish an independent National Archives and Records Administration due to the unique importance of the tasks of creating, identifying, and preserving the records of the Nation which have permanent value and making such records available to the public, to Federal agencies, and to the Congress for historical and other research purposes."

(c) Section 2102 of such title (as redesignated by subsection (a)), is amended—

(1) by striking out "sections 2103-2113 of";

(2) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new paragraphs:

"Federal agency" means, notwithstanding section 2901(13) of this title, any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), any independent regulatory agency, or any establishment in the legislative or judicial branch of the Government (except the Supreme Court, the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol);

"Archivist" means the Archivist of the United States appointed under section 2104; and

"Administration" means the National Archives and Records Administration established under section 2103."

(d) Section 2103 of such title is amended to read as follows:

## "§ 2103. Establishment

"There is established an independent establishment in the executive branch of the Government to be known as the National Archives and Records Administration. The Administration shall be administered under the supervision and direction of the Archivist."

(e) Such title is further amended by inserting before section 2108 (as redesignated by subsection (a)) the following new sections:

## "§ 2104. Officers

"(a) The Archivist of the United States shall be appointed by the President by and with the advice and consent of the Senate. The Archivist shall be appointed for a term of ten years, but may continue to serve until his successor is appointed and confirmed. The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist.

"(b) There shall be in the Administration a Deputy Archivist of the United States, who shall be appointed by and who shall serve at the pleasure of the Archivist. The Deputy Archivist shall be established as a career reserved position in the Senior Executive Service within the meaning of section 3132(a)(8) of title 5. The Deputy Archivist

shall perform such functions as the Archivist shall designate. During any absence or disability of the Archivist, the Deputy Archivist shall act as Archivist. In the event of a vacancy in the office of the Archivist, the Deputy Archivist shall act as Archivist until an Archivist is appointed under subsection (a).

## "§ 2105. Administrative provisions

"(a) Except as otherwise expressly provided by law, the Archivist may delegate any of his functions to such officers and employees of the Administration as he may designate, and may authorize such successive redelegations of such functions as he may deem to be necessary or appropriate. A delegation of functions by the Archivist shall not relieve the Archivist of responsibility for the administration of such functions.

"(9) The Archivist may organize the Administration as he finds necessary or appropriate.

"(c) The Archivist is authorized to establish, maintain, alter, or discontinue such regional, local, or other field offices as he finds necessary or appropriate to perform the functions of the Archivist or the Administration.

"(d) The Archivist shall cause a seal of office to be made for the Administration of such design as he shall approve. Judicial notice shall be taken of such seal.

"(e) The Archivist may establish advisory committees to advise him with respect to any function of the Archivist or the Administration. Members of any such committee who are not officers or employees of the Government shall serve without compensation but shall be entitled, when performing the duties of the committee, to travel and transportation expenses and a per diem allowance in the same manner and under the same conditions as provided for employees under section 5702 of title 5.

"(f) The Archivist shall advise and consult with interested Federal agencies with a view to obtaining their advice and assistance in carrying out the purposes of this chapter.

"(g) If authorized by the Archivist, officers and employees of the Administration having investigatory functions are empowered, while engaged in the performance of their duties in conducting investigations, to administer oaths.

## "§ 2106. Personnel and services

"(a) The Archivist is authorized to select, appoint, employ, and fix the compensation of such officers and employees, pursuant to part III of title 5, as are necessary to perform the functions of the Archivist and the Administration.

"(b) The Archivist is authorized to obtain the services of experts and consultants under section 3109 of title 5.

"(c) Notwithstanding the provisions of section 973 of title 10 or any other provision of law, the Archivist, in carrying out the functions of the Archivist or the Administration, is authorized to utilize in the Administration the services of officers and employees in other executive agencies, including personnel of the Armed Forces, with the consent of the head of the agency concerned.

"(d) Notwithstanding section 1342 of title 31, the Archivist is authorized to accept and utilize voluntary and uncompensated services.

## "§ 2107. Reports to Congress

"The Archivist shall submit to the Congress, in January of each year, a report concerning the administration of the Administration, the National Historical Publications and Records Commission, and the National Archives Trust Fund. Such report shall de-

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scribe program administration and expenditure of funds, both appropriated and nonappropriated, by the Administration, the Commission, and the Trust Fund Board. The report shall describe research projects and publications undertaken by Commission grantees, and by Trust Fund grantees, including detailed information concerning the receipt and use of all appropriated and nonappropriated funds."

(f) Chapter 21 of such title is amended by adding at the end thereof the following new section:

"§ 2120. Authorization of appropriations

"There are authorized to be appropriated such sums as may be necessary to carry out the functions of the Archivist and the Administration under this title."

(g)(1) The table of sections for chapter 21 of such title is amended to read as follows:

"CHAPTER 21—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

"Sec.

"2101. Purpose.

"2102. Definitions.

"2103. Establishment.

"2104. Officers.

"2105. Administrative provisions.

"2106. Personnel and services.

"2107. Reports to Congress.

"2108. Acceptances of records for historical preservation.

"2109. Responsibility for custody, use, and withdrawal of records.

"2110. Preservation, arrangement, duplication, exhibition of records.

"2111. Servicing records.

"2112. Material accepted for deposit.

"2113. Presidential archival depository.

"2114. Depository for agreements between States.

"2115. Preservation of motion-picture films, still pictures, and sound recordings.

"2116. Reports; correction of violations.

"2117. Legal status of reproductions; official seal, fees for copies and reproductions.

"2118. Limitation on liability.

"2119. Records of Congress.

"2120. Authorization of appropriations."

(2) The item relating to chapter 21 in the table of chapters for such title is amended to read as follows:

"21. National Archives and Records Administration..... 2101".

(h)(1) Section 1506 of such title is amended by striking out the third sentence.

(2) Section 2301 of such title is amended by striking out the second sentence.

(3) Section 2501 of such title is amended by striking out the last sentence.

(i) Section 2504(a) of such title is amended by striking out "the Administrator" in the last sentence and inserting in lieu thereof "the President and the Congress."

(j)(1) Section 2507 of such title is repealed.

(2) The table of sections for chapter 25 of such title is amended by striking out the item relating to section 2507.

(k)(1) Section 2108(4) of such title (as redesignated by section 2(a) of this Act) is amended by striking out "section 2107" and inserting in lieu thereof "section 2112".

(2) Section 2113 of such title (as redesignated by section 2(a) of this Act) is amended by striking out "section 2107" each place it appears and inserting in lieu thereof "section 2112".

(l)(1) Section 1501 of such title is amended:

(A) by striking out the period at the end of the last paragraph and inserting in lieu thereof a semicolon and "and"; and

(B) by adding at the end thereof the following new paragraph:

"National Archives of the United States" has the same meaning as in section 2901(11) of this title."

(2) Section 2109 of such title (as redesignated by section 2(a) of this Act) is amended—

(A) by striking out "Administrator, the Archivist of the United States," in the second sentence and inserting in lieu thereof "Archivist";

(B) by striking out "the Administrator shall, if he concurs, and in consultation with the Archivist of the United States," in the third sentence and inserting in lieu thereof "the Archivist shall, if the Archivist concurs,"; and

(C) by striking out "Administrator of General Services, by order, having consulted with the Archivist and" in the fifth sentence and inserting in lieu thereof "Archivist, by order, having consulted with".

(3) Section 2204(c)(1) of such title is amended by striking out "Service of the General Services".

(4) Section 2205(1) of such title is amended by striking out "Service of the General Services".

(5) Section 2110 of such title (as redesignated by section 2(a) of this Act) is amended by inserting "and Records" after "Historical Publications" in the last sentence.

(6) Section 2504(a) of such title is amended by inserting "and Records" after "Historical Publications" in the fourth sentence.

(7) Chapters 7, 15, 17, 21, 22, 23, 25, 29, 31, and 33 of such title (as amended by this section) are further amended by striking out "Administrator of General Services", "Administrator", and "General Services Administration" each place they appear and inserting in lieu thereof "Archivist of the United States", "Archivist", and "National Archives and Records Administration", respectively.

(8) Section 3504(e) of such title is amended by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States".

(9) Section 3513(a) of such title is amended by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist of the United States".

(10) The item relating to chapter 29 in the table of contents for such title is amended to read as follows:

"29. Records Management by Archivist of the United States, 2901".

(m) The first sentence of section 1506 of such title is amended by striking out "and" after "Attorney General," and by inserting before the period a comma and "the Administrator of General Services, and the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget".

(n) (1) Section 2901 of such title is amended by striking out paragraph (13) and inserting in lieu thereof the following:

"(13) the term 'executive agency' shall have the meaning given such term by section 3(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472 (a)); and

"(14) the term 'Federal agency' means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Supreme Court, the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol);".

(2) Section 2103(1) of such title is amended by striking out "or of the Congress" and inserting in lieu thereof a comma and "the Congress, or the Supreme Court".

(o)(1) Section 101 of the Presidential Recordings and Materials Preservation Act is amended—

(A) by striking out "section 2107" each place it appears and inserting in lieu thereof "section 2112";

(B) by striking out "section 2101" and inserting in lieu thereof "section 2102";

(C) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist of the United States"; and

(D) by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist".

(2) Section 102 of such Act is amended—

(A) by striking out "section 2107" and inserting in lieu thereof "section 2112"; and

(B) by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist".

(3) Section 103 of such Act is amended by striking out "Administrator" and inserting in lieu thereof "Archivist".

(4) Section 104 of such Act is amended—

(1) by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist";

(2) by striking out subsection (b);

(3) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively; and

(4) by striking out "under subsection (b)" in subsection (b) (as redesignated by paragraph (3) of this subsection).

(p) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

"Archivist of the United States."

(q) Sections 141 through 145 of title 4, United States Code, are each amended by striking out "Administrator of General Services", "Administrator", and "General Services Administration" each place they appear and inserting in lieu thereof "Archivist of the United States", "Archivist", and "National Archives and Records Administration", respectively.

(r) The Act of March 27, 1934 (48 Stat. 501, chapter 93; 25 U.S.C. 199a) is amended—

(1) by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States"; and

(2) by striking out "section 2112(b)" and inserting in lieu thereof "section 2117(b)".

(s)(1) Sections 106a, 106b, 112, and 113 of title 1, United States Code are each amended by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States".

(2) Section 106b of such title (as amended by paragraph (1) of this subsection) is further amended by striking out "General Services Administration" and inserting in lieu thereof "National Archives and Records Administration".

(t)(1) Sections 6, 11, 12, and 13 of title 3, United States Code, are amended by striking out "Administrator of General Services" and "General Services Administration" each place they appear and inserting in lieu thereof "Archivist of the United States," and "National Archives and Records Administration", respectively.

(2)(A) The heading of section 6 of such title is amended to read as follows:

"§ 6. Credentials of electors; transmission to Archivist of the United States and to Congress; public inspection"

(B) The heading of section 12 of such title is amended to read as follows:

"§ 12. Failure of certificates of electors to reach President of the Senate or Archivist of the United States; demand on State for certificate"

(C) The table of sections for chapter 1 of such title is amended by striking out "Ad-

ministrator of General Services" each place it appears in the items pertaining to sections 6 and 12 and inserting in lieu thereof "Archivist of the United States".

(u) Section 552a of title 5, United States Code, is amended—

(1) by striking out subsection (b)(6) and inserting in lieu thereof the following:

"(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist to determine whether the record has such value;" and

(2) by striking out "Administrator of General Services" each place it appears in subsection (1)(1) and inserting in lieu thereof "Archivist of the United States".

#### DEFINITIONS

SEC. 3. For purposes of sections 3 through 8—

(1) the term "Archivist" means the Archivist of the United States appointed under section 2104 of title 44, United States Code (as added by section 2 of this Act); and

(2) the term "Administration" means the National Archives and Records Administration established under section 2103 of such title (as amended by section 2 of this Act).

#### TRANSFER OF FUNCTIONS

SEC. 4. (a) All functions of the Administrator of General Services under chapters 7, 15, 17, 21, 22, 23, 25, 29, 31, and 33 of title 44, United States Code, are transferred to the Archivist.

(b) The National Archives and Records Service of the General Services Administration is transferred to the Administration.

(c) The Office of Office Information Systems of the Office of Information Resources Management of the General Services Administration is transferred to the Administration.

(d) In the exercise of the functions transferred under this Act, the Archivist shall have the same authority as had the Administrator of General Services prior to the transfer of such functions, and the actions of the Archivist shall have the same force and effect as when exercised by such Administrator.

(e) Prior to the appointment and confirmation of an individual to serve as Archivist of the United States under section 2104 of title 44, United States Code, the individual holding the office of Archivist of the United States on the day before the effective date of this Act may serve as Archivist under such section, and while so serving shall be compensated at the rate provided under subsection (b) of such section.

#### TRANSFERS

SEC. 5. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions and agencies transferred by this Act, subject to section 1531 of title 31, United States Code, are transferred to the Archivist for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) The transfer pursuant to this title of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employees to be separated or reduced in grade or compensation for one year after such transfer or after the effective date of this Act, whichever is later.

#### SAVINGS PROVISIONS

Sec. 6. (a) All orders, determinations, rules, regulations, grants, contracts, agreements, permits, licenses, privileges, and other actions which have been issued, granted, made, undertaken, or entered into in the performance of any function transferred under this Act shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Archivist, a court of competent jurisdiction, or by operation of law.

(b)(1) The transfer of functions under this Act shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending on the effective date of this Act before the General Services Administration; but such proceedings and applications, to the extent that they relate to functions transferred under this Act, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Archivist, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Archivist is authorized to promulgate regulations providing for the orderly transfer of proceedings continued under paragraph (1) from the General Services Administration to the Administration.

(c) Except as provided in subsection (e)—  
(1) the provisions of this Act shall not affect actions commenced prior to the effective date of this Act, and

(2) in all such actions, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) No action or other proceeding lawfully commenced by or against any officer of the United States acting in his official capacity shall abate by reason of any transfer under this Act. No cause of action by or against the General Services Administration or by or against any officer thereof in the official capacity of such officer shall abate by reason of any transfer of functions under this Act.

(e) If, before the date on which this Act takes effect, the General Services Administration or any officer thereof in the official capacity of such officer, is a party to an action, and under this Act any function in connection with such action is transferred to the Archivist or any other official of the Administration, then such action shall be continued with the Archivist or other appropriate official of the Administration substituted or added as a party.

(f) Orders and actions of the Archivist in the exercise of functions transferred under this Act shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the individual holding the office of Archivist of the United States on the day before the effective date of this Act or the Administrator of General Services in the exercise of such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this Act shall apply to the exercise of such function by the Archivist.

#### REFERENCE

SEC. 7. With respect to any function transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to the office of the Archivist of the United States as in existence on the date before the effective date of this Act or the National Archives and Records Service of the General Services Administration or any office or officer thereof shall be deemed to refer to the Archivist or the Administration, respectively.

#### RETURN OR RETURN INFORMATION

SEC. 8. Notwithstanding any provision of this title, no return or return information as defined in section 6103 of title 26 of the United States Code may be disclosed except as authorized by title 26.

#### EFFECTIVE DATE

SEC. 9. The provisions of this Act shall take effect one hundred and twenty days after enactment.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. EAGLETON. Mr. President, I am extremely gratified by the Senate's consideration and passage of S. 905, legislation to restore the independence of the National Archives and Records Service [NARS].

This is an action long overdue. It is the most fitting celebration of the golden anniversary of NARS. In passing S. 905, the Senate will be reaching the conclusion that the community of historians, archivists, and other users of the National Archives reached long ago: independence for NARS is the best guarantee that our priceless documentary heritage will be preserved for future generations.

The fundamental incongruity of NARS' placement within GSA was described very aptly by James Rhoads, who was Archivist of the United States from 1968 to 1979:

The central problem is that many of the objectives, priorities and motivations of GSA and NARS are simply incompatible. There is no way that an agency dedicated to encouraging scholarly research and other educational and cultural objectives can function effectively as a subordinate component of a business-oriented conglomerate whose primary responsibilities are for construction and maintenance of public buildings, procurement of supplies, and management of motor pools and stockpiles of strategic materials.

As the Committee report on S. 905 documents, in exhaustive detail, the damage done to NARS by its placement within GAS has been severe.

NARS' performance has perennially been plagued by management problems: a lack of clear policy directions, confusion over lines of authority and responsibility and delays in decision-making. Morale has declined, and good managers have been hard to keep, understandably, in a situation where ultimate authority resides with GSA, and not NARS.



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Professional judgment is the essence of the Archivist's work; it is the best guarantee that the historical record preserved and made available to the public will be full and fair. Yet because final responsibility for archival judgments rests with the GSA Administrator, not the Archivists, the dangers of politicization have been ever-present.

The NARS budget has traditionally suffered, in comparison to the other cultural agencies, because NARS has lacked an advocate for its programs and needs. GSA Administrators have understandably had other priorities; the OMB budget examiners reviewing GSA budget requests have been more sensitive to building construction, procurement, and motor vehicle pools than to documentary history. The resources of NARS—budget and personnel—have been held in tight check while the demands on the agency have expanded dramatically. The inevitable result has been marked deterioration of NARS' capacity to serve the public and the scholarly community.

By restoring independence to NARS, S. 905 provides the only realistic remedy for these chronic problems. For the first time since 1949, the Archivist of the United States will exercise ultimate responsibility for the archival programs of the Federal Government. The Archivist will have the authority—de facto and de jure—to run the agency. The Archivist will again be a Presidential appointee, confirmed by the Senate, which will enhance the attractiveness, prestige, and independence of the position. The Archivist will be able to make the strongest possible case to OMB and Congress in support of the resources needed to carry out the critical responsibilities of NARS.

In general, reorganization is not a panacea. In situations where we choose to reorganize rather than deal with substantive problems, reorganization can be positively harmful. In this case, however, the record is clear beyond dispute: the current arrangement is untenable; placement within GSA has been the major problem plaguing NARS. Substantive problems—from preserving aging documents to coping with the Archivist's function in the computer age—will all be handled more successfully by an independent NARS.

Mr. President, the Congressional Budget Office has reported its expectation that "no significant additional costs will be incurred by the Federal, State or local governments if this legislation is enacted." The Committee on Governmental Affairs does not intend that this measure authorize any additional budget authority for fiscal year 1984 beyond that already available to the General Services Administration. The committee intends that any fiscal year 1984 costs incurred from the bill will be absorbed from existing funds.

I am extremely grateful for the efforts of Senator MATHIAS, my principal cosponsor, for his longstanding concern about the plight of NARS. Senator HATFIELD, who currently represents the Senate on the National Historical Publications and Records Commission [NHPRC], has also been a stalwart supporter of this legislation and a strong ally in my efforts within the Appropriations Committee to attain adequate funding for NARS and the NHPRC. I want to pay special tribute to Marian Morris of Senator MATHIAS' staff who has been tireless and effective in her efforts on behalf of this legislation. But the real credit for success of this legislation should go to the coalition of historians, archivists, genealogists, and other users of the Archives who took the time and made the effort to make Congress understand just what was happening to NARS because of its placement within GSA. Independence for NARS is an idea whose time has come because of their efforts.

Mr. President, S. 905 is a small piece of legislation, but its enactment will have a major impact on our history by creating an agency that will do justice to our precious historical legacy.

Mr. BAKER. Mr. President, I venture a statement that has no place in this Record, perhaps, but I cannot remember a more complicated unanimous-consent matter in a long time. I cannot think of a more likely candidate for that honor than the Archives of the United States, with which this deals.

#### AUTHORIZATION FOR CERTAIN FISHERY PROGRAMS

Mr. BAKER. Mr. President, next I say to the minority leader, I propose to go to Calendar Order No. 767, if agreeable.

Mr. BYRD. Mr. President, that has been cleared on this side.

Mr. BAKER. Mr. President, I ask the Chair to lay before the Senate Calendar Order No. 767, S. 2463.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2463) to authorize appropriations of funds for certain fishery programs, and for other purposes.

#### AMENDMENT NO. 3324

(Purpose: Make amendment in the nature of a substitute)

Mr. BAKER. Mr. President, I send an amendment to the desk on behalf of the distinguished Senator from Oregon [Mr. PACKWOOD].

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee (Mr. BAKER), for Mr. Packwood, proposes an amendment numbered 3324.

Mr. BAKER. Mr. President, I ask unanimous consent that further read-

ing of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following: That section 2 of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409) is amended—

(1) in subsection (a), by inserting ", and \$28,000,000 for fiscal year 1985" immediately after "1984"; and

(2) in subsection (b), by striking "of 1976".

Sec. 2. Section 3 of such Act is amended—

(1) in subsection (a), by inserting ", and \$35,000,000 for fiscal year 1985" immediately after "1984"; and

(2) in subsection (b), by inserting "Magnuson" immediately before "Fishery", and by striking "of 1976".

Sec. 3. Section 4 of such Act is amended—

(1) in subsection (a)—

(A) by inserting ", and \$12,000,000 for fiscal year 1985" immediately after "1984"; and

(B) by striking "boats" and inserting in lieu thereof "vessels"; and

(2) in subsection (b), by striking "of 1976".

Sec. 4. Sections 2, 3, and 4 of such Act are amended by adding at the end thereof the following:

"(c) The duties authorized in subsection (a) of this section shall be considered separate and distinct from duties and functions performed pursuant to moneys authorized in subsection (b) of this section. The total authorization for all such duties and functions shall be the sum of amounts specified in such subsections."

Sec. 5. (a) Section 7(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977(e)) is amended—

(1) by striking "October 1, 1984" and inserting in lieu thereof "October 1, 1987"; and

(2) by inserting ", other than payments from fees collected or revenues accruing from deposits or investments of such fees pursuant to subsection (c) of this section," immediately after "payments".

(b) The amendment made by subsection (a)(2) of this section shall become effective on October 1, 1985.

Sec. 6. (a) Section 4(c) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c(c)) is amended by striking "September 30, 1984" each place it appears and inserting in lieu thereof "September 30, 1985".

(b) Section 7(c)(6) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(c)(6)) is amended by striking "and 1984" and inserting in lieu thereof "1984, and 1985".

Sec. 7. Section 221 of the American Fisheries Promotion Act (16 U.S.C. 742c, note) is amended—

(1) in subsection (a), by striking "September 30, 1984" and inserting in lieu thereof "September 30, 1985";

(2)(A) in subsection (b)(2)(A), by striking "and 1984," and inserting in lieu thereof "1984, and 1985."; and

(B) in subsection (b)(2)(C), by striking "and 1984" and inserting in lieu thereof "1984, and 1985"; and

(3) in subsection (c)(1), by striking "and 1984," and inserting in lieu thereof "1984, and 1985".

Sec. 8. Section 310 of the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1470) is amended—

(1) by striking "and" immediately after "1983."; and

(2) by inserting ", and \$1,500,000 for each of the fiscal years ending September 30,