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Department of Justice
Washington, D.C. 20530

MAY 9 1973

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D.C. 20503



Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of enrolled bill S. 518, to abolish and reestablish the offices of Director and Deputy Director of the Office of Management and Budget.

Section 1 of the bill "abolishes" the offices of Director and Deputy Director of the Office of Management and Budget provided for in section 207 of the Budget and Accounting Act of 1921, and redesignated by section 102(b) of Reorganization Plan No. 2 of 1970.

Section 2 "establishes" the offices of Director and Deputy Director, OMB, and provides that they are to be filled by and with the advice and consent of the Senate.

Section 3 transfers to the office of the Director, OMB, created by section 2, the functions transferred to the President by section 101 of Reorganization Plan No. 2 of 1970, and all functions vested by law in OMB or the Director of OMB. The section also authorizes the President to assign to "such office" from time to time such additional functions as he may deem necessary, and authorizes the Director to assign to the office of the Deputy Director such functions as he may deem necessary.

Section 4 provides that nothing in the Act shall impair the President's power to remove the Director and Deputy Director.

Section 5 amends 5 U.S.C. 5313(11) (not 5315) and 5314(34) to conform with the changes in the titles of the Director and Deputy Director, Bureau of the Budget, to Director and Deputy Director, Office of Management and Budget.

Section 6 provides that the legislation will become effective on the 31st day following its enactment.



I.

The Department of Justice has a number of constitutional objections to S. 518. These objections, which were spelled out at some length in the statement of March 9, 1973 by Assistant Attorney General Robert G. Dixon, Jr. before the House Subcommittee on Legislation and Military Operations (copy attached), are summarized below:

1. Initially, because S. 518 will have the effect of requiring the current Director and Deputy Director of OMB to undergo confirmation, the bill is subject to two substantial constitutional deficiencies. By asserting the power of the Senate to confirm or decline to confirm the incumbents, the Congress is in effect asserting a Senate power to remove them from office. Such a power is inconsistent with the established constitutional precept that the power to remove an official of the Executive branch is exclusively that of the President. See Myers v. United States, 272 U.S. 52 (1926), where the Court held unconstitutional a statute providing that postmasters appointed with the advice and consent of the Senate could be removed only by that process.

2. In subjecting the incumbents to possible removal, S. 518 may also conflict with the constitutional prohibition on bills of attainder contained in Article I, section 9 of the Constitution. A bill of attainder is a legislative act which imposes punishment on a designated individual without the procedural protections of a trial by the judiciary. The Supreme Court has invoked this clause to hold unconstitutional a statute which attempted to remove specified

incumbents in federal office by direct congressional action rather than Presidential action. United States v. Lovett, 328 U.S. 303 (1946).

3. A final general constitutional objection to S. 518, unrelated to the current Director and Deputy Director, is the bill's requirement that all future appointees to these offices be subject to Senate confirmation. Such a requirement infringes upon the President's traditional control of positions immediate to the Presidency itself, thereby arguably violating the separation of powers principle. This central constitutional principle is implicit in the separate and distinct establishment of the three branches of government in Articles I, II, and III of the Constitution. See Ex Parte Grossman, 267 U.S. 87, 119 (1925). The principle implies that the President shall and must have a number of persons serving him immediately and exclusively as staff advisers.



With respect to the power of appointment, the Constitution does not call for total separation, reserving to the Senate the advice and consent function. However, the Senate confirmation role traditionally has not extended to the inner circle of Presidential advisers. The Director and Deputy Director of the Office of Management and Budget hold positions comparable to the close personal advisers of the President, dealing with the entire Executive branch in a matter in which no cabinet or agency head would do. Congress was aware of the unique status of the OMB (Bureau of the Budget) Director when, in enacting the Budget and Accounting Act of 1921, it declined to require Senate confirmation for his appointment. See the sources cited in the Statement by Assistant Attorney General Dixon, at page 5. A reversal of this policy, in our view, dilutes Presidential powers in a manner not consonant with the proper functioning of the Presidency and the separation of powers principle.

II.

The most substantial of the constitutional objections to S. 518 is the infringement of the President's exclusive

power of removal which it would permit. S. 518 seeks to avoid this deficiency by nominally "abolishing" the positions of OMB Director and Deputy Director and immediately "re-establishing" them subject to Senate confirmation of the President's nominees. Concededly, Congress has the power to totally and finally abolish any office which it has created. However, this power cannot be utilized to achieve a constitutionally prohibited end. As the Supreme Court stated in United States v. Butler, 297 U.S. 1, 68 (1936):

It is an established principle that the attainment of a prohibited end may not be accomplished under the pretext of the exertion of powers which are granted.



While we are not aware of any decision of a federal court involving an attempt by Congress to remove an officer through the abolishment and immediate reestablishment of an office, there are a number of state court decisions in which such enactments by state legislatures have been nullified. In general, these decisions have held that the abolition of the office must be genuine and not merely colorable. Where the reestablished office has substantially the same functions as the one which had been abolished, the courts have generally found the statutory language abolishing the office to be mere subterfuge. See Commonwealth ex rel. Kelley v. Clark, 327 Pa. 181, 193 Atl. 634 (1937). Other state cases are cited in the attached statement by Assistant Attorney General Dixon at pages 11-20.

The positions reestablished by section 2 of S. 518 are largely identical to those abolished in section 1 of the bill. The only difference between the functions of the Director whose office would be abolished by section 1 of the bill and those of the Director whose office would be created by section 2, would be that the former derived his authority from a Presidential delegation while the latter would receive statutory authority. Thus, S. 518 would not effect a genuine abolition of the offices of Director and Deputy Director of the Office of Management and Budget. The incumbents would remain in office and the President would not, in our view, be required to reappoint them by and with the advice and consent of the Senate.

The Department of Justice recommends against Executive approval of this bill. In the attached proposed veto message, discussion has been limited to the clear infringement of the President's exclusive removal power which would be effected by S. 518. This argument, in our view, represents the most persuasive and weighty constitutional deficiency in the bill and the best tactical ground on which to base a Presidential veto.

Sincerely,

MIKE MCKEVITT
Assistant Attorney General



To the Senate of the United States:

I regret that I must return S. 518 without my approval. I am impelled to take this action because enactment of the bill would represent a grave invasion of the separation of powers, a fundamental principle of our constitutional system.

Under existing law the Director and Deputy Director of the Office of Management and Budget are appointed by the President alone and serve at the pleasure of the President. The bill would abolish these two offices effective thirty days after enactment, but then provide for their immediate reestablishment. Future appointees would be subject to senatorial confirmation. Thus, if the officers lawfully occupying those two positions at present are to continue to serve, they must be reappointed by the President, subject to the new condition of advice and consent of the Senate. The result would be to remove those two officers by legislative action.

Such action plainly violates the constitutional principle that the President has the exclusive and illimitable power to remove, or retain, executive officers appointed by the President. The Supreme Court in a leading decision, Myers v. United States, 272 U.S. 52, 122 (1926), has held that this



authority is incident to the power of appointment and is an exclusive power that cannot be infringed upon by the Congress.

Congress of course has the power to abolish an office. When it does so, the tenure of the incumbent ends. The power of the Congress to terminate an office, however, may not be utilized to circumvent the exclusive nature of the President's constitutional removal power. Genuine abolition of an office carries with it the notion of permanency. Where, as here, the same statute abolishes an office and immediately recreates it to all intents and purposes in its identical form, it is no more than a device to accomplish a removal of the incumbent.

The unpleasant task of vetoing an act of Congress is never to be undertaken lightly. In this instance, however, the constitutional objection was raised both in committee and on the floor of the House of Representatives.

In 1789, during the first session of the first Congress, James Madison said:

"If there is a principle in our Constitution, indeed in any free Constitution, more sacred than another, it is just that which separates the Legislative, Executive and Judicial powers."



Madison made that observation during the Great Debate on the illimitable nature of the President's removal power. That

issue, if not identical with, is intimately related to, the issue this bill raises. Congress cannot remove an officer in the executive branch by the device, utilized in this bill, of abolishing his office and reestablishing it immediately, subject to new qualifications.

In addition to the federal precepts implicit in the separation of powers principle and made explicit by the Supreme Court in the Myers case, I am advised by the Attorney General that legislation of this type has been invalidated by State courts. As one court put it, the legislative power to create or abolish offices is broad, but it is limited "by the condition that it must not be used for the purposes of removing an officer." State ex rel. Hammond v. Maxfield, 103 Utah 1, 13-14 (1942).

When I took my oath of office, I assumed the solemn obligation to preserve, protect, and defend every provision of the Constitution. I would violate that oath if I left to my successor a Presidency which is no longer co-equal with the legislative branch.

It is therefore my duty to return this bill without my approval.



TESTIMONY OF WILLIAM EUDEY
ASSISTANT POSTMASTER GENERAL
FOR EMPLOYEE RELATIONS
BEFORE THE
SUBCOMMITTEE ON THE HANDICAPPED
COMMITTEE ON LABOR AND PUBLIC WELFARE
UNITED STATES SENATE

November 19, 1973



Mr. Chairman and Members of the Subcommittee:

I am William Eudey, Assistant Postmaster General for Employee Relations. I certainly appreciate the opportunity to appear before you today to present the views of the Postal Service on S. 2581. I have brought with me Al Gandal, from our Labor Relations Department; Phil Tice, who is General Manager of our Environmental Services Division; and Allen Sanders, Assistant General Counsel, Legislative Division.

S. 2581 has been proposed as a set of amendments to the Randolph-Sheppard Act intended to perfect and implement the program established by that Act. We believe that this legislation sweeps much broader than

that. In particular, as applied to the Postal Service, the proposed changes would subject the Service to a measure of supervision by the Executive branch inconsistent with the philosophy of Postal Reorganization. Since the Postal Service is making sincere and newly reinforced efforts to assure that its Randolph-Sheppard program contributes as much as possible to the employment opportunities of the blind, in our opinion the proposed changes are not justified for Postal Service application.

Section 7 of the bill (proposed new section 7 of the Act) would accomplish one of those changes by requiring that all income from vending machines located in work areas be assigned either to blind vendors or to state agencies for the blind. The present statute, 20 U.S.C. §107, requires the transfer of only so much of that vending machine income as is necessary to protect the preference for blind-vendor opportunities, to be made only to the blind vendors themselves. In effect, the bill would substitute a straight subsidy for the blind, at the expense of Federal and Postal Service employees, for the present philosophy of the Act to provide job opportunities for the blind.

To impose such an obligation on postal employees, when not also made applicable to the private sector of the economy, cannot be squared



with the determination of the Postal Reorganization Act to structure postal employment along a business-like model. In that spirit, existing postal practice continues an historical practice of assigning income from workroom vending machines, subject to the requirement for assignment of that income where needed to protect the blind-stand preference, to employee welfare associations for use in specified employee activities. However admirable the objective of general aid to the handicapped, we believe that profits from vending machines on the workroom floor are not postal or federal income, and properly should be shared by the employees who put their money into those machines.

A second marked alteration in the Randolph-Sheppard Act as it presently reads is contemplated by those provisions of the bill that would assign to the Secretary of Health, Education, and Welfare the direct responsibility for enforcing the Act. For example, section 3 (proposed new section 1(b) of the Act) would empower the Secretary to prescribe regulations implementing the program and to determine those situations where the placement of blind vending facilities would be inappropriate. The present Act, in contrast, delegates to the individual agency the principal authority for enforcing the program, preserving for the Secretary only the responsibility for consultation and for final approval



of agency regulations. The Postal Reorganization Act, 39 U.S.C. §410(b)(3), in keeping with the general philosophy of that legislation to free the Postal Service from the control of the Executive branch, adopts the Randolph-Sheppard Act, 20 U.S.C. §107, as it now stands, with only a limited supervisory role for the Secretary.



To return the Postal Service to substantial outside control in this area would be to chip away at the comprehensive responsibility that the Reorganization framers felt necessary to give postal management the ability to run an effective postal program. Such a dilution of postal management control would be aggravated by the changes contemplated by section 8 of the bill (proposed new section 10(8) of the Act). That section would greatly extend the scope of blind-vendor operations, from the "vending stands" of the present law to the potential all-encompassing "vending facility", defined to include "automatic vending machines, snack bars, cart service, shelters, counters," and even cafeterias, where feasibility is determined solely by the Secretary and state licensing agency. For a labor-intensive organization like the Postal Service, management ability to exercise the basic responsibility for food service and for employee recreation guidance is a necessity to assure the harmonious employee relations required for the success of its mission.

Under the authority granted by present law, the Postal Service is continuing its efforts to provide opportunities for blind and other handicapped persons, both within the Randolph-Sheppard program and otherwise. According to a General Accounting Office report, at the end of fiscal 1972 better than one quarter of the total blind stands operated on federal property were to be found at postal sites (B-176886, Appendix III). To the extent that report was critical of Postal Service implementation of Randolph-Sheppard, it relied almost exclusively on an internal audit instituted by, and for the use of, the Postal Service. We, too, have been concerned with insuring that the reorganized Postal Service fully comply with the law in this area. Our audit, as noted and adopted by GAO, made the following findings in reference to the Randolph-Sheppard Act:

(1) The system for supplementing the income of blind-stand operators from employee welfare fund revenues was not entirely uniform.

(2) Local management enforcement of the Act and communication with state officials had been inadequate.

As a result of the audit and further investigation and study, the Postal Service has prepared a draft Handbook, entitled "Operating Instructions for Food Service and Employee Social and Recreational Funds", a copy of



which has been furnished to your Committee, and we have circulated the draft to employee representatives for comment and evaluation. Paragraph 230 of that Handbook would introduce the following requirements in response to the findings of the audit dealing with Randolph-Sheppard:

(1) Blind operators receiving an inadequate income would be assigned profits from other vending machines located in the installation as determined jointly by the postal official in charge and the state licensing agency.

(2) The Postal Service would be committed to full cooperation with state agencies, including affirmative action to advise them of opportunities for additional blind vending facilities.

We are fully determined to implement our responsibilities under the Randolph-Sheppard Act and will make every effort necessary to maintain continued compliance. Local performance under the revised instructions, when promulgated, will be monitored and supervised at the headquarters level.

Beyond Randolph-Sheppard, the new Handbook would also provide that agreements with Postal Service contractors for cafeteria services include requirements that those contractors make good faith efforts to recruit and train handicapped employees, including but not limited to the visually handicapped. That program would be consistent with the current design



of Randolph-Sheppard to provide job opportunities rather than subsidies, and with the Postal Service's own program for hiring the handicapped, which has resulted in the appointment of approximately 5,300 handicapped employees since 1970.

The Postal Service is proud of its total record in behalf of employment opportunities for the handicapped. Since we believe that the proposed legislation would significantly alter the program for the blind without substantial justification, we cannot support its enactment.

This concludes my prepared statement. I will be happy to attempt to answer any questions you may have.





LAW DEPARTMENT
Washington, DC 20260

July 22, 1974



Dear Mr. Rommel:

This responds to your request for the views of the Postal Service on the Senate-passed bill, S. 2581, the Randolph-Sheppard Act Amendments of 1974.

In testimony on November 19, 1973, before the Subcommittee on the Handicapped of the Senate Committee on Labor and Public Welfare, the Postal Service opposed several major features of S. 2581. Since subsequent amendments have not relieved the objections we expressed at that time, our position remains unchanged.

Much of the attention given the bill in the Senate has focused on the proposal of section 7 to restructure the apportionment of income earned from vending machines operated on Federal property. Under present practice, the Postal Service and other agencies have authorized employee welfare associations to operate those machines. Present law requires that agencies provide by regulation for a portion of vending machine income to be assigned to blind vendors if necessary to protect the statutory preference for vending stands operated by the blind. 20 U.S.C. §107. As introduced, S. 2581 would have assigned all vending machine income to blind vendors or to state agencies for the blind. As now amended, section 7 proposes in the short term to divide income from existing vending machines between employee groups and blind vendors or state agencies on the basis of statutory percentages, which would vary depending upon a number of factors, and in the long term, with a minor exception, to assign all income to the blind. All of the income from new or replacement machines would go to the blind except in the case of facilities where income from machines used by employees without access to a blind vending facility does not aggregate more than \$3,000 annually.

The Postal Service opposes proposed section 7 for two reasons. First, the proposed formula is unnecessarily complicated and would be awkward to administer. Secondly, we believe that the present law represents sounder policy than the proposed amendment, which arbitrarily would go beyond what is necessary to protect blind vendors from competition or to create additional job opportunities. It seems only fair that employees should share in the profits from the operation of these machines into which they put their money. That idea is consistent with the encouragement and protection of opportunities for blind vendors. Our present regulations require the assignment of vending machine income to blind stand operators to whatever extent is necessary to provide an adequate income level, as determined jointly by the Postal Service and state licensing agencies.

The Postal Service also opposes certain administrative changes proposed by this bill which we consider inconsistent with the philosophy of Postal Reorganization to place full authority and responsibility for postal affairs in the Postal Service itself. For example, proposed section 2(d) would require new construction projects and extension, modification, and improvement projects to be examined and cleared in advance by the Secretary of Health, Education, and Welfare and the appropriate state licensing agency to assure maximum provision for blind vendors. In practice, this provision apparently would require that postal design standards be adapted in each state to reflect standards set by HEW and the state agency. The proposal cannot be squared with the general postal exemption from cumbersome Federal construction and procurement requirements and regulations, an exemption intended to reflect an overriding national priority to modernize long-neglected postal facilities and equipment with all possible speed.

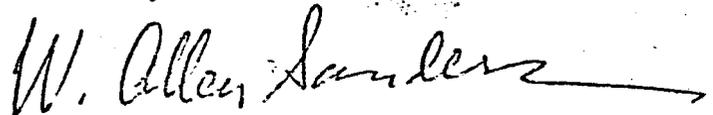
Similar considerations apply to proposed section 1, providing for HEW regulation of the placement and operation of vending facilities on postal property, and to proposed section 5, providing for compulsory arbitration of disagreements between the Postal Service and state agencies. Present law assigns the principal responsibility for enforcing the substantive postal program under the Act to the Postal Service itself. We believe that is where it belongs.

Continued postal management control is especially important in the context of proposed section 9(7), which would extend the priority for blind vendors to include cafeteria operations. In our judgment, postal authority to determine the standards necessary to assure the best professional in-plant meal service for our employees is essential to an effective postal operation. We cannot agree that the responsibility for setting those standards should be delegated to state agencies responsible for licensing blind vendors.



The Postal Service is strongly committed to affirmative action in behalf of the handicapped, through Randolph-Sheppard and other programs. We are continually engaged in upgrading those programs, and just recently have promulgated new regulations to assure greater cooperation between local postal managers and state agencies in identifying and providing opportunities for blind vendors. We believe that present provisions for division of vending machine income and for general administration of postal responsibilities under Randolph-Sheppard are effective and should not be changed as proposed by S. 2581.

Sincerely,



W. Allen Sanders
Assistant General Counsel
Legislative Division

Mr. W.H. Rommel
Assistant Director
Legislative Reference
Office of Management
and Budget
Washington, D.C. 20503



Office of the White House Press Secretary
(Cleveland, Ohio)

THE WHITE HOUSE

TO THE HOUSE OF REPRESENTATIVES:

~~I am withholding my approval from H.R. 11541, a bill which would amend the National Wildlife Refuge System Administration Act of 1966. I am advised by the Attorney General and I have determined that the absence of my signature from this bill prevents it from becoming law. Without in any way qualifying this determination, I am also returning it without my approval to those designated by Congress to receive messages at this time.~~

~~This bill would amend section 4(d) of the Act of October 15, 1966, by adding a new standard in determining the authority of the Secretary of the Interior to allow certain rights-of-way across lands of the National Wildlife Refuge System. This new standard would require the Secretary to review all reasonable alternatives to the use of such area, and then make a determination that the proposed right-of-way use is the most feasible and prudent alternative for such purpose.~~

~~If we are to have adequate energy-transmission and communication facilities, we must have rights-of-way on which to locate them. Of course, when such lands have a special status as wildlife refuges or national parks, we must fully protect this status when portions of these areas are sought for use as rights-of-way.~~

~~However, I believe that such protection is properly provided under existing law which requires environmental impact review and further requires the Secretary of the Interior to determine that granting a right-of-way across a national wildlife refuge or national park must be compatible with the purposes for which the park or refuge had been established. Only last year, Congress enacted legislation which had the effect of reiterating this protection in the case of refuges.~~

~~In short, our wildlife refuges are properly protected by existing law. We should avoid changes in the law that could create further obstacles and delays in the construction of vitally needed facilities, particularly those facilities designed to help meet urgent energy needs.~~

Accordingly, I am withholding my approval from H.R. 11541.

GERALD R. FORD

THE WHITE HOUSE,
October 22, 1974

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Insert
11/15/74

according to
Dick Gilbert's
office
(OMB, ext 4710)
also Rammels
office



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 24 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 14225 - Rehabilitation Act
and Randolph-Sheppard Act Amendments of 1974,
White House Conference on Handicapped Individuals
Sponsor - Rep. Brademas (D) Indiana and 3 others

Last Day for Action

October 29, 1974 - Tuesday

Purpose

Extends through fiscal year 1976 and increases the appropriation authorizations of the Rehabilitation Act of 1973; mandates administration of the Act in the Office of the Secretary of HEW and amends the Act in other respects; expands the priority, scope, and income of the blind vendor program under the Randolph-Sheppard Act; authorizes a White House Conference on Handicapped Individuals.

Agency Recommendations

Office of Management and Budget

Disapproval (Veto
message attached)

Department of Health, Education,
and Welfare

Disapproval (Veto
message attached)

General Services Administration
Veterans Administration

Cannot favor approval
Cannot recommend
approval of Title II

Department of Defense

No objection to
approval of Title II

Department of Labor

Defers to HEW

Postal Service

No recommendation

Civil Service Commission

Approval



Discussion

This legislation was initiated in the Congress and, as passed by the House, consisted only of amendments to the Rehabilitation Act of 1973 (Title I). The Senate added Titles II and III, which would, respectively, amend the Randolph-Sheppard Act in major respects and authorize the convening of a White House Conference on Handicapped Individuals. The conferees adopted all three titles with minor modifications. The conference report was passed by a vote of 334-0 in the House and by voice vote in the Senate.



The following describes the main features of the enrolled bill, which are discussed in greater detail in the attached agency views letters.

Title I -- Rehabilitation Act Amendments of 1974

The Federal-State vocational rehabilitation (VR) program dates back to 1920 and is currently operated by the Rehabilitation Services Administration (RSA) within the Social and Rehabilitation Service (SRS) component of HEW. The legislation providing authority for the VR program is the Rehabilitation Act of 1973, which was approved on September 26, 1973 after two previous vetoes by President Nixon.

The appropriation authorizations in the Rehabilitation Act of 1973 are scheduled to expire at the end of fiscal year 1975. By far the largest single authorization is for formula grants to States at an 80 percent matching rate. Under the Act, these grants constitute an entitlement of the States, and the full authorization must be allocated if the States have adequate matching funds.

Although the present authorization provides authority through June 30, 1975, the House initiated H.R. 14225 this year in order to give the States advance notice of how much they could expect to receive in fiscal year 1976 so that they would be able to plan their programs for next year effectively. The report of the House Committee on Education and Labor indicates that extensive hearings and a longer extension of the VR programs are contemplated in the near future.

The following are the major features of Title I of H.R. 14225.

Appropriation authorizations. The enrolled bill would authorize a total of \$849.1 million for fiscal year 1976 for the various activities of the Rehabilitation Act of 1973. The following table compares the fiscal year 1976 authorizations in H.R. 14225 with the fiscal year 1975 authorizations in current law and the amended 1975 budget request.



(In millions of dollars)

| | <u>Current 1975 autho- rizations</u> | <u>1975 budget request as amended</u> | <u>1976 authorizations in H.R. 14225</u> |
|--|--|---|--|
| Formula grants to States for VR services | 680 | 680 | 720 |
| Innovation and expansion grants | 39 | -- | 42 |
| Research and training | 52.7 | 42.2 | 64 |
| Other | <u>19.5</u> | <u>13.9</u> | <u>23.1</u> |
| Total | 791.2 | 736.1 | 849.1 |

* Note: The enrolled bill also contains "such sums" authorizations for construction grants and certain other activities.

Because the State grant allotments are computed on the basis of the authorization, the \$40 million increase provided in H.R. 14225, from \$680 million to \$720 million, would have to be requested in the 1976 Budget. The other specific authorizations, representing an increase in fiscal year 1976 of \$73 million over the amended fiscal year 1975 budget request are subject to the normal budget and appropriations process, but will undoubtedly create pressures for increased funding.

The Administration's position during congressional consideration was that either the formula grants should be extended at the fiscal year 1975 level or the Act should be amended so that appropriations rather than authorizations would be the basis for the State allotments.

Organizational provisions. Despite strong opposition by HEW, H.R. 14225 would provide for the transfer of RSA from SRS to the Office of the Secretary, effective 60 days after enactment. The expressed reasons for this shift are (1) to remove the VR program from the primarily welfare-oriented SRS and (2) to give handicapped persons a more highly placed and visible location within HEW.

Under the enrolled bill, confirmation by the Senate would be required for the Presidentially-appointed Commissioner heading the RSA. The Commissioner would be directly responsible to the Secretary, the Under Secretary, or an appropriate Assistant Secretary, as designated by the Secretary. The bill would prohibit the delegation of the Commissioner's functions to any officer not directly responsible to him both with respect to program operations and administration.

H.R. 14225 would also prohibit the delegation of the Secretary's responsibilities under section 405 of the Rehabilitation Act of 1973 (relating to planning, research, and evaluation) to any person with operational responsibilities for any program designed to benefit handicapped individuals.

HEW strongly objects to these provisions as an infringement on the Secretary's ability to marshal the Department's resources in an effective and efficient manner.

HEW also believes the enrolled bill would require Senate confirmation of the incumbent RSA Commissioner, an unconstitutional infringement on the President's appointment authority. The Justice Department, however, believes that the bill should be read as not affecting the tenure of the incumbent Commissioner and, accordingly, that it does not present a substantial constitutional issue.

Other significant amendments. Title I of H.R. 14225 would make various miscellaneous revisions in the Rehabilitation Act of 1973, chief among them:

-- expanding, only for the purposes of Titles IV and V of the Act, the definition of "handicapped individual," to remove the present orientation toward employment and



employability resulting from VR services. This change in definition would not apply to the basic VR activities. Its main objective is to clarify that the Congress did not intend to limit the term "handicapped individual" by employment criteria for purposes of section 503 (requiring Federal contractors to take affirmative action for hiring and advancing handicapped individuals) or section 504 (prohibiting denial of benefits or discrimination against a handicapped individual under any program or activity receiving Federal assistance).

-- requiring each State agency and facility receiving VR funds to take affirmative action to hire and advance in employment qualified handicapped persons on the same terms and conditions applicable to Federal contractors under section 503 of the Act.

-- adding under the special project and demonstration grant authority a new authority to operate programs to demonstrate methods of making recreational activities fully accessible to handicapped persons.

-- providing authority for the interagency Architectural and Transportation Barriers Compliance Board, which was established in the 1973 Act, to make grants or contracts to carry out its functions and to order withholding or suspension of Federal funds with respect to standards prescribed under the Architectural Barriers Act.

Title II -- Randolph-Sheppard Act Amendments

Title II of the enrolled bill would substantially amend the Randolph-Sheppard Act which governs the operation of blind vending stands on Federal property. There have been growing complaints in recent years that the growth of vending machines has in general adversely affected the economic conditions surrounding the operation of such stands. In response, Senator Randolph has introduced legislation for the last five years to take this development into consideration and to expand the rights of blind vendors in other respects.



The major changes proposed by Title II are:

-- Priority rather than preference would be given to blind licensees in the operation of vending facilities on Federal property.

-- The scope of food service operations for which blind vendors would be given priority would be significantly expanded to include cafeterias, snack bars, cart service, etc.

-- All income from vending machines in direct competition with a blind vending facility would be assigned to blind vendors or used for their benefit; 50 percent of income from vending machines not in direct competition (30 percent at properties where a majority of hours worked are outside normal working hours) would be so assigned. This provision would not cover military exchanges, the Veterans Canteen Service, or those facilities where income from vending machines not in direct competition does not exceed \$3,000. "Vending machine income" would be defined as either (1) commissions paid by a commercial vending company (which average about 10 percent on gross sales), when the machines are on Federal property by franchise arrangement or lease or (2) net receipts, after subtracting the cost of goods sold (including reasonable service and maintenance), when the machines are owned by a Federal agency.

-- The Secretary of HEW, rather than the head of the individual agency, would be assigned direct responsibility for determining, in consultation with the agency controlling the Federal property, and with the State licensing agency, where blind vending facilities would have to be provided in properties to be acquired, leased, or renovated, and where exceptions would be permissible, subject to a new requirement that, effective January 1, 1975, such properties should include satisfactory sites for such facilities.

-- The Secretary of HEW would have to provide for binding arbitration of grievances of blind licensees or State licensing agencies and would have to pay all reasonable costs of such arbitration.



-- HEW would be directed to assign 10 additional full-time personnel to RSA, including an additional supergrade position, to administer the Randolph-Sheppard program.

-- The Secretary of HEW would be required to make recommendations on the establishment of a nationally administered retirement, pension, and health insurance system for blind licensees.



During consideration by the Senate Labor and Public Welfare Committee, GSA, VA, the Postal Service, DOD and HEW opposed various provisions of Title II, with major concern expressed over the assignment of vending machine income to the blind, the inclusion of cafeterias for possible operation by the blind, and the tightened requirements and dominant role of HEW in determining the proper circumstances and locations for the placement of blind vending facilities.

Title III -- White House Conference on Handicapped Individuals

This title of the enrolled bill, which incorporates a separate measure passed by the Senate in 1973, would authorize the President to call a White House Conference on Handicapped Individuals not later than two years after the date of enactment to develop recommendations and stimulate a national assessment of problems and solutions to such problems facing individuals with handicaps.

A 28-member National Planning and Advisory Council would be appointed by the Secretary of HEW to help plan the conference. A final report of the Conference would be submitted by the Council to the President, and made public, not later than 120 days after the Conference is called. The Council and Secretary would be required to transmit to the President and the Congress within 90 days after the report their recommendations for administrative action and legislation.

The Secretary would be authorized to make a grant to each State of between \$10,000 and \$25,000 to assist the States in participating, including conducting at least one conference in each State. The enrolled bill would authorize \$2 million for the Conference itself and "such additional sums as may be necessary" for the State grants.

During debate on the House floor, Congressman Guie and Brademas indicated that an additional year might be necessary to prepare for the Conference. They agreed that if at the beginning of next year this is found to be the case they would extend the time for a year.



Arguments for approval

1. If fully funded, the 1975 authorization increase in H.R. 14225 would represent approximately a 15 percent increase over the current 1975 budget request, but only 7 percent over the current 1975 authorization level. All but the \$40 million increase for State formula grants (which is a legal entitlement) is subject to some control through the appropriations process. At the current rate of inflation, this \$40 million increase would probably not be unreasonable to maintain actual vocational rehabilitation services at the current level.

2. Congressional proponents argue that the rehabilitation program is a human development program and therefore RSA should be transferred out of the Social and Rehabilitation Service where welfare programs are emphasized. In their view, the transfer of RSA to the Office of the Secretary would give greater visibility to the handicapped and the Federal programs for their rehabilitation.

3. The Randolph-Sheppard program has been criticized in the Congress for not being faithfully executed by some agencies. The comprehensive supervisory power over other agencies assigned to HHW under the Randolph-Sheppard Act Amendments is intended to eliminate this problem and provide for more consistent treatment of blind vendors.

4. Blind vendors have claimed that their economic viability has been threatened in recent years by the growing numbers of vending machines on the same premises. A statutory formula for allocating vending machine income to blind licensees and State agencies would assure additional income to blind licensees and thereby help secure the viability of blind vending facilities.

5. A White House Conference on Handicapped Individuals would help focus on how existing programs might be best utilized and what further steps might be taken to improve the lives of the handicapped.

6. In view of the two fairly recent vetoes of VR legislation, disapproval of this bill could be viewed as further evidence of lack of concern by the Administration for the needs of the handicapped.



Arguments against approval.

1. Of the total increase of \$113 million in the 1976 authorization levels contained in H.R. 14225 above the actual 1975 budget request, at least \$40 million--the portion for State formula grants--would have to be allocated to the States since it is an entitlement, and could not therefore be controlled through the appropriations process. While this particular increase would not in itself add substantially to inflationary pressures, it is one source of strain which, if repeated throughout Federal programs, would seriously endanger the Administration's efforts to bring the Federal budget under control.

2. The mandating of several organizational structures and the restrictions on delegation of functions through statute seriously undermines the management flexibility the Secretary of HEW needs and represents unnecessary interference by the Congress in the administration of the VR program. Also objectionable is the statutory requirement that the Secretary assign ten additional full-time personnel, including one supergrade, to the Office for the Blind and Visually Handicapped in RSA to manage the Randolph-Sheppard program.

3. There is no sound basis for assigning by law all or a substantial portion of commissions or net receipts from vending machines to blind licensees or State licensing agencies. This discriminatory provision of the enrolled bill would simply increase the present subsidy to blind vendors at the expense of others who now obtain revenue from the machines. For example, it would endanger the economic viability of many existing, marginal cafeteria operations which rely on such income. GSA points out that an undetermined number of cafeterias

contracts would have to be renegotiated to accommodate the loss of income to cafeteria concessionaires, with a resulting increase in cafeteria prices. In addition, many employee welfare and beneficent activities which depend on vending machine income would have to be curtailed or eliminated altogether.



4. All the agencies concerned object to the requirement that the Secretary of HEW be responsible for approving the construction, leasing, renovation, etc., of Federal properties in order to assure appropriate sites for blind vending facilities, on the basis that this requirement would seriously interfere with the proper management responsibilities of the agency which controls the property. VA, in particular, expresses serious concern about the potential adverse effect of this requirement on the Veterans' Canteen Service. It fears that the most profitable locations would be assigned to blind vendors, leaving the marginal locations to the Canteen Service, which would either have to close them or support them with Federal funds. It also fears increases in the prices charged to hospitalized veterans.

5. A White House Conference on Handicapped Individuals could result in costly program increases and would largely duplicate many of the responsibilities of HEW. From previous experience, White House conferences result in pressures for major new programs and substantially increased funding of existing programs. In addition, HEW, under the Rehabilitation Act of 1973, is conducting special studies on the needs of the handicapped and is responsible for long-range planning and evaluation of on-going programs. The Department believes that such a conference is unnecessary and might even interfere with its ability to carry out the 1973 Rehabilitation Act effectively.

6. Several other provisions of H.R. 14225 would also be undesirable, i.e.:

-- The new program in RSA to demonstrate methods of making recreational activities fully accessible to handicapped individuals, thus seriously diluting the vocational emphasis of the vocational rehabilitation program.

-- New grant and contract authority of the Architectural and Transportation Barriers Compliance Board, which is duplicative of existing HEW and DOT authority and is inappropriate for a regulatory agency.

-- The State licensing agency affirmative action hiring program, which is one more burden on the States that would be also difficult to administer.

-- The expanded definition of "handicapped" for the affirmative action employment and anti-discrimination provisions of the Rehabilitation Act is so broad, vague, and subjective, that it would be extremely difficult to identify objectively the affected population, thereby further aggravating the difficulties of administering these provisions. Labor believes the effect of the new definition would be to weaken rather than strengthen the affirmative action program.

7. The arbitration provisions of the Randolph-Sheppard title would also be difficult to administer. No specific time limits are prescribed for the filing of a complaint with the Secretary or for the Secretary to convene an arbitration panel. In addition, the Secretary would be required to pay all reasonable costs of arbitration which could be expensive in complex arbitration proceedings.

Agency recommendations

HEW recommends that the enrolled bill not be approved, indicating that, with the exception of a few provisions, "the bill contains very little of a desirable nature." HEW states, however, that in view of the overwhelming congressional support for this bill it is doubtful that a veto would be upheld.

GSA states that it cannot favor Presidential approval of the bill. The agency vigorously objects to the Randolph-Sheppard provisions which it believes would adversely affect cafeteria operations in its buildings and to the comprehensive supervisory role given to HEW.

VA objects to the Randolph-Sheppard Act Amendments because it could conflict with the basic purpose of the Veterans' Canteen Service. VA states that if the enrolled bill



becomes law, "it may be necessary in the future to seek legislation clearly exempting VA health care facilities from the provisions of the Randolph-Sheppard Act." It concludes that "While we cannot recommend approval of this provision of the enrolled bill, we do not feel we can recommend a Presidential disapproval solely on the basis of such provision, especially if it is determined that the other provisions of the bill require approval by the President."



Postal Service objects to the provisions "which would involve the layering of bureaucracy on top of bureaucracy" by requiring the Postal Service to obtain advance approval by the Secretary of HEW and state licensing agencies before undertaking to acquire a Federal building. Nevertheless, "The Postal Service makes no recommendation with regard to Presidential action because approval or disapproval of H.R. 14225 should properly turn on the probable effect on the economy of Title I of the bill with regard to which the Postal Service has no special knowledge or expertise."

Defense has no objection to approval of the Randolph-Sheppard Act Amendments because "the House of Representatives in its consideration of the Act as presented by a Joint Conference Report specifically stated in its discussion, the intent to exempt military exchanges, officer and enlisted messes, and other military nonappropriated fund instrumentalities."

The Civil Service Commission recommends approval, although it objects to the provision creating ten additional positions in the Office for the Blind and Visually Handicapped of RSA, including one at the supergrade level, stating that "This kind of legislation denies the flexibility needed for the CSC to successfully manage supergrade resources."

* * * * *

We believe that, on the merits, the enrolled bill has little to commend it. While it would be desirable to extend the authorizations of the Rehabilitation Act in advance of fiscal year 1976, the Congress has done so in a manner which would require an add-on of at least \$40 million to the 1976 Budget.



The Randolph-Sheppard Act Amendments do not represent an equitable balance between the objectives of promoting the interests of blind vendors and the effective management of Government property taking into account the interests of Federal employees and others who would be affected. There is the further question of the equity of singling out the blind as the sole handicapped group deserving of special, heavily subsidized, treatment on Federal property.

A White House Conference on Handicapped Individuals would, as noted above, be duplicative of ongoing activities and would create more pressures for increased Federal spending for the handicapped.

Accordingly, we concur with HEW in recommending disapproval of H.R. 14225, although we recognize that the Congress has given this bill its overwhelming approval.

HEW has prepared a draft veto message which does not mention the constitutional issue raised by the Department concerning Senate confirmation of the incumbent RSA Commissioner. However, HEW has notified us informally that it would like to see the material included in its views letter on this issue incorporated in such a message.

Our draft veto message does not address the constitutional question in view of the disagreement between Justice and HEW, noted earlier in this memorandum. (A letter from Justice on this provision of the bill is attached.) We will attempt to get this matter resolved so that appropriate language on this issue can be incorporated, if needed, in any statement you make when you act on this bill.

(Signed) Roy L. Ash
Director

Enclosures

We assume that the form of this message including the title and the first paragraph, will be revised to conform with the approach taken in the veto message on H.R. 11541--the National Wildlife Refuge System, dated October 22, 1974.

TO THE HOUSE OF REPRESENTATIVES

I am today returning, without my approval, H.R. 14225, the Rehabilitation Act and Randolph-Sheppard Act Amendments of 1974, and the White House Conference on Handicapped Individuals Act.

While this legislation has certain worthy objectives, it contains so many objectionable and inequitable features that I cannot give it my support.

The bill would, first of all, make major changes in the Randolph-Sheppard Act under which for many years preference has been given to blind persons to operate vending facilities on Federal property. H.R. 14225 seeks to correct certain criticisms which have been made by the blind vendors about the operation of the Act. However, the bill goes too far and would in fact create new inequities.

All net receipts and commission income from vending machines on Federal properties operated in direct competition with blind vendors (except for military exchanges and the Veterans Canteen Service) would have to be assigned to the vendors or their State licensing agencies. Half of such income would have to be assigned in the case of machines not in direct competition with the vendors.

The bill would also unwisely enlarge the scope of food service operations for which blind vendors would be given priority to manage, including cafeterias, snack bars, and cart services.

I see no sound basis for the far reaching provisions of this bill. Their effect would be to expand the existing program on an unwarranted scale, to endanger cafeteria operations which now depend on income from vending machines,



and to cause the curtailment or disruption of Federal employee welfare and other activities which likewise rely on vending machine income.

In addition, the Secretary of HEW, rather than the individual agency head, would be required to determine that a satisfactory site is provided for blind vending facilities in all Federal property to be acquired, substantially altered or renovated, and where exceptions would be permissible. This would interfere with the proper management responsibility of each agency head over the property of the agency.

I am also concerned about the provisions of H.R. 14225 which would amend the Rehabilitation Act of 1973.

Certain of these provisions would require specific organizational arrangements in HEW for administering the vocational rehabilitation program. Others contain prohibitions on the delegation of functions within the Department. These provisions would impose severe restrictions on the ability of the Secretary of HEW to organize the resources of his Department.

The appropriation authorizations provided for the vocational rehabilitation program for fiscal year 1976 represent a 15 percent increase over the budget request submitted to the Congress for the current fiscal year. Under the terms of the Rehabilitation Act, \$40 million of this increase is entirely uncontrollable and would have to be spent next year. Such actions on individual bills put an ever-increasing strain on the Federal budget and seriously endanger our efforts to curb inflation.



Finally, I see no need to spend several million dollars for a White House Conference on Handicapped Individuals, as is called for by this bill. In recent years, the Government has placed an unprecedented emphasis on finding ways to help handicapped individuals lead better lives. Various programs and special studies to further this objective are already underway. Accordingly, I am opposed to the proposed Conference in H.R. 14225.

The Rehabilitation Act of 1973 will require extension before the current fiscal year ends. I believe that, working together, the Congress and the Executive Branch can produce sound legislation, in place of H.R. 14225, which will serve the best interests of the handicapped and of the Nation.

THE WHITE HOUSE

October , 1974



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

To
Harren Handicapped
10-24-74
7:30 P.M.

OCT 24 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 14225 - Amendments to the
Rehabilitation Act of 1973 and the
Randolph-Sheppard Act of 1936



Description of the Bill

Title I of H.R. 14225 would: provide appropriation authorizations for fiscal year 1976 for the Vocational Rehabilitation program; transfer the Rehabilitation Services Administration (RSA) from the Social and Rehabilitation Services (SRS) to the Office of the Secretary of HEW; and require Senate confirmation of the RSA Commissioner. The bill would also expand the definition of "handicapped" for those sections of the Rehabilitation Act dealing with affirmative action against discrimination in hiring and in the administration of Federal programs, and contains several other objectionable provisions.

Title II of H.R. 14225 would amend the Randolph-Sheppard Act to require that a substantial portion of income from vending machines on Federal properties be paid either to licensed blind vendors or to State blind licensing agencies. Cafeterias, snack bars, and cart services would be included in the expanded scope of food operations for which blind vendors would be given priority.

Title II would also require the approval of the Secretary of HEW regarding the availability of blind vending sites before any Federal property could be acquired, leased, or renovated in a major way. The bill mandates the assignment of 10 additional staff to administer the Randolph-Sheppard Act, and the Secretary of HEW would provide for and pay the costs of binding arbitration of grievances of blind vendors.

Under Title III of the bill, the President would be authorized to call a White House Conference on Handicapped Individuals within two years of enactment, and \$2 million plus "such sums as may be necessary" would be authorized to fund the Conference.

Attached is a more detailed memorandum covering this enrolled bill and agency recommendations.

Major arguments for approval

- Appropriation authorizations for fiscal year 1976 represent only a 7 percent increase over current authorization levels, far smaller than such levels in earlier, vetoed bills, and less than the current inflation rate. It is possible that all but \$40 million of the increase could be controlled via the budget and appropriations processes.
- Transfer of RSA to the Office of the Secretary of HEW would give the program a more highly placed and visible location than in SRS where welfare programs are emphasized.
- The Secretary of HEW, with overall Pandolph-Sheppard responsibility, could provide more consistent and beneficial treatment of blind vendors than individual agencies could.
- The priority given to the blind in establishing vending facilities and the assignment of vending machine income to the blind would substantially increase the viability of blind vending facilities and employment opportunities for blind persons.
- A White House Conference would help focus existing programs more effectively on the needs of the handicapped.
- The Administration would be viewed more favorably and sympathetically by approving this bill, when contrasted with the fact that two vocational rehabilitation bills were vetoed in the past three years.



Major arguments for disapproval

- Appropriation authorizations represent a 7 percent increase over existing authorization levels and a 15 percent increase over the current 1975 budget request. Moreover, \$40 million of the increase would have to be spent.

- The management flexibility of the Secretary of HEW would be seriously undermined by mandated organizational changes contained in the bill.
- Marginal cafeteria operations on Federal property would be endangered by assignment of vending machine income, on which they now depend, to blind vendors. Many existing cafeteria contracts would have to be renegotiated with concessionaires, with probable increased cafeteria prices.
- Many employee welfare and beneficent activities which depend upon vending machine income would have to be curtailed.
- The management responsibilities of individual agencies would be seriously hampered by the requirement for the approval of the Secretary of HEW for all new building acquisition, leasing, or renovation to assure appropriate sites for blind vending facilities.
- The expanded definition of "handicapped" would confuse the administration of the existing affirmative action and anti-discrimination provisions of the Rehabilitation Act.
- The White House Conference would probably raise strong pressures for increased funding for programs for the handicapped.

Recommendation

I recommend disapproval.



(Signed) Roy L. Ash
Director

THE WHITE HOUSE

WASHINGTON

October 25, 1974



MEMORANDUM FOR: WARREN HENDRIKS

FROM: WILLIAM E. TIMMONS *WET*

SUBJECT: Enrolled Bill H. R. 14425 - Amendments to the
Rehabilitation Act of 1973 and the Randolph
Sheppard Act of 1936 *Log 712*

The Office of Legislative Affairs concurs in the recommendation of OMB to veto this bill.

Date: October 25, 1974

Time: 9:30 a.m.

FOR ACTION: James Cavanaugh
Phil Buchen
✓ Bill Timmons
Paul Theis

cc (for information): Warren K. Hendriks
Jerry Jones
Pam Needham

FROM THE STAFF SECRETARY

DUE: Date: Today, October 25, 1974

Time: 3:00 p.m.

SUBJECT: Enrolled Bill H.R. 14225 - Amendments to the
Rehabilitation Act of 1973 and the Randolph-
Sheppard Act of 1936



ACTION REQUESTED:

___ For Necessary Action

XX For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

___ For Your Comments

___ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

- 1- Stafford called Pres. on this to urge signing. I took call & sent note in.
- 2- Quiz plans to call TT to urge signing
- 3 - I don't think we can sustain
House will override. *TK*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

Date: October 25, 1974

Time: 9:30 a.m.

FOR ACTION: James Cavanaugh
✓ Phil Buchen
Bill Timmons
Paul Theis

cc (for information): Warren K. Hendriks
Jerry Jones
Pam Needham

FROM THE STAFF SECRETARY

DUE: Date: Today, October 25, 1974

Time: 3:00 p.m.

SUBJECT: Enrolled Bill H.R. 14225 - Amendments to the
Rehabilitation Act of 1973 and the Randolph-
Sheppard Act of 1936



ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

*Do not believe that any issues of
Constitutional dimension are presented
by this bill - in accord with Justice
Ken Casaros*

*If President signs, Justice interpretation
of Title I in this respect should be strengthened
in the approval message.*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a
delay in submitting the required material, please
telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 25, 1974

Time: 9:30 a.m.

FOR ACTION: ✓ James Cavanaugh
Phil Buchen
Bill Timmons
Paul Theis

cc (for information): Warren K.
Jerry Jones
Pam Needham

FROM THE STAFF SECRETARY

DUE: Date: Today, October 25, 1974

Time: 3:00 p.m.

SUBJECT: Enrolled Bill H.R. 14225 - Amendments to the
Rehabilitation Act of 1973 and the Randolph-
Sheppard Act of 1936



ACTION REQUESTED:

___ For Necessary Action

XX For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

___ For Your Comments

___ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

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If you have any questions or if you anticipate a
delay in submitting the required material, please
telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

Date: October 25, 1974

Time: 9:30 a.m.

FOR ACTION: James Cavanaugh
Phil Buchen
Bill Timmons
✓ Paul Theis

cc (for information): Warren K. Hendriks
Jerry Jones
Pam Needham

FROM THE STAFF SECRETARY

DUE: Date: Today, October 25, 1974

Time: 3:00 p.m.

SUBJECT: Enrolled Bill H.R. 14225 - Amendments to the
Rehabilitation Act of 1973 and the Randolph-
Sheppard Act of 1936



ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

Christina Hagner, RESEARCH

1974 OCT 25 AM 11 10

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 24 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 14225 - Amendments to the
Rehabilitation Act of 1973 and the
Randolph-Sheppard Act of 1936



Description of the Bill

Title I of H.R. 14225 would: provide appropriation authorizations for fiscal year 1976 for the Vocational Rehabilitation program; transfer the Rehabilitation Services Administration (RSA) from the Social and Rehabilitation Services (SRS) to the Office of the Secretary of HEW; and require Senate confirmation of the RSA Commissioner. The bill would also expand the definition of "handicapped" for those sections of the Rehabilitation Act dealing with affirmative action against discrimination in hiring and in the administration of Federal programs, and contains several other objectionable provisions.

Title II of H.R. 14225 would amend the Randolph-Sheppard Act to require that a substantial portion of income from vending machines on Federal properties be paid either to licensed blind vendors or to State blind licensing agencies. Cafeterias, snack bars, and cart services would be included in the expanded scope of food operations for which blind vendors would be given priority.

Title II would also require the approval of the Secretary of HEW regarding the availability of blind vending sites before any Federal property could be acquired, leased, or renovated in a major way. The bill mandates the assignment of 10 additional staff to administer the Randolph-Sheppard Act, and the Secretary of HEW would provide for and pay the costs of binding arbitration of grievances of blind vendors.

Under Title III of the bill, the President would be authorized to call a White House Conference on Handicapped Individuals within two years of enactment, and \$2 million plus "such sums as may be necessary" would be authorized to fund the Conference.

Attached is a more detailed memorandum covering this enrolled bill and agency recommendations.

Major arguments for approval

- Appropriation authorizations for fiscal year 1976 represent only a 7 percent increase over current authorization levels, far smaller than such levels in earlier, vetoed bills, and less than the current inflation rate. It is possible that all but \$40 million of the increase could be controlled via the budget and appropriations processes.
- Transfer of RSA to the Office of the Secretary of HEW would give the program a more highly placed and visible location than in SRS where welfare programs are emphasized.
- The Secretary of HEW, with overall Randolph-Sheppard responsibility, could provide more consistent and beneficial treatment of blind vendors than individual agencies could.
- The priority given to the blind in establishing vending facilities and the assignment of vending machine income to the blind would substantially increase the viability of blind vending facilities and employment opportunities for blind persons.
- A White House Conference would help focus existing programs more effectively on the needs of the handicapped.
- The Administration would be viewed more favorably and sympathetically by approving this bill, when contrasted with the fact that two vocational rehabilitation bills were vetoed in the past three years.

Major arguments for disapproval

- Appropriation authorizations represent a 7 percent increase over existing authorization levels and a 15 percent increase over the current 1975 budget request. Moreover, \$40 million of the increase would have to be spent.



- The management flexibility of the Secretary of HEW would be seriously undermined by mandated organizational changes contained in the bill.
- Marginal cafeteria operations on Federal property would be endangered by assignment of vending machine income, on which they now depend, to blind vendors. Many existing cafeteria contracts would have to be renegotiated with concessionaires, with probable increased cafeteria prices.
- Many employee welfare and beneficent activities which depend upon vending machine income would have to be curtailed.
- The management responsibilities of individual agencies would be seriously hampered by the requirement for the approval of the Secretary of HEW for all new building acquisition, leasing, or renovation to assure appropriate sites for blind vending facilities.
- The expanded definition of "handicapped" would confuse the administration of the existing affirmative action and anti-discrimination provisions of the Rehabilitation Act.
- The White House Conference would probably raise strong pressures for increased funding for programs for the handicapped.

Recommendation

I recommend disapproval.



[Handwritten signature]
Director

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 14225 - Rehabilitation Act
and Randolph-Sheppard Act Amendments of 1974,
White House Conference on Handicapped Individuals
Sponsor - Rep. Brademas (D) Indiana and 3 others

Last Day for Action

October 29, 1974 - Tuesday

Purpose

Extends through fiscal year 1976 and increases the appropriation authorizations of the Rehabilitation Act of 1973; mandates administration of the Act in the Office of the Secretary of HEW and amends the Act in other respects; expands the priority, scope, and income of the blind vendor program under the Randolph-Sheppard Act; authorizes a White House Conference on Handicapped Individuals.

Agency Recommendations

Office of Management and Budget

Disapproval (Veto
message attached)

Department of Health, Education,
and Welfare

Disapproval (Veto
message attached)
Cannot favor approval
Cannot recommend
approval of Title II

General Services Administration
Veterans Administration

No objection to
approval of Title II

Department of Defense

Defers to HEW
No recommendation
Approval

Department of Labor
Postal Service
Civil Service Commission



Discussion

This legislation was initiated in the Congress and, as passed by the House, consisted only of amendments to the Rehabilitation Act of 1973 (Title I). The Senate added Titles II and III, which would, respectively, amend the Randolph-Sheppard Act in major respects and authorize the convening of a White House Conference on Handicapped Individuals. The conferees adopted all three titles with minor modifications. The conference report was passed by a vote of 334-0 in the House and by voice vote in the Senate.

The following describes the main features of the enrolled bill, which are discussed in greater detail in the attached agency views letters.

Title I -- Rehabilitation Act Amendments of 1974

The Federal-State vocational rehabilitation (VR) program dates back to 1920 and is currently operated by the Rehabilitation Services Administration (RSA) within the Social and Rehabilitation Service (SRS) component of HEW. The legislation providing authority for the VR program is the Rehabilitation Act of 1973, which was approved on September 26, 1973 after two previous vetoes by President Nixon.

The appropriation authorizations in the Rehabilitation Act of 1973 are scheduled to expire at the end of fiscal year 1975. By far the largest single authorization is for formula grants to States at an 80 percent matching rate. Under the Act, these grants constitute an entitlement of the States, and the full authorization must be allocated if the States have adequate matching funds.

Although the present authorization provides authority through June 30, 1975, the House initiated H.R. 14225 this year in order to give the States advance notice of how much they could expect to receive in fiscal year 1976 so that they would be able to plan their programs for next year effectively. The report of the House Committee on Education and Labor indicates that extensive hearings and a longer extension of the VR programs are contemplated in the near future.



The following are the major features of Title I of H.R. 14225.

Appropriation authorizations. The enrolled bill would authorize a total of \$849.1 million for fiscal year 1976 for the various activities of the Rehabilitation Act of 1973. The following table compares the fiscal year 1976 authorizations in H.R. 14225 with the fiscal year 1975 authorizations in current law and the amended 1975 budget request.

(In millions of dollars)

| | <u>Current 1975 autho- rizations</u> | <u>1975 budget request as amended</u> | <u>1976 authorizations in H.R. 14225</u> |
|--|--|---|--|
| Formula grants to States for VR services | 680 | 680 | 720 |
| Innovation and expansion grants | 39 | -- | 42 |
| Research and training | 52.7 | 42.2 | 64 |
| Other | <u>19.5</u> | <u>13.9</u> | <u>23.1</u> |
| Total | 791.2 | 736.1 | 849.1 |

* Note: The enrolled bill also contains "such sums" authorizations for construction grants and certain other activities.

Because the State grant allotments are computed on the basis of the authorization, the \$40 million increase provided in H.R. 14225, from \$680 million to \$720 million, would have to be requested in the 1976 Budget. The other specific authorizations, representing an increase in fiscal year 1976 of \$73 million over the amended fiscal year 1975 budget request are subject to the normal budget and appropriations process, but will undoubtedly create pressures for increased funding.

The Administration's position during congressional consideration was that either the formula grants should be extended at the fiscal year 1975 level or the Act should be amended so that appropriations rather than authorizations would be the basis for the State allotments.

Organizational provisions. Despite strong opposition by HEW, H.R. 14225 would provide for the transfer of RSA from SRS to the Office of the Secretary, effective 60 days after enactment. The expressed reasons for this shift are (1) to remove the VR program from the primarily welfare-oriented SRS and (2) to give handicapped persons a more highly placed and visible location within HEW.

Under the enrolled bill, confirmation by the Senate would be required for the Presidentially-appointed Commissioner heading the RSA. The Commissioner would be directly responsible to the Secretary, the Under Secretary, or an appropriate Assistant Secretary, as designated by the Secretary. The bill would prohibit the delegation of the Commissioner's functions to any officer not directly responsible to him both with respect to program operations and administration.

H.R. 14225 would also prohibit the delegation of the Secretary's responsibilities under section 405 of the Rehabilitation Act of 1973 (relating to planning, research, and evaluation) to any person with operational responsibilities for any program designed to benefit handicapped individuals.

HEW strongly objects to these provisions as an infringement on the Secretary's ability to marshal the Department's resources in an effective and efficient manner.

HEW also believes the enrolled bill would require Senate confirmation of the incumbent RSA Commissioner, an unconstitutional infringement on the President's appointment authority. The Justice Department, however, believes that the bill should be read as not affecting the tenure of the incumbent Commissioner and, accordingly, that it does not present a substantial constitutional issue.

Other significant amendments. Title I of H.R. 14225 would make various miscellaneous revisions in the Rehabilitation Act of 1973, chief among them:

-- expanding, only for the purposes of Titles IV and V of the Act, the definition of "handicapped individual," to remove the present orientation toward employment and



employability resulting from VR services. This change in definition would not apply to the basic VR activities. Its main objective is to clarify that the Congress did not intend to limit the term "handicapped individual" by employment criteria for purposes of section 503 (requiring Federal contractors to take affirmative action for hiring and advancing handicapped individuals) or section 504 (prohibiting denial of benefits or discrimination against a handicapped individual under any program or activity receiving Federal assistance).

-- requiring each State agency and facility receiving VR funds to take affirmative action to hire and advance in employment qualified handicapped persons on the same terms and conditions applicable to Federal contractors under section 503 of the Act.

-- adding under the special project and demonstration grant authority a new authority to operate programs to demonstrate methods of making recreational activities fully accessible to handicapped persons.

-- providing authority for the interagency Architectural and Transportation Barriers Compliance Board, which was established in the 1973 Act, to make grants or contracts to carry out its functions and to order withholding or suspension of Federal funds with respect to standards prescribed under the Architectural Barriers Act.

Title II -- Randolph-Sheppard Act Amendments

Title II of the enrolled bill would substantially amend the Randolph-Sheppard Act which governs the operation of blind vending stands on Federal property. There have been growing complaints in recent years that the growth of vending machines has in general adversely affected the economic conditions surrounding the operation of such stands. In response, Senator Randolph has introduced legislation for the last five years to take this development into consideration and to expand the rights of blind vendors in other respects.



The major changes proposed by Title II are:

-- Priority rather than preference would be given to blind licensees in the operation of vending facilities on Federal property.

-- The scope of food service operations for which blind vendors would be given priority would be significantly expanded to include cafeterias, snack bars, cart service, etc.

-- All income from vending machines in direct competition with a blind vending facility would be assigned to blind vendors or used for their benefit; 50 percent of income from vending machines not in direct competition (30 percent at properties where a majority of hours worked are outside normal working hours) would be so assigned. This provision would not cover military exchanges, the Veterans Canteen Service, or those facilities where income from vending machines not in direct competition does not exceed \$3,000. "Vending machine income" would be defined as either (1) commissions paid by a commercial vending company (which average about 10 percent on gross sales), when the machines are on Federal property by franchise arrangement or lease or (2) net receipts, after subtracting the cost of goods sold (including reasonable service and maintenance), when the machines are owned by a Federal agency.

-- The Secretary of HEW, rather than the head of the individual agency, would be assigned direct responsibility for determining, in consultation with the agency controlling the Federal property, and with the State licensing agency, where blind vending facilities would have to be provided in properties to be acquired, leased, or renovated, and where exceptions would be permissible, subject to a new requirement that, effective January 1, 1975, such properties should include satisfactory sites for such facilities.

-- The Secretary of HEW would have to provide for binding arbitration of grievances of blind licensees or State licensing agencies and would have to pay all reasonable costs of such arbitration.



-- HEW would be directed to assign 10 additional full-time personnel to RSA, including an additional supergrade position, to administer the Randolph-Sheppard program.

-- The Secretary of HEW would be required to make recommendations on the establishment of a nationally administered retirement, pension, and health insurance system for blind licensees.



During consideration by the Senate Labor and Public Welfare Committee, GSA, VA, the Postal Service, DOD and HEW opposed various provisions of Title II, with major concern expressed over the assignment of vending machine income to the blind, the inclusion of cafeterias for possible operation by the blind, and the tightened requirements and dominant role of HEW in determining the proper circumstances and locations for the placement of blind vending facilities.

Title III -- White House Conference on Handicapped Individuals

This title of the enrolled bill, which incorporates a separate measure passed by the Senate in 1973, would authorize the President to call a White House Conference on Handicapped Individuals not later than two years after the date of enactment to develop recommendations and stimulate a national assessment of problems and solutions to such problems facing individuals with handicaps.

A 28-member National Planning and Advisory Council would be appointed by the Secretary of HEW to help plan the conference. A final report of the Conference would be submitted by the Council to the President, and made public, not later than 120 days after the Conference is called. The Council and Secretary would be required to transmit to the President and the Congress within 90 days after the report their recommendations for administrative action and legislation.

The Secretary would be authorized to make a grant to each State of between \$10,000 and \$25,000 to assist the States in participating, including conducting at least one conference in each State. The enrolled bill would authorize \$2 million for the Conference itself and "such additional sums as may be necessary" for the State grants.

During debate on the House floor, Congressmen Quie and Brademas indicated that an additional year might be necessary to prepare for the Conference. They agreed that if at the beginning of next year this is found to be the case they would extend the time for a year.

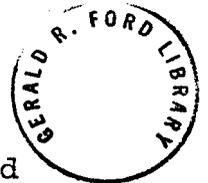
Arguments for approval

1. If fully funded, the 1976 authorization increase in H.R. 14225 would represent approximately a 15 percent increase over the current 1975 budget request, but only 7 percent over the current 1975 authorization level. All but the \$40 million increase for State formula grants (which is a legal entitlement) is subject to some control through the appropriations process. At the current rate of inflation, this \$40 million increase would probably not be unreasonable to maintain actual vocational rehabilitation services at the current level.

2. Congressional proponents argue that the rehabilitation program is a human development program and therefore RSA should be transferred out of the Social and Rehabilitation Service where welfare programs are emphasized. In their view, the transfer of RSA to the Office of the Secretary would give greater visibility to the handicapped and the Federal programs for their rehabilitation.

3. The Randolph-Sheppard program has been criticized in the Congress for not being faithfully executed by some agencies. The comprehensive supervisory power over other agencies assigned to HEW under the Randolph-Sheppard Act Amendments is intended to eliminate this problem and provide for more consistent treatment of blind vendors.

4. Blind vendors have claimed that their economic viability has been threatened in recent years by the growing numbers of vending machines on the same premises. A statutory formula for allocating vending machine income to blind licensees and State agencies would assure additional income to blind licensees and thereby help secure the viability of blind vending facilities.



5. A White House Conference on Handicapped Individuals would help focus on how existing programs might be best utilized and what further steps might be taken to improve the lives of the handicapped.

6. In view of the two fairly recent vetoes of VR legislation, disapproval of this bill could be viewed as further evidence of lack of concern by the Administration for the needs of the handicapped.



Arguments against approval.

1. Of the total increase of \$113 million in the 1976 authorization levels contained in H.R. 14225 above the actual 1975 budget request, at least \$40 million--the portion for State formula grants--would have to be allocated to the States since it is an entitlement, and could not therefore be controlled through the appropriations process. While this particular increase would not in itself add substantially to inflationary pressures, it is one source of strain which, if repeated throughout Federal programs, would seriously endanger the Administration's efforts to bring the Federal budget under control.

2. The mandating of several organizational structures and the restrictions on delegation of functions through statute seriously undermines the management flexibility the Secretary of HEW needs and represents unnecessary interference by the Congress in the administration of the VR program. Also objectionable is the statutory requirement that the Secretary assign ten additional full-time personnel, including one supergrade, to the Office for the Blind and Visually Handicapped in RSA to manage the Randolph-Sheppard program.

3. There is no sound basis for assigning by law all or a substantial portion of commissions or net receipts from vending machines to blind licensees or State licensing agencies. This discriminatory provision of the enrolled bill would simply increase the present subsidy to blind vendors at the expense of others who now obtain revenue from the machines. For example, it would endanger the economic viability of many existing, marginal cafeteria operations which rely on such income. GSA points out that an undetermined number of cafeteria

contracts would have to be renegotiated to accommodate the loss of income to cafeteria concessionaires, with a resulting increase in cafeteria prices. In addition, many employee welfare and beneficent activities which depend on vending machine income would have to be curtailed or eliminated altogether.

4. All the agencies concerned object to the requirement that the Secretary of HEW be responsible for approving the construction, leasing, renovation, etc., of Federal properties in order to assure appropriate sites for blind vending facilities, on the basis that this requirement would seriously interfere with the proper management responsibilities of the agency which controls the property. VA, in particular, expresses serious concern about the potential adverse effect of this requirement on the Veterans' Canteen Service. It fears that the most profitable locations would be assigned to blind vendors, leaving the marginal locations to the Canteen Service, which would either have to close them or support them with Federal funds. It also fears increases in the prices charged to hospitalized veterans.



5. A White House Conference on Handicapped Individuals could result in costly program increases and would largely duplicate many of the responsibilities of HEW. From previous experience, White House conferences result in pressures for major new programs and substantially increased funding of existing programs. In addition, HEW, under the Rehabilitation Act of 1973, is conducting special studies on the needs of the handicapped and is responsible for long-range planning and evaluation of on-going programs. The Department believes that such a conference is unnecessary and might even interfere with its ability to carry out the 1973 Rehabilitation Act effectively.

6. Several other provisions of H.R. 14225 would also be undesirable, i.e.:

-- The new program in RSA to demonstrate methods of making recreational activities fully accessible to handicapped individuals, thus seriously diluting the vocational emphasis of the vocational rehabilitation program.

-- New grant and contract authority of the Architectural and Transportation Barriers Compliance Board, which is duplicative of existing HEW and DOT authority and is inappropriate for a regulatory agency.

-- The State licensing agency affirmative action hiring program, which is one more burden on the States that would be also difficult to administer.

-- The expanded definition of "handicapped" for the affirmative action employment and anti-discrimination provisions of the Rehabilitation Act is so broad, vague, and subjective, that it would be extremely difficult to identify objectively the affected population, thereby further aggravating the difficulties of administering these provisions. Labor believes the effect of the new definition would be to weaken rather than strengthen the affirmative action program.



7. The arbitration provisions of the Randolph-Sheppard title would also be difficult to administer. No specific time limits are prescribed for the filing of a complaint with the Secretary or for the Secretary to convene an arbitration panel. In addition, the Secretary would be required to pay all reasonable costs of arbitration which could be expensive in complex arbitration proceedings.

Agency recommendations

HEW recommends that the enrolled bill not be approved, indicating that, with the exception of a few provisions, "the bill contains very little of a desirable nature." HEW states, however, that in view of the overwhelming congressional support for this bill it is doubtful that a veto would be upheld.

GSA states that it cannot favor Presidential approval of the bill. The agency vigorously objects to the Randolph-Sheppard provisions which it believes would adversely affect cafeteria operations in its buildings and to the comprehensive supervisory role given to HEW.

VA objects to the Randolph-Sheppard Act Amendments because it could conflict with the basic purpose of the Veterans' Canteen Service. VA states that if the enrolled bill

becomes law, "it may be necessary in the future to seek legislation clearly exempting VA health care facilities from the provisions of the Randolph-Sheppard Act." It concludes that "While we cannot recommend approval of this provision of the enrolled bill, we do not feel we can recommend a Presidential disapproval solely on the basis of such provision, especially if it is determined that the other provisions of the bill require approval by the President."



Postal Service objects to the provisions "which would involve the layering of bureaucracy on top of bureaucracy" by requiring the Postal Service to obtain advance approval by the Secretary of HEW and state licensing agencies before undertaking to acquire a Federal building. Nevertheless, "The Postal Service makes no recommendation with regard to Presidential action because approval or disapproval of H.R. 14225 should properly turn on the probable effect on the economy of Title I of the bill with regard to which the Postal Service has no special knowledge or expertise."

Defense has no objection to approval of the Randolph-Sheppard Act Amendments because "the House of Representatives in its consideration of the Act as presented by a Joint Conference Report specifically stated in its discussion, the intent to exempt military exchanges, officer and enlisted messes, and other military nonappropriated fund instrumentalities."

The Civil Service Commission recommends approval, although it objects to the provision creating ten additional positions in the Office for the Blind and Visually Handicapped of RSA, including one at the supergrade level, stating that "This kind of legislation denies the flexibility needed for the CSC to successfully manage supergrade resources."

* * * * *

We believe that, on the merits, the enrolled bill has little to commend it. While it would be desirable to extend the authorizations of the Rehabilitation Act in advance of fiscal year 1976, the Congress has done so in a manner which would require an add-on of at least \$40 million to the 1976 Budget.

The Randolph-Sheppard Act Amendments do not represent an equitable balance between the objectives of promoting the interests of blind vendors and the effective management of Government property taking into account the interests of Federal employees and others who would be affected. There is the further question of the equity of singling out the blind as the sole handicapped group deserving of special, heavily subsidized, treatment on Federal property.

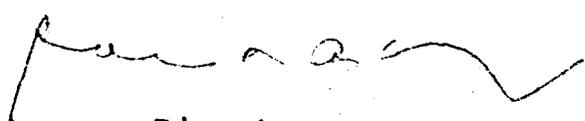
A White House Conference on Handicapped Individuals would, as noted above, be duplicative of ongoing activities and would create more pressures for increased Federal spending for the handicapped.

Accordingly, we concur with HEW in recommending disapproval of H.R. 14225, although we recognize that the Congress has given this bill its overwhelming approval.

HEW has prepared a draft veto message which does not mention the constitutional issue raised by the Department concerning Senate confirmation of the incumbent RSA Commissioner. However, HEW has notified us informally that it would like to see the material included in its views letter on this issue incorporated in such a message.

Our draft veto message does not address the constitutional question in view of the disagreement between Justice and HEW, noted earlier in this memorandum. (A letter from Justice on this provision of the bill is attached.) We will attempt to get this matter resolved so that appropriate language on this issue can be incorporated, if needed, in any statement you make when you act on this bill.




Director

Enclosures