Calendar No. 900

95TH CONGRESS
*2d Session*

SENATE

REPORT
No. 95-969

# CIVIL SERVICE REFORM ACT OF 1978

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## REPORT

OF THE

## COMMITTEE ON GOVERNMENTAL AFFAIRS
## UNITED STATES SENATE

TO ACCOMPANY

S. 2640

TO REFORM THE CIVIL SERVICE LAWS

together with

ADDITIONAL AND MINORITY VIEWS

JULY 10 (legislative day, MAY 17), 1978.—Ordered to be printed

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REPORT
No. 95-969

# CIVIL SERVICE REFORM ACT OF 1978

JULY 10 (legislative day MAY 17), 1978.—Ordered to be printed

Mr. RIBICOFF, from the Committee on Governmental Affairs, submitted the following

## REPORT

together with

## ADDITIONAL AND MINORITY VIEWS

[To accompany S. 2640]

The Committee on Governmental Affairs, to which was referred the bill (S. 2640) to reform the civil service laws, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

## I. BACKGROUND

The changes in law which are proposed in S. 2640 will constitute the most comprehensive reform of the Federal work force since passage of the Pendleton Act in 1883. Since that time total civilian employment has increased from approximately 131,000 to almost 2.9 million employees, of whom almost 93 percent work under a merit system. In 1977, the Federal civilian payroll amounted to over $46 billion, more than 11 percent of Federal outlays for that year. Despite the enormous growth in Federal employment and the accompanying increase in the laws and regulations governing the civil service, no systematic congressional review or revision of the system has been attempted in close to 100 years. S. 2640, as amended, is that long overdue, comprehensive reform.

S. 2640 is based on many of the recommendations by the President's Personnel Management Project. That exhaustive study took 5 months to complete and involved thousands of experts and members of the public. Building on the comprehensive work of the President and his staff, the Governmental Affairs Committee held 12 days of public



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hearings and heard from 86 witnesses, representing 55 organizations. The committee held seven markup sessions before ordering the bill reported. S. 2640 is the centerpiece of the President's efforts to make the Government more efficient and accountable. The committee believes that, as amended, S. 2640 will promote a more efficient civil service while preserving the merit principle in Federal employment.

## II. BRIEF SUMMARY OF THE BILL

The following is a brief listing of the principal changes that S. 2640 makes in the civil service system.[1] The bill:

Codifies merit system principles and subjects employees who commit prohibited personnel practices to disciplinary action;

Provides for an independent Merit Systems Protection Board and Special Counsel to adjudicate employee appeals and protect the merit system;

Provides new protections for employees who disclose illegal or improper Government conduct;

Empowers a new Office of Personel Management to supervise personnel management in the executive branch and delegate certain personnel authority to the agencies;

Establishes a new performance appraisal system and new standard for dismissal based on unacceptable performance;

Streamlines the processes for dismissing and disciplining Federal employees;

Creates a Senior Executive Service which embodies a new structure for selecting, developing, and managing top-level Federal executives;

Provides a merit pay system for GS–13 to 15 managers, so that increases in pay are linked to the quality of the employees' performance;

Authorizes the Office of Personnel Management to conduct research in public management and carry out demonstration projects that test new approaches to Federal personnel administration; and

Creates a statutory base for the improvement of labor-management relations, including the establishment in law of the Federal Labor Relations Authority.

## III. THE NEED FOR REFORM

Both the public and those in government have a right to the most effective possible civil service; that is, one in which employees are hired and removed on the basis of merit and one which is accountable to the public through its elected leaders.

The civil service system is the product of an earlier reform, which, in protest against the 19th century spoils system, promised a work force in which employees were selected and advanced on the basis of

[1] During its consideration of S. 2640, the committee has also had under consideration Reorganization Plan No. 2 of 1978, which provides for the creation of the Office of Personnel Management, the Merit Systems Protection Board, the Office of Special Counsel, and the Federal Labor Relations Authority. The plan, which was submitted to Congress on May 23, 1978, is scheduled to become effective 60 days after submission, if not disapproved by either House of Congress during the interim.

competence rather than political or personal favoritism. Protection of the merit principle in Federal employment has been accomplished through the enactment of numerous laws, rules, and regulations. Although the civil service system has largely succeeded in safeguarding merit principles, there have been frequent attempts to circumvent them, some of which have been successful.

Assaults on the merit system have taken place despite, and in some instances because of, the complicated rules and procedures that have developed over the last century. The welter of inflexible strictures that have developed over the years threatens to asphyxiate the merit principle itself.

The complex rules and procedures have, with their resultant delays and paperwork, undermined confidence in the merit system. Many managers and personnel officers complain that the existing procedures intended to assure merit and protect employees from arbitrary management actions have too often become the refuge of the incompetent employee. When incompetent and inefficient employees are allowed to stay on the work rolls, it is the dedicated and competent employee who must increase his workload so that the public may be benefitted. The morale of even the best motivated employee is bound to suffer under such a system. Moreover, the system's rigid procedures—providing almost automatic pay increases for all employees—makes it as difficult to reward the outstanding public servant as it is to remove an incompetent employee.

The committee agrees with President Carter that "most civil service employees perform with spirit and integrity." Unfortunately, the existing civil service system is more of a hindrance than a help to dedicated Federal employees.

The civil service system is an outdated patchwork of statutes and rules built up over almost a century. Federal management practices are antiquated in comparison with the current state of the managerial art. Research and experimentation concerning management practices is virtually nonexistent.

The public is ill served by the existing civil service system. As the President's Personnel Management Project put it:

> It is the public which suffers from a system which neither permits managers to manage nor which provides assurance against political abuse. Valuable resources are lost to the public service by a system increasingly too cumbersome to compete for talent. The opportunity for more effective . . . service to the public is denied by a system so tortuous that managers regard it as almost impossible to remove those who are not performing. (Final Staff Report, Vol. 1, p. vi.)

When programs fail or are damaged by mismanagement and incompetence, both the taxpayer and the program beneficiary suffer.

For this reason, civil service reform has been described as a "paramount consumer issue."

> . . . millions of consumers look to federal civil servants to protect them from cancerous additives in food, filth in meat products, defects in cars, radiation in television sets, flammability in clothes, poisons in air and water, and monopoly

> prices in all goods and services. Consumers look to federal civil servants to wisely spend the twenty or thirty percent of their income which they pay to the federal government in taxes. Consumers look to federal civil servants to see that their mail is promptly delivered, their bank deposits insured, their energy needs met. In short, effective, efficient, honest, patriotic, committed and hard-working federal employees are a basic consumer interest. (Testimony of Ralph Nader before Senate Governmental Affairs Committee, April 10, 1978.)

Government executives and managers are vital to the success of public programs. The existing civil service system, however, has failed to adequately recruit and develop government managers. Too little emphasis has been placed on training and experience when hiring or promoting executives who will run programs worth billions of dollars and have a tremendous impact on the lives of millions of people.

Throughout this country's history—and especially since 1883—there has been a tension between protections established to insure that employees are hired and fired solely on the basis of their ability, and the need of managers and policymakers to have flexibility to perform their jobs. Frequently, this tension is characterized as the "rights of employees" versus the "need for management flexibility." Although it has recognized this tension, the Committee has viewed civil service reform from the standpoint of the public, rather than the more limited perspective of either the employee or manager. The "rights of employees" to be selected and removed only on the basis of their competence are concomitant with the public's need to have its business conducted competently. Similarly, the need for Federal executives to manage their personnel responsibilities effectively can only be justified by the benefit derived by the public from such management flexibility. An employee has no right to be incompetent; a manager has no right to hire political bed fellows.

The public has a right to an efficient and effective Government, which is responsive to their needs as perceived by elected officials. At the same time, the public has a right to a Government which is impartially administered. One of the central tasks of the civil service reform bill is simple to express but difficult to achieve: Allow civil servants to be able to be hired and fired more easily, but for the right reasons. This balanced bill should help to accomplish that objective. It is an important step toward making the Government more efficient and more accountable to the American people.

## IV. MAJOR PROVISIONS IN S. 2640

*Separation of Civil Service Commission functions*

When the Civil Service Commission was created in 1883, Congress did not intend to create a central personnel agency, but rather to police patronage. The President was authorized to appoint, with the advice and consent of the Senate, a Commission to be composed of three members, not more than two of whom were from the same party, removable at the will of the President. The Commission's job was to screen, examine, and present a choice of applicants to fill jobs in the agencies in the competitive service. General issues of personnel man-

ing the civil service abuses only a few years ago. Establishment of a strong and independent Board and Special Counsel will discourage subversions of merit principles. Dwight Ink, Executive Director of the President's Personnel Management Study, called the independent and strong Merit Board "the cornerstone" of civil service reform.

The bill provides for an independent Board and Special Counsel. By statute, no more than two members of the Board will be of the same political party. Its members' terms will last 7 years, with removal only for cause. The Special Counsel will serve a term coterminous with that of the President. Board Members will not be eligible to serve more than one term. As a result of this structure, the Board should be insulated from the kind of political pressures that have led to violations of merit principles in the past. Both the Board and the Special Counsel will exercise statutory responsibilities independent of any Presidential directives. Absent such a mandate for independence for the Merit Board, it is unlikely that the committee would have granted the Office of Personnel Management the power it has or the latitude to delegate personnel authority to the agencies.

In addition, S. 2640 gives the Board and the Special Counsel new powers to protect the merit system more effectively. Unlike the Civil Service Commission, the Board will have subpena authority for obtaining evidence that is essential in conducting investigations and adjudicating appeals by Federal workers. The Special Counsel will have power to initiate disciplinary action against those who knowingly and willfully violate the merit principles by engaging in prohibited personnel practices. In addition to simple reprimand, these sanctions include removal, suspension, demotion, exclusion from Federal employment for up to 5 years, and fines up to $1,000. S. 2640 requires the Board to direct agencies, in certain cases, to pay employees' attorneys' fees.

*Creation of statutory labor-management relations authority*

A major aspect of Federal personnel management under S. 2640 will be carried out by a new Federal Labor Relations Authority. At present, this responsibility is shared by the Assistant Secretary of Labor for Labor-Management Relations and the part-time Federal Labor-Relations Council. The Assistant Secretary is charged with decisionmaking regarding unfair labor practices, and the Council serves as an appellate body. S. 2640 provides for consolidation of this authority in a single administrative organization, which is impartial by virtue of its independence from any direct responsibility to the incumbent administration, and which has a statutory mandate to govern Federal labor-management activities and procedures.

Consolidating responsibility in FLRA should eliminate what is perceived by Federal employee unions and others as a conflict of interest in the existing Council. Its members consist of the Chairman of the Civil Service Commission, the Director of the Office of Management and Budget, and the Secretary of Labor—policymakers who are responsible primarily as top managers in the incumbent administration. S. 2640 will assure impartial adjudication of labor-management cases by providing for a new Board whose members are selected independently—nominated by the President and confirmed by the

Senate—rather than by virtue of their service as Federal managers.

Creation of the FLRA also will eliminate the existing fragmentation of authority between the Assistant Secretary of Labor for Labor-Management Relations and the Federal Labor Relations Council. The FLRA will have comprehensive jurisdiction in Federal labor-management relations. Merging the responsibility into a single agency will eliminate the need for continuous coordination between two separate agencies with differing and at least potentially conflicting mandates. This change should result in more effective policymaking and administration in this area of vital importance to both Federal employees and Federal managers, as well as the public at large.

S. 2640 also provides explicit statutory responsibilities for FLRA. The part-time Federal Labor Relations Council was established by Executive order. With approval of S. 2640, the intent of Congress regarding the functions and operations of Federal labor-management relations will be clearly established.

*Whistle blowers*

S. 2640 gives the Merit Systems Protection Board and the Special Counsel explicit authority to protect whistle blowers—Federal employees who disclose illegal or improper government activities. Often, the whistle blower's reward for dedication to the highest moral principles is harassment and abuse. Whistle blowers frequently encounter severe damage to their careers and substantial economic loss.

Protecting employees who disclose government illegality, waste, and corruption is a major step toward a more effective civil service. In the vast Federal bureaucracy it is not difficult to conceal wrongdoing provided that no one summons the courage to disclose the truth. Whenever misdeeds take place in a Federal agency, there are employees who know that it has occurred, and who are outraged by it. What is needed is a means to assure them that they will not suffer if they help uncover and correct administrative abuses. What is needed is a means to protect the Pentagon employee who discloses billions of dollars in cost overruns, the GSA employee who discloses widespread fraud, and the nuclear engineer who questions the safety of certain nuclear plants. These conscientious civil servants deserve statutory protection rather than bureaucratic harassment and intimidation.

S. 2640 will establish significant protections for whistle blowers. For the first time, and by statute, the Federal Government is given the mandate—through the Special Counsel of the Merit Systems Protection Board—to protect whistle blowers from improper reprisals. The Special Counsel may petition the Merit Board to suspend retaliatory actions against whistle blowers. Disciplinary action against violators of whistle blowers' rights also may be initiated by the Special Counsel. In addition, S. 2640 establishes a mechanism by which the allegations made by whistle blowers can be reviewed by responsible government officials. At the same time, S. 2640 will not protect employees who disclose information which is classified or prohibited by statute from disclosure. Nor would the bill protect employees who claim to be whistle blowers in order to avoid adverse action based on inadequate performance.

range, advancement would, at least in part, be based on the quality of the work of the employees covered by this provision. Full comparability adjustments would not be given to all employees covered by the provision. The money saved would be used to compensate employees whose performance merited an additional pay increase.

*Research and demonstration projects*

In recognition of changing public needs. Title VI of S. 2640 authorizes the Office of Personnel Management to conduct research in public management and carry out demonstration projects that test new approaches to Federal personnel administration. Certain sections of the Federal personnel laws would be waived for purposes of small-scale experiments. Among the subjects of possible projects are appeals mechanisms, alternative forms of discipline, security and suitability investigations, labor-management relations, pay systems, productivity, performance evaluation, and employee development and training.

Expanded knowledge in organizational management is always useful, and pilot projects provide one of the best sources of information. Through experimentation, it is possible to avoid both excessive rigidification in the personnel system and comprehensive change with extensive unanticipated consequences. Researchers are able to get the facts about the likely results of proposed new procedures by applying them on a small scale rather than throughout the entire organization. If successful, a proposed change can then be extended; if not, it can be eliminated more easily; if the results are mixed, the new system can be adjusted.

Experimentation of this kind should permit responsiveness to changing public needs as reflected in the Federal personnel system. It may mean less need for reform in future years. It permits flexibility and the foresight to meet emerging issues.

This provision of S. 2640 also will provide a statutory basis for the Office of Personnel Management to conduct demonstration projects. It embodies the intent of Congress that continuing review of personnel techniques and systems is a vital aspect of civil service reform.

*Labor management relations*

S. 2640 incorporates into law the existing Federal employee relations program. At the same time, S. 2640 recognizes the special requirements of the Federal government and the paramount public interest in the effective conduct of the public's business. It insures to Federal agencies the right to manage government operations efficiently and effectively.

The basic, well-tested provisions, policies and approaches of Executive Order 11491, as amended, have provided a sound and balanced basis for cooperative and constructive relationships between labor organizations and management officials. Supplemented by the Federal Labor Relations Authority to administer the program, and expanded arbitration procedures for resolving individual appeals, these measures will promote effective labor-management relationships in Federal operations.

The bill permits unions to bargain collectively on personnel policies and practices, and other matters affecting working conditions within the authority of agency managers. It specifies areas for decision which are reserved to the President and heads of agencies, which are not sub-

ject to the collective bargaining process. It excludes bargaining on economic matters and on nonvoluntary payments to unions by employees. Strikes by Federal employees are prohibited; bargaining impasses are resolved through the Federal Mediation and Conciliation Service and the Federal Service Impasses Panel; and employees are protected in their rights to join, or refrain from joining, labor organizations.

*Intergovernmental Personnel Act Amendments*

Title VI also provides for the use of a single set of merit system standards to be applied to state and local governments in those programs which receive Federal funding. This change is designed to aid state and local officials who now must meet several sometimes conflicting requirements.

## V. HISTORY OF LEGISLATION

S. 2640 had its genesis early in 1977 when officials of the Civil Service Commission, the Office of Management and Budget and other executive branch agencies met in preparation for the President's Personnel Management Project. The Project was officially begun in June 1977, and took 5 months to complete.

The Project involved 110 staff members, the great majority of whom were career employees, assigned to 9 different task forces. These 110 people were from numerous agencies and commissions within the executive branch, as well as Congress and the private sector. Alan H. Campbell, Chairman of the Civil Service Commission, served as Chairman of the Project, and Wayne G. Granquist, Associate Director of OMB, as Vice Chairman.

The project staff held 17 public hearings throughout the United States in which approximately 7,000 individuals participated as part of the consultation process. Also, 800 organizations were contacted for comments on option papers. Although the staff carrying out the project were largely from the public service, people were drawn from outside Government into the study process on an extensive scale. Each of the project task forces studying separate aspects of the personnel system developed detailed option papers which discussed the problems and suggested a wide range of recommendations.

After completion of the three volume report, the Carter administration developed S. 2640, which embodies many of the recommendations contained in the President's study. In March of 1978, the President submitted S. 2640 to Congress.

In March of 1978, the President submitted S. 2640 to Congress.

The Governmental Affairs Committee held 12 days of hearings during which 86 individuals, representing 55 organizations, testified. In addition, Senators Ribicoff and Percy wrote to almost 90 experts in public administration and personnel management requesting their views on this legislation and the proposed Civil Service Reorganization Plan. The vast majority of the respondents expressed support for the reforms. Most of the witnesses who testified also voiced support for S. 2640.

The following is a list of the witnesses who testified at the hearings, in order of their appearance:

Mr. George Auman—President, Federated Professional Association.
Mr. Ed MacCutchen—Member, Executive Committee.
Mr. Lionel Murphy—Member, Executive Committee and Legislative Research Director.

Following the completion of these hearings the Committee met on May 22, June 7, June 8, June 12, June 13, June 14, and June 29 to consider this legislation. On June 29 the Committee voted 11–2 to report favorably S. 2640, as amended.

## VI. SECTION-BY-SECTION ANALYSIS

### SECTION 1. SHORT TITLE

This section provides that the Act is to be known as the "Civil Service Reform Act of 1978."

### SECTION 2. TABLE OF CONTENTS

This section sets forth the table of contents for the eight titles of the statute. They are: Title I—Merit System Principles; Title II—Civil Service Functions, Performance Appraisal, Adverse Actions; Title III—Staffing; Title IV—Senior Executive Service; Title V—Merit Pay; Title VI—Research, Demonstration, and Other Programs; Title VII—Labor-Management Relations; and Title VIII—Miscellaneous.

### SECTION 3. FINDINGS AND STATEMENT OF PURPOSE

This section establishes as policy of the United States that the merit system principles governing the Federal civil service be expressly stated, and that the personnel practices which are prohibited in the Federal service be statutorily defined. It provides that the authority and powers of the independent Merit Systems Protection Board and Special Counsel to enable the Board to handle hearings and appeals involving Federal employees, to enable the Special Counsel to investigate prohibited personnel practices and protect Federal employees from reprisals arising out of the disclosure of information, exercise of an appeal right, or conduct involving political activity. It provides that certain personnel functions, including the function of filling positions in the competitive service, may be delegated from the Office of Personnel Management to agencies, with oversight of the delegation retained by the Office of Personnel Management. It calls for the establishment of a Senior Executive Service to provide additional flexibility for executive agencies in recruitment and management efforts, and provides that pay increases should be based on quality of performance rather than length of service. It provides that a research and demonstration program should be authorized to enable Federal agencies to utilize new and different personnel management concepts and to provide for greater productivity in the Federal civil service. Finally, it codifies in statute the rights previously granted by Executive Order 11491 to Federal employees to organize, bargain collectively, and participate through labor organizations in decisions which affect their working conditions.

SUBCHAPTER I—SUSPENSION FOR 30 DAYS OR LESS

*Section 7501. Definitions*

Section 7501 defines the employee coverage of this subchapter and the term "suspension." This subchapter applies to competitive service employees who are serving under career, career-conditional, and other non-temporary appointments, and who have completed a probationary or trial period. This definition of employee would include all competitive service employees who are currently covered by these procedural protections. It does not apply to members of the Senior Executive Service, employees not in the competitive service who are excluded from coverage by OPM regulation, or an employee in an agency or unit of an agency engaged in foreign intelligence or counter-intelligence excluded from the application of the merit systems principles by section 2301.

For the first time, the term *suspension* is defined in statutory language as a disciplinary action temporarily denying an employee his duties or pay. The bill follows the definition of the term previously adopted by the Civil Service Commission in its policy issuances.

*Section 7502. Actions Covered*

Section 7502 specifies that this subchapter covers suspensions of 30 days or less.

The provisions of this subchapter do not apply to the suspension of an employee under present section 7532 of this title, which outlines the procedures to be followed when such an action is taken in the interest of national security; nor do they apply to disciplinary actions taken by the Board under section 1207 upon a complaint filed with it by the Special Counsel pursuant to section 1206.

*Section 7503. Cause and Procedure*

Subsection (a) provides that an action to suspend an employee must be taken in accordance with regulations prescribed by the Office of Personnel Management. As in current law the agency may take such action only "for such cause as will promote the efficiency of the service."

Subsection (b) defines the rights of an employee against whom a suspension of 30 days or less is proposed. These include the rights currently provided by statute. In addition, the right to furnish material in support of the answer is expanded to include, in addition to affidavits, other documentary evidence which the employee may wish to submit. The employee is also accorded the right to reply orally and to be accompanied by an attorney or other representative. It is expected that, by regulation, OPM will provide employees the right to review material on which the agency has relied in proposing an action. An employee who is suspended for 30 days or less is entitled to have the action reviewed by the employing agency, but has no right of appeal to the Merit Systems Protection Board. In the alternative, this type of action may be the subject of grievance procedures established by labor-management agreements under title VII of this bill.

Paragraph (2) specifically exempts certain agencies or positions in agencies from inclusion under this title, including (a) the Federal Bureau of Investigation, (b) the Central Intelligence Agency, (c) the Defense Intelligence Agency, (d) the National Security Agency, (e) the Drug Enforcement Authority, and (f) other Executive agencies or units thereof whose principal function is the conduct of intelligence or counterintelligence activities, as determined by the President.

Paragraph (3) defines an "employee" as an individual employed in or under an agency.

Paragraph (4) defines an "eligible" as an individual who has qualified for an appointment to the competitive service, and whose name has been entered on an appropriate register or list of eligibles.

Paragraph (5) defines "demonstration project" as one aimed at determining whether a specified change in policies or procedures will result in improved Federal personnel management, and is conducted or supervised by the Office of Personnel Management.

Paragraph (6) defines "research program" as a planned study of public management policies and systems, the manner in which they are operating, their effects, comparisions among policies and systems, and possibilities for change.

*Section 4702. Research and development functions*

Section 4702 authorizes the Office of Personnel Management to establish, maintain, and evaluate research and development projects to find improved methods and technologies in Federal Personnel Management. OPM is also directed to establish and maintain a system for collection and public dissemination of such research and development, and to encourage exchange of information among interested parties. OPM is authorized to carry out these activities directly or through contract or agreement.

*Section 4703. Demonstration projects*

Section 4703 establishes the scope and limitation of OPM's authority to conduct experimental demonstration projects aimed at improving Federal personnel management. Because this Section permits OPM to waive certain provisions of law in conducting these projects, the Committee was particularly concerned that adequate safeguards be developed to assure that this power not be abused. Any demonstration project that oversteps these limitations, or does not satisfy the essential definitional intent of such projects is prohibited.

Part (a) of this Section authorizes OPM to conduct and evaluate, either directly or through agreement or contract with one or more Federal agencies or other public or private organizations, demonstration projects involving up to 5,000 individuals (not including control groups) and having an active duration of up to 5 years. No more than 10 active demonstration projects may be underway at any one time. The intent of this requirement is to limit to 50,000 the total number of Federal employees that may be involved directly, at any one time, in active demonstration projects. For purposes of this limitation, an "active" project is intended to mean one where the experimental condition remains in effect. A project where the experiment is no longer in effect, but where evaluation study is still underway, would not be considered an "active" project for purposes of this limitation.

In order to provide OPM with the ability to experiment with new and innovative means of improving Federal personnel management, the Committee agreed to a limited allowance for OPM to either (a) act beyond specific authorities granted to it under Title 5, United States Code, or (b) waive inconsistent provisions of Title 5, United States Code, in creating experimental conditions for purposes of demonstration projects.

While the Committee recognized the need to allow OPM adequate flexibility to develop new approaches to Federal personnel management policies and procedures, it was concerned about the dangers inherent whenever any Federal agency is given authority to waive provisions of law. For this reason, a number of provisions were inserted to assure that demonstration project authorities are not used to abridge employee rights, contravene the express will of Congress, or undermine the essential purpose of this Act, that is, to create a fairer, more effective, more merit-oriented Federal civil service. For instance, the Committee decided to insert language forbidding any demonstration project to violate merit system principles or prohibited personnel practices established under Title II of this Act. Any demonstration project which does so would be subject to the full range of disciplinary powers accorded the Merit Systems Protection Board and its Special Counsel. Further, no demonstration project may affect leave, insurance, or annuity provisions established under this Title.

To provide assurance that demonstration projects are proper, rigorous procedural safeguards must be satisfied before any such project may go into effect. A detailed plan must be developed, published in the Federal Register, and submitted to public hearings as a precondition to implementation. The plan must identify the purposes of the proposed demonstration project, the number, types, and categories of employees and eligibles to be affected, the methodology, the duration, the anticipated costs, the training to be provided, and the methodology and criteria for evaluation of the project. Further, employees who might be affected by the project must be notified and consulted with at least 6 months prior to first implementing the project. Congress also must be provided a detailed report on the proposed project at least 3 months in advance of implementation.

No project may be implemented unless the agency involved has approved the proposal.

To insure that employees have an active input into the planning and implementation of demonstration projects and are fully appraised of any change which might affect their status or well-being, parts (e) and (f) of this section establish rules for prior consultation with employees before a project may be initiated. Where employees are within an agency unit where an employee organization holds exclusive recognition rights, no demonstration project may be entered into (a) if the project would violate a negotiated agreement between the employee organization and such agency unless a written agreement provides for such projects, or (b) if the project is not covered by such a written agreement, unless there has been consultation or negotiation, as appropriate, with the employee organization. It is the intent of this provision that the authority to enter into demonstration projects and to waive certain provisions of law not be construed as license to violate any agreement entered into by an agency and its employees, or

to bypass the exclusive recognition rights accorded an employee organization.

Where employees are within a unit where an employee organization has not been accorded exclusive recognition rights, the requirement for prior consultation with employees must still be adhered to, and part (f) forbids the implementation of any project where consultation has not taken place.

Finally, an evaluation is required of all demonstration projects entered into under this section, including an evaluation of results and their impact on improving public management. All agencies are mandated to cooperate with the Director of OPM in the performance of his demonstration project authority, including the providing of information and reports.

*Section 4704. Alloction of Funds*

Section 4704 allows OPM to allocate funds appropriated to it for the purpose of conducting demonstration or research projects to other agencies, where such other agencies are to be actually conducting or assisting in the conducting of such projects. However, to insure continued Congressional control over such funds, allocated funds may remain available only for so long as specified in appropriation Acts. And no contracts may be entered into under this Section unless specifically provide for in advance by relevant appropriations Acts.

*Section 4705. Reports*

Section 4705 requires that OPM, as part of its annual report to Congress, include a summary of all research and demonstration projects conducted during the year, the effect of the projects on improving management efficiency, and recommendations of policies and procedures which will improve the attainment of general research objectives.

*Section 4706. Regulations*

Section 4706 authorizes the OPM to prescribe regulations to administer the provisions of this Chapter.

SECTION 602. INTERGOVERNMENTAL PERSONNEL ACT AMENDMENTS

This Section amends the Intergovernmental Personnel Act as follows:

Subsection 602(a) amends section 208 of the Intergovernmental Personnel Act (IPA) to (1) authorize Federal agencies to require State and local governments, as a condition of participation in Federal assistance programs, to have merit personnel systems for the positions engaged in the administration of such programs; and (2) abolish all statutory personnel requirements established as a condition of the receipt of Federal grants-in-aid by State and local governments, except those listed in Section 208 of the IPA, those that prohibit discrimination in employment or require equal employment opportunity or affirmative action, the Davis-Bacon Act, and the Hatch Political Activities Act.

Subsection 602(b) amends section 401 of the IPA to extend the authority to participate in the mobility program to certain other organizations.

Subsection 602(c) amends section 403 of the IPA to make commissioned Public Health Service Officers eligible to participate in the IPA mobility program.

Subsection 602(d) amends section 502 of the IPA to define the Trust Territory of the Pacific Islands as a jurisdiction which is eligible to participate in all IPA programs.

Subsection 602(e) amends section 506 of the IPA to include the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands in the formula allocation of IPA grants and exclude these jurisdictions from the local government allocation.

SECTION 603. AMENDMENTS TO THE MOBILITY PROGRAM

This Section amends Title 5 of the United States Code to expand the Intergovernmental Mobility Program as follows:

Subsections 603 (a) through (d) amend sections 3371 through 3375 of title 5, United States Code, to extend eligibility to participate in the mobility program to the Trust Territory of the Pacific Islands; to a military department; a court of the United States; the Administrative Office of the United States Courts; the Library of Congress; the Botanic Garden; the Government Printing Office; the Congressional Budget Office; the United States Postal Service; the Postal Rate Commission; the Architect of the Capitol; the Office of Technology Assessment; and other organizations such as a national, regional, statewide, or metropolitan organization representing member State or local governments; an association of State or local public officials; or a nonprofit organization, one of whose principal functions is to offer professional advisory, research, development or related services to governments or universities concerned with public management. Federal employees in non-career appointments in the Senior Executive Service and employees in the excepted service who are serving in confidential or policy determining positions are excluded from participation in the mobility program.

Subsection 603(e) amends section 3374 of title 5, United States Code, to provide technical amendments to assure fairness and equity for persons participating in mobility assignments. If enacted, Federal retirement and other benefits, in the rare cases where such programs apply to certain State and D.C. government employees, would not be lost by such employees while they are on mobility assignments. Federal agencies would be authorized to reimburse State and local governments and institutions of higher learning, and other organizations for various fringe benefits (e.g., health and life insurance, retirement, etc.) of employees on detail from such organizations.

Subsection 603(f) amends section 3375 of title 5, United States Code, to authorize an executive agency to reimburse mobility assignees for certain miscellaneous relocation expenses related to a geographic move for purposes of a mobility assignment on the same basis such payments are authorized on a permanent change of station (e.g., automobile registrations, drivers' licenses, etc.).

## TITLE VII—LABOR-MANAGEMENT RELATIONS

Title VII establishes a Federal Labor Management Relations Authority and creates a statutory base for the improvements of labor-management relations in the Federal service. The Authority will carry

out the duties and responsibilities now being handled by the part-time Federal Labor Relations Council and Assistant Secretary of Labor for Labor-Management Relations. Title VII permits labor unions to bargain collectively over personnel policies, practices, and matters affecting working conditions within the authority of agency managers. It specifies areas for decision which are reserved to management and may not be subjected to the collective bargaining process.

Title VII also provides statutory base for the establishment of grievance and arbitration procedures for Federal employees organized in collective bargaining units. Through the statutory establishment of a Federal Service Impasses Panel, it provides for the resolution of impasses between agencies and labor unions. Further, it sets out a grounp of unfair labor practices for both the agencies and the unions.

SECTION 701(A)

This section provides that subpart F of part III of title 5, United States Code, is amended to add the following chapter.

## CHAPTER 72—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

*Section 7201. Findings and purpose*

Subsection (a) states findings of Congress that the public interest demands the highest standards of employee performance and the continued development of modern and progressive work practices to facilitate the efficient accomplishment of the operations of the Government.

Subsection (b) states findings of Congress that the protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them can be accomplished with full regard for the public interest and contributes to the effective conduct of public business.

Subsection (c) states that the purpose of this subchapter is to prescribe rights and obligations of employees of the Federal Government and to establish procedures to meet the special requirements and needs of the Federal Government.

*Section 7202. Definitions; application*

Subsection (a)(1) defines "agency."

Subsection (a)(2) defines "employee." The definition includes a person who was separated from service as a consequence of, or in connection with, an unfair labor practice under section 7174 of this subchapter. This language is an adaptation of language in section 2(3) of the National Labor Relations Act. By its operation under NLRA, and intended by its inclusion in this subchapter, persons determined to have been separated in violation of the unfair labor practice provisions of this subchapter could vote in representation elections and have access to those provisions, e.g., "It shall be an unfair labor practice . . . to interfere with . . . an employee in the exercise of rights assured by this subchapter." The term "uniformed services" used in subsection (a)(2)(D)(ii) is intended to have the same meaning as that given the term by section 2101(3) of this title which reads as follows:

*Sec. 2101. Civil Service; armed forces; uniformed services*

For the purpose of this title—

* * * * * * *

(3) "uniformed services" means the armed forces, the commissioned corps of the Public Health Service, and the commissioned corps of the Environmental Science Services Administration.

Subsection (a)(3) defines "labor organization." Subsection (a)(4) defines "agency management." Subsection (a)(5) defines "Authority." Subsection (a)(6) defines the "General Counsel." Subsection (a)(7) defines the "Panel." Subsection (a)(8) defines the "Assistant Secretary."

Subsections (a)(9), (10) and (12) define "Confidential employee," "Management official" and "Professional employee," respectively. Executive Order 11491 referred to but did not define these terms. The Assistant Secretary defined them in case decisions. Such definitions are now codified in sections 7162(a)(9), (10) and (12).

Subsection (a)(11) defines "supervisor." Subsection (a)(12) defines "professional employee." Subsection (a)(13) defines "agreement."

Subsection (a)(14) defines "collective bargaining," "bargaining" or "negotiating" as synonymous terms with references to the mutual obligation of agency representatives and the exclusive representative set forth in section 7215. Subsection (a)(15) defines "exclusive representative." Subseciton (a)(16) defines "person."

Subsection (a)(17) defines "grievance." This term is intended to apply broadly than just to complaints concerning matters covered by a *negotiated* grievance procedure. For example, "grievance" as used in section 7212(c) refers to a procedure which has not been negotiated by the parties, such as an agency grievance procedure, but does not apply to complaints concerning matters not subject to a grievance procedure such as classification and Fair Labor Standards Act matters.

Subsection (b) provides that this subchapter applies to all employees and agencies in the executive branch except for specific exclusions set forth below. This subsection tracks the language of Executive Order 11491, section 3(a).

Subsection (c) specifies the agencies, subdivisions thereof and personnel to which this subchapter does not apply. It reflects current exclusions under Executive Order 11491. For the purpose of clarity, the National Security Agency, the U.S. Postal Service and the personnel of the Authority, General Counsel and Panel are specifically listed as excluded. S. 2640 as introduced included among the exceptions the United States Postal Commission. The Committee decided that there was no reason to exclude the Commission because there are no national security issues involved and by statute it is a government agency.

Subsection (d) provides that an agency head may, as deemed in the national interest, suspend this subchapter with respect to an agency or subdivision located outside the U.S. It tracks the provision of Executive Order 11491, section 3(c).

Subsection (e) provides that employees engaged in administering a labor-management relations law (except for personnel of the Authority, General Counsel and Panel, who are excluded by subsection

(c) of this section) may not be represented by labor organizations which also represent other employees covered by that law. A similar provision is contained in Executive Order 11491, section (3)(d), the purpose of which is to avoid conflicts of interest for the employees administering the labor-management relations law.

*Section 7203. Federal Labor Relations Authority; Office of the General Counsel*

Subsection (a) establishes the Federal Labor Relations Authority as an independent establishment in the Executive Branch of the Government. This provision conforms with Reorganization Plan No. 2 of 1978.

Subsection (b) provides that the Authority is composed of a Chairperson and two other full-time members, not more than two of whom may be adherents of the same political party, and none of whom, in general, may be employed elsewhere in the Government. The composition of the Authority as an independent, third-party establishment will eliminate the appearance of bias which has inhered in the composition of the Federal Labor Relations Council (consisting of three high-level Government managers) under Executive Order 11491. The full-time nature of membership on the Authority is further responsive to criticism of the Council, the members of which serve on the Council on only a part-time basis.

Subsection (c) provides for the appointment and reappointment of the members, and the designation of the Chairman of the Authority. It further provides for removal of any member of the Authority by the President.

Subsection (d) provides for five-year terms of office of each member of the Authority, for the dates of expiration of such terms, and for the filling of vacancies.

Subsection (e) provides that a vacancy in the Authority shall not impair the right of the remaining members to exercise the Authority's powers.

Subsection (f) provides that the Authority shall make an annual report to the President for transmittal to Congress.

Subsection (g) creates the Office of the General Counsel in the Authority. It also provides for the General Counsel's appointment, term of office, reappointment, removal, and full-time service. It is the intent of the Committee that the Office of the General Counsel will be an independent organizational entity within the Authority, and thereby maintain a separation between the prosecutorial and adjudicatory functions of the Authority.

*Section 7204. Powers and duties of the Authority; the General Counsel*

Subsection (a) provides for the Authority's powers and duties to administer and interpret this subchapter, decide major policy issues, prescribe regulations needed to administer its functions, and disseminate information relating to its operations. Similar powers and duties are assigned to the Federal Labor Relations Council under Executive Order 11491. Under this provision, the Authority will not advise or issue policy guidance to agencies, which role will rest with the Office of Personnel Management. Likewise, the Authority is not

authorized to advise the President other than the normal role of agencies to suggest necessary and desired changes in legislation. Also, the Authority, like the Council, will not issue advisory opinions.

Subsection (b) provides that the Authority shall decide appropriate unit questions, supervise elections, decide questions concerning eligibility for national consultation rights, and decide unfair labor practice complaints. Similar powers and duties are assigned to the Assistant Secretary of Labor for Labor-Management Relations under Executive Order 11491. Integration of the powers and duties of the Assistant Secretary, except for decisions relating to alleged violations of the standards of conduct for labor organizations, in the Authority will improve coordination and eliminate the fragmented nature of the decision-making under the Executive Order between the Assistant Secretary and the Federal Labor Relations Council. The initial jurisdiction to decide alleged violations of the standards of conduct for labor organizations will be retained by the Assistant Secretary, who administers similar standards in the private sector.

The Committee revised subsection 7204(b)(2) to provide explicitly that a labor organization which receives a majority of the valid ballots cast in a representation election would be accorded exclusive recognition.

Subsection (c) provides for the Authority's powers to decide appeals on negotiability issues, exceptions to arbitration awards, appeals from decisions of the Assistant Secretary, and other matters it deems appropriate to assure the effectuation of the purposes of this subchapter. Similar decisional powers are assigned to the Federal Labor Relations Council under Executive Order 11491. The power of the Authority, like that of the Council, to consider other matters it deems appropriate to assure the effectuation of the purposes of this subchapter is intended to be used sparingly and to permit the Authority to deal with labor-management issues and problems within the overall scope of its authority, but not set forth expressly in this section of the subchapter. The phrase "may consider" as used in subsection (c) is intended to grant the Authority discretion with respect to the manner and extent, not the scope, of its decisional authority. Thus, it is not intended that the Authority be permitted to eliminate all consideration of matters expressly listed in this subsection, but that it be empowered, consistent with this subchapter, to establish by regulation procedural requirements, e.g., timeliness, service, etc., and procedural limitations on the conditions upon which merits decisions will issue. For example, currently the Council will grant a petition for review of an arbitration award only where it appears, based upon the facts and circumstances described in the petition, that the exceptions to the award present grounds that the award violates applicable law, appropriate regulations or the Order, or other grounds similar to those upon which challenges to arbitration awards are sustained by courts in private sector labor-management relations. Initial review of exceptions to an arbitration award is limited to a determination as to whether this condition has been met; if such condition has been met, a decision on the merits will later be issued. It is intended that the Authority, subject to its own regulations, will operate in a similar manner—reviewing all appeals, but limiting the extent of review where warranted.

The provision further expressly sanctions appeals to the Authority from final decisions and orders of the Federal Service Impasses Panel. The broad authority of the Council under Executive Order 11491 to interpret the Order, decide major policy issues and take whatever action is required to effectuate the purposes of the Order implies a right to oversee final decisions and orders of the Panel. This subchapter specifically sets forth the limited power of review by the central authority to assure uniform application of the legal requirements in the program, but it is not anticipated that it would often be necessary to exercise it except in the unlikely event that the legal requirements of the program are misapplied. The Authority would not otherwise review the substance or merits of any final decisions and orders of the Panel.

Subsection (d) provides that the Authority shall adopt an official seal which shall be judicially noticed.

Subsection (e) provides for the location of the Authority's office in or about the District of Columbia, for the exercise of the Authority's powers at any time or place, and for the power of its members or agents to make inquiries necessary to carry out its duties.

Subsection (f) provides that the Authority may appoint officers and employees, and delegate to such officers and employees authority to perform such duties and make such expenditures as may be necessary.

Subsection (g) provides for the allowance and payment of the Authority's expenses.

Subsection (h) provides for the Authority's power and duty to prevent violations of this subchapter; and for the Authority's powers to hold hearings, subpena witnesses, administer oaths, take testimony or depositions of persons under oath, issue subpenas requiring the production and examination of evidence, and take such other action as may be necessary. It also provides, under certain conditions, that the Authority may request an advisory opinion from the Director of the Office of Personnel Management; that the Director shall have standing to intervene as a party in Authority proceedings; and that the Director may request that the Authority reopen and reconsider its decision.

Subsection (i) provides that the Authority may require an agency or labor organization to cease and desist from violations of this subchapter and require it to take such remedial action as it considers appropriate to effectuate the policies of the subchapter.

Subsection (j) provides that the Authority shall maintain a record of its proceedings and make public any decision made by it or any action taken by the Panel under section 7222 of this title. Further section 552 (public access to information) shall apply with respect to any record maintained under this subsection of this title.

Subsection (k) provides that the General Counsel is authorized to investigate unfair labor practice complaints; to make final decisions concerning the issuances of notices of hearings on unfair labor practice complaints; to prosecute unfair labor practice complaints before the Authority; to direct and supervise all field employees of the General Counsel; to perform such other functions as the Authority prescribes, which would include participation before the Authority in unfair labor practice proceedings; and to prescribe regulations needed to administer the functions of the General Counsel under this subchapter.

The General Counsel is intended to be autonomous in investigating unfair labor practice complaints, in making "final decisions" as to which cases to prosecute before the Authority in its capacity as decision maker, and in directing and supervising field employees of the General Counsel. Specifically, the Authority would neither direct the General Counsel concerning which unfair labor practice cases to prosecute nor review the General Counsel's determinations not to prosecute, just as the National Labor Relations Board does not exercise such control over its General Counsel.

Subsection (l) provides that the decisions of the authority shall be final and conclusive, and not subject to judicial review except for constitutional questions. Access to judicial review, however, for adverse action and discrimination matters would continue under this chapter.

*Section 7211. Employees' rights*

Subsection (a) incorporates the policy contained in section 1(a) of Executive Order 11491 concerning the rights of employees to form, join or assist a labor organization and participate in its management or representation; or to refrain from such activity. It further provides that employees have the right to bargain collectively through representatives of their own choosing subject to limits contained in section 7215(c) of this subchapter.

Subsection (b) incorporates the policy contained in section 1(b) of Executive Order 11491 that participation in the management or representation of a labor organization by a supervisor, or by other employees whose participation would create a real or apparent conflict of interest or would be incompatible with law or the employees' official duties, is not authorized. The same policy is specifically extended to management officials and confidential employees for the same reasons.

*Section 7212. Recognition of labor organizations*

Subsection (a) provides that an agency shall accord exclusive recognition or national consultation rights to a labor organization which meets the requirements of this chapter for such recognition or consultation rights. This tracks section 7(a) of Executive Order 11491.

Subsection (b) provides that recognition, once accorded, shall continue as long as the organization meets the requirements of this chapter for recognition by preventing the disruption caused by repeated elections.

Subsection (c) tracks section 7(d) of Executive Order 11491. Section 7212(c)(1) creates no new employee rights but provides that recognition of a labor organization does not preclude an employee from exercising grievance or appellate rights already established by other laws or regulations or from choosing any personal representative in such proceedings as may be authorized by the law or regulation creating the grievance or appellate rights. However, where the grievance or appeal is covered and pursued under a negotiated grievance procedure as provided in section 7221 of this subchapter, all employees in the bargaining unit—union members and nonmembers alike—must use that procedure to resolve the dispute, and may be represented only by the exclusive representative. Where the negotiated procedure covers adverse action and discrimination complaints, the employee has an option to use the negotiated procedure of the statutory appeal proce-

dure, but not both. If the employee chooses the negotiated procedure, only the exclusive representative of the unit may act as the employee's representative. However, if the employee chooses the statutory appeal procedure, the employee may also choose his/her own representative, and the union (as exclusive representative of the unit) would have neither a right nor an obligation to represent the employee.

*Section 7213. National consultation rights*

This section provides that an agency shall accord national consultation rights to a labor organization which qualifies under criteria established by the Authority, describes the duties of an agency which has accorded national consultation rights to a labor organization, and provides further that questions as to the eligibility of labor organizations for national consultation rights shall be referred to the Authority for decision. When a labor organization holds national consultation rights, the agency must give the labor organization notice of proposed new substantive personnel policies and proposed changes in established personnel policies and an opportunity to comment on such proposals. The labor organization has a right to suggest changes in personnel policies and to have those suggestions carefully considered. The labor organization also has a right to consult, in person at reasonable times, upon request, with appropriate officials on personnel policy matters and a right to submit its views in writing on personnel policy matters at any time. National consultation rights do not include the right to negotiate. Further, the agency is not required to consult with a labor organization on any matter which would be outside the scope of negotiations if the labor organization held national exclusive recognition in that agency.

*Section 7214. Exclusive recognition*

Subsection (a) provides that an agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative in a secret ballot, by a majority of the employees as an appropriate unit. The proviso in subsection (a) permits an agency to grant exclusive recognition to a labor organization without an election when the appropriate unit is established by consolidating existing exclusively recognized units of that labor organization.

The Committee revised subsection 7214(a) to make it clear that a labor organization which receives a majority of the valid ballots cast in a representation election would be accorded exclusive recognition.

Subsection (b) defines the bases for determining appropriate units as well as certain conditions which are not appropriate for establishing such units. Any question with respect to the appropriate unit may be referred by the agency or the labor organization to the Authority for a decision.

The Committee clarified the language of subsection 7214(b) to provide that appropriate units may be established on an agency basis.

Subsection (c) provides that all elections conducted under the supervision of the Authority shall be by secret ballot. Elections may be held to determine whether a labor organization should be recognized as the exclusive representative in a unit; replace another labor

organization as the exclusive representative; cease to be the exclusive representative; and be recognized as the exclusive representative of employees in a unit composed of employees in units currently represented by that labor organization or continue to be recognized in existing separate units. Subsection (c) also contains an "election bar" rule under which no election may be held in any unit or part of such unit within 12 months of a valid election. This provision is intended to foster stability and certainty as to labor relations issues by preventing the disruption caused by repeated elections.

*Section 7215. Representation rights and duties; good faith bargaining; scope of negotiations; resolution of negotiability disputes*

Subsection (a) provides that a labor organization accorded exclusive recognition is the exclusive representative of employees in the unit and is entitled to act for and negotiate agreements covering all employees in the unit and to be represented at formal discussions between management and employees concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit. It also provides that the exclusive representative is responsible for representing the interests of all unit employees without discrimination and without regard to labor organization membership. It further provides that the agency and the labor organization shall negotiate in good faith for the purpose of arriving at an agreement.

The parties have a mutual duty to bargain not only with respect to those changes in established personnel policies proposed by management, but also concerning negotiable proposals initiated by either the agency or the exclusive representative in the context of negotiations leading to a basic collective bargaining agreement. Where agency management proposes to change established personnel policies, the exclusive representative must be given notice of the proposed changes and an opportunity to negotiate over such proposals to the extent they are negotiable. In addition, a union holding exclusive recognition must be given the opportunity to be represented at formal discussions between management and employees concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit.

Subsection (b) defines the duty to "negotiate in good faith" to include approaching negotiations with a sincere resolve to reach an agreement, being represented at negotiations by appropriate representatives prepared to discuss and negotiate on all negotiable matters, meeting at reasonable times and places, and if an agreement is reached, executing a written document embodying the agreed terms and taking necessary steps to implement the agreement.

Subsection (c) provides that an agency and a labor organization accorded exclusive recognition shall negotiate with respect to personnel policies and practices and matters affecting working conditions so far as may be appropriate under this chapter and other applicable laws and regulations elaborated below. The scope of negotiations under this section is the same as under section 11(a) of Executive Order 11491. That is, under this subchapter a labor organization is

entitled to negotiate on the personnel policies and practices and matters affecting working conditions of employees in the bargaining unit which it represents, but only to the extent appropriate under laws and regulations which are set forth in the Federal Personnel Manual; consist of published agency policies and regulations issued at the agency level or level of primary national subdivision for which a compelling need exists (as determined under criteria established by the Authority); or are set forth in a national or other controlling agreement entered into by a higher unit of the agency.

Subsection (d) excepts certain enumerated matters from the obligation to negotiate under section 7215, in effect rendering bargaining on those matters optional or permissive; and recognize that there is an obligation to negotiate over the impact of realignments of work forces and technological change. Excepted from the obligation to negotiate are matters with respect to the numbers of employees in an agency; the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty (i.e., the agency's staffing patterns, including job content); and the technology of performing agency work.

Subsection (e) provides procedures for the resolution of negotiability issues arising in connection with negotiations. The procedures correspond exactly to those contained in section 11(c) of Executive Order 11491.

*Section 7216. Unfair labor practices*

Subsection (a) provides that certain enumerated actions are unfair labor practices for agencies. Similar unfair labor practices are contained in section 19(a) of Executive Order 11491. Those unfair labor practices are:

(1) interfering with, restraining, or coercing an employee in connection with the exercise of rights assured by this chapter of the United States Code;

(2) encouraging or discouraging membership in any labor organization by discrimination with regard to hiring, tenure, promotion, or other conditions of employment;

(3) sponsoring, controlling or otherwise assisting any labor organization, unless the assistance consists of furnishing customary and routine services and facilities—

(A) in a manner consistent with the best interests of the agency, its employees, and the organization, and

(B) on an impartial basis to any organization having equivalent status.

In addition, the subsection provides that it is an unfair labor practice for an agency to—

(4) discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, petition, or given any information or testimony under the provisions of the subchapter;

(5) refuse to accord appropriate recognition to a labor organization qualified for such recognition; or

(6) to refuse to consult or negotiate in good faith with a labor organization as required by the chapter.

Subsection (b) provides that certain actions are unfair labor practices for labor organizations. Similar unfair labor practices are contained in section 19(b) of Executive Order 11491 except that section 7216(b)(4) codifies the Federal Labor Relations Council's interpretation of section 19(b)(4) that it is an unfair labor practice for a labor organization to picket an agency in a labor-management dispute where such picketing interferes or reasonably threatens to interfere with an agency's operations. Specifically, this subsection makes it an unfair labor practice for a labor organization to—

(1) interfere with, restrain, or coerce an employee in connection with the exercise of rights assured by this chapter of the United States Code;

(2) cause or attempt to cause an agency to coerce an employee in connection with the exercise of rights under this chapter;

(3) coerce or attempt to coerce an employee, or to discipline, fine or take other economic sanction against a member of a labor organization, as punishment or reprisal or for the purpose of hindering or impeding work performance, productivity or the discharge of duties by the employee;

(4) (A) call, or participate in, a strike, work stoppage, slowdown, or picketing of an agency in a labor-management dispute if the picketing intereferes or reasonably threatens to interfere with an agency's operations or (B) condone any activity described in (A) above by failing to take action to prevent or stop it;

(5) discriminate against an employee with regard to the terms or conditions of membership in the organization because of race, color, religion, national origin, sex, age, or handicapping condition; or

(6) to refuse to consult or negotiate in good faith with an agency as required by this chapter.

Subsection (c) provides that it is an unfair labor practice for a labor organization holding exclusive recognition to deny membership to a unit employee except under certain conditions. Those conditions are: (1) the employee's failure to meet reasonable occupational standards uniformly required for admission, or (2) failure by the employee to tender fees and dues uniformly required as a condition of acquiring and retaining membership. Similar language contained in section 19(c) of the Executive Order has been interpreted as an unfair labor practice provision. The subsection does not preclude a labor organization from enforcing discipline in accordance with procedures under its constitution and bylaws as long as such action is consistent with the requirements of this chapter.

It is intended that unfair labor practice complaints will be handled by the General Counsel of the Authority in a manner essentially identical to National Labor Relations Board practices in the private sector. The one deviation from private sector practices is that it is envisioned that there be retained the current Executive Order 11491 requirement that there be first filed a pre-complaint charge which would provide an opportunity for informal resolution of the issues by the parties. If a matter is not resolved informally, a complaint may be filed with the General Counsel, who will conduct such investigation as is necessary to determine whether a reasonable basis for the com-

plaint has been established. If so, the General Counsel shall, in the absence of settlement, issue a notice of hearing. If a reasonable basis for the complaint has not been established, absent withdrawal, the complaint will be dismissed. At the formal hearing before an administrative law judge the General Counsel shall prosecute the unfair labor practice for the complainant. After the close of the hearing, the administrative law judge will issue a report and recommendation. The Authority shall, subject to its regulations, consider any exceptions filed by the parties and decide the unfair labor practice complaint.

Subsection (d) is similar to a provision contained in section 19(d) of Executive Order 11491. Under section 19(d), issues which can be raised under a statutory appeal procedure may not be raised as an unfair labor practice. This prohibition is preserved in section 7216(d). However, section 7221(d) of this chapter permits a negotiated grievance procedure to cover matters for which a statutory appeal procedure exists, except for those matters specifically enumerated. Where a negotiated grievance procedure covers a non-excepted matter for which a statutory appeal procedure exists (other than adverse action and discrimination matters), the otherwise applicable statutory appeal procedure may not be invoked to resolve such matters. Accordingly, the issues involved may be raised either under the negotiated grievance procedure or, where appropriate, in an unfair labor practice proceeding. Those matters specifically enumerated in section 7221(d), which cannot be covered in a negotiated grievance procedure must be resolved exclusively under the applicable statutory appeal procedure. Accordingly, issues which can be raised under such statutory appeal procedure may not be raised in an unfair labor practice proceeding. Finally, where discrimination or adverse action matters (including demotion or removal for unacceptable performance under section 4303 of this title) are covered by a negotiated grievance procedure, an employee has the option of using either the negotiated procedure or statutory procedures. The use of either option will preclude the use of the unfair labor practice procedures.

The subsection also provides that appeals or grievance decisions shall not be construed as unfair labor practice decisions under this chapter nor as precedent for such decisions. All complaints of unfair labor practices prohibited under this section that cannot be resolved by the parties shall be filed with the FLRA.

Subsection (e) provides that questions concerning whether issues can properly be raised under an appeals procedure as described in section 7216(d) shall be referred for resolution to the agency responsible for final decisions relating to those issues. This provision is similar to section 7221(g) of this subchapter in purpose and effect. Under section 7216(e), the question is whether a statutory appeal procedure described in 7221(d) precludes an unfair labor practice proceeding whereas under 7221(g) the question is whether such statutory appeal procedure renders a grievance nongrievable or nonarbitrable.

*Section 7217. Standards of conduct for labor organizations*

This section provides that labor organizations must subscribe to certain standards of conduct and that the Assistant Secretary shall prescribe regulations to effectuate this section. Subsection (a) sets

forth these standards of conduct, which are the same as contained in Executive Order 11491. An organization does not have to prove that it is free from corrupt influences and influences opposed to basic democratic values if its governing requirements include explicit and detailed provisions requiring it to (1) maintain democratic procedures and practices, (2) exclude persons from office in the organization if they are affiliated with communist or other totalarian influences, (3) prohibit conflicts of interest by its officers and agents, and (4) maintain fiscal integrity in the organization's affairs.

Under subsection (b), an organization could still be required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that the organization is subject to such influences or that the organization has been subject to a sanction by a parent or affiliated organization because of its unwillingness or inability to comply with the requirements of subsection (a).

Subsection (c) requires a labor organization which has or seeks recognition as a representative of employees to file financial and other reports with the Assistant Secretary. It also must provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

Subsection (d) requires that complaints of violations of this section be filed with the Assistant Secretary. As noted under section 7204(b), the power and duty to decide alleged violations of the standards of conduct are not being transferred to the Authority because the Assistant Secretary administers similar standards in the private sector. Further, as noted under section 7204(c), the Authority may review the Assistant Secretary standards of conduct decisions as the Federal Labor Relations Council now does under Executive Order 11491.

This subsection also empowers the Assistant Secretary to require a labor organization to cease and desist from violations of this section and requires it to take action that he considers appropriate to carry out this section's policies.

*Section 7218. Basic provisions of agreements*

This section provides that each agreement between an agency and a labor organization is subject to certain enumerated requirements and mandates that these requirements be expressly stated in any agreement between an agency and a labor organization. Subsection 7218 (a)(1) provides that in the administration of agreements, officials and employees are governed by existing or future laws, the regulations of appropriate authorities, and certain published agency policies and regulations. Subsection (2) enumerates the rights that management officials of an agency must retain, and in effect prohibits negotiating on proposals which would negate management's reserved authority as to the rights involved: to determine the mission, budget, organization, and internal security practices of the agency; to direct empolyees of the agency; to hire, promote, transfer, assign, and retain employees in positions within the agency; to suspend, demote, dicharge, or take other disciplinary action against employees; to relieve employees from duties because of lack of work or for other legitimate reasons; to maintain the efficiency of Government operations entrusted to the

agency; to determine the methods (how), means (with what), and personnel (by whom) by which agency operations will be conducted; and to take whatever actions may be necessary to carry out the agency's mission in emergencies. Section 7218(a)(1) and (2) corresponds to section 12(a) and (b) of Executive Order 11491 except that matters relating to an agency's mission, budget, organization, and internal security practices are prohibited from bargaining under subsection (2); and, further, it is specified in subsection (2) that nothing in that subsection shall preclude parties from negotiating procedures which management will observe in exercising its authority to decide or act or from negotiating arrangements for employees adversely affected provided that such negotiations do not result in certain consequences and are consonant with law and regulations as provided in section 7215(c). These principles with respect to the obligation to negotiate "procedures" and "impact," while not expressly stated in Executive Order 11491, are established in case law thereunder.

Subsection 7218(c) continues the requirement contained in Executive Order 11491 that nothing in the agreement shall require membership in a labor organization or require employees to pay money to a labor organization except pursuant to a voluntary, written authorization for the payment of dues through payroll deductions.

Subsection 7218(d) provides that the requirements of section 7218 must be expressly stated in all agreements between an agency and an organization.

*Section 7219. Approval of agreements*

This section provides that a negotiated agreement is subject to the approval of the head of the agency involved or other designated official, and provides a time limit (45 days from the date the agreement is signed by the negotiating parties) for the completion of such agency action. The purpose of the provision is to ensure that agreements conform to applicable laws (including this subchapter), existing published agency policies and regulations (unless an agency has granted an exception to them), and regulations of other appropriate authorities (such as the Office of Personnel Management). A substantially identical provision is contained in Executive Order 11491. Experience under that Executive Order in numerous negotiability disputes established that the provision was warranted to accomplish the purpose described, and that the time limit imposed was a reasonable one to expedite the review process without sacrificing the quality of such review.

*Section 7221. Grievance procedures*

Subsection (a) provides that an agreement must contain a procedure for the consideration of grievances. The coverage and scope of the procedure is left to negotiation between the parties so long as it does not conflict with statute and so long as it does not cover any of the matters specifically excluded from coverage by section 7221(d). Thus, if the parties choose to do so, they may negotiate into coverage under their grievance procedure many of the matters that are covered by statutory appeal procedures, such as appeal from the withholding of within-grade salary increases and appeal from reduction-in-force actions. With the exception of adverse actions and discrimination

complaints, where a grievance falls within the coverage of the negotiated grievance procedure, both union and nonunion members of the bargaining unit must use the negotiated procedure to resolve the grievance. Where the negotiated procedure covers adverse actions or discrimination complaints, under section 7221(e) and 7221(f) the employee will have an option to use the negotiated grievance procedure or the statutory appeal procedure, but not both.

Subsection (b) provides for the adjustment of grievances between an employee or group of employees and the agency without the intervention of the exclusive representative. However, in such cases the adjustment cannot be inconsistent with any of the terms of the argument and the exclusive representative must have been given an opportunity to be present at the adjustment.

Subsection (c) provides that a negotiated grievance procedure must provide for arbitration as the final step of the procedure. This contrasts with the provisions of Executive Order 11491 under which the determination as to whether to provide for arbitration was left to negotiation between the parties. However, arbitration can only be invoked by the agency or the exclusive, representative. Thus an aggrieved employee does not have a right to arbitration. This maintains the right of an exclusive representative to refuse to take to arbitration any grievance which it, in good faith, believes should not be processed through to arbitration so long as it meets its representational responsibilities under this subchapter. This section further requires the parties to provide in their grievance procedure that, except as provided in section 7221(g), an arbitrator will be empowered to resolve arbitrability questions.

Subsection (d) provides that a negotiated grievance procedure may cover any matter over which an agency has authority so long as it does not otherwise conflict with the provisions of this subchapter, and so long as it doesn't include any matters involving examination, certification and appointment, suitability, classification, political activities, retirement, life and health insurance, national security or the Fair Labor Standards Act.

Subsection (e) provides employees with an option, in appealing matters covered under 5 U.S.C. section 4303 (demotion or removal for unacceptable performance) or 5 U.S.C. section 7512 (removal, suspension for more than 30 days, reduction in grade, reduction in pay of an amount exceeding one step of an employee's grade or 3 percent of the employee's basic pay, furlough for 30 days or less), of using the statutory appeal procedure under 5 U.S.C. section 7701 or the negotiated grievance procedure if such matters have been negotiated into coverage under the grievance procedure. It also provides that matters similar to those listed above which may arise under other personnel systems applicable to employees covered by this subchapter, such as those provided in title 38, United States Code, may, in the discretion of the aggrieved employee, be raised under either the negotiated grievance procedure or under any appellate procedures which would otherwise be available to the employee if the matter weren't covered by the grievance procedure.

Subsection (f) provides employees with an option on discrimination matters listed in 5 U.S.C. section 2302(b)(1) to use either a sta-

tutory procedure or the negotiated grievance procedure to resolve the matter. Selection by the employee of the negotiated procedure would not prejudice an employee's right to request the Merit Systems Protection Board to review a final decision in the matter as provided for in 5 U.S.C. section 7701.

Subsection (g) provides that questions as to whether a grievance is on a matter excepted from coverage under the grievance procedure by section 7221(d) shall be referred for resolution to the agency responsible for final decisions in those matters.

Subsection (h) provides that if an employee exercises the option to pursue a matter covered under 5 U.S.C. sections 4303 and 7512 through the negotiated grievance procedure an arbitrator must apply the same standards in deciding the case as would be applied by an administrative law judge or an appeals officer if the case had been appealed through the appellate procedures of 5 U.S.C. section 7701.

Subsection (i) provides that the parties must negotiate the allocation of the costs of arbitration. It also prohibits an arbitrator from awarding attorney or representative fees, except in matters where an employee is the prevailing party and the arbitrator's decision is based on a finding of discrimination, attorneys fees may be awarded and shall be governed by the standards applicable under the Civil Rights Act of 1964.

Subsection (j) provides that challenges to an arbitrator's award may be sustained by the Authority on grounds that the award violates applicable laws, appropriate regulations, or other grounds similar to those applied by Federal Courts in private sector labor-management relations. Challenges are not permitted to the Authority on matters covered by subsection (e). Decisions of the Authority are final, except for the right of an aggrieved employee under subsection (f).

Subsection (k) provides for judicial review of an arbitrator's award in matters covered under 5 U.S.C. sections 4303 and 7512 in the same manner and under the same conditions that apply to matters decided by the Merit Systems Protection Board. In applying the provisions of 5 U.S.C. section 7702 (Judicial review of decisions of the Merit Systems Protection Board) the word "arbitrator" should be read in place of the words "Merit Systems Protection Board". It further provides for judicial review of an arbitrator's award in matters similar to those covered under 5 U.S.C. sections 4303 and 7512 which arise under other personnel systems in the same manner and on the same basis as would be available to an employee who had not used the negotiated grievance procedure to appeal the matter.

The provision for judicial review is intended to assure conformity between the decisions of arbitrators with those of the Merit Systems Protection Board. Under the terms of this subsection, an arbitrator must establish a record that will meet the judicial tests provided for in section 7702 of this title.

*Section 7222. Federal Service Impasses Panel; negotiation impasses*

Subsection (a)(1) establishes within the Authority the Federal Services Impasses Panel. The Panel is composed of the Chairman and an even number of members, appointed by the President. No Federal employee shall be appointed to serve as a member of the Panel. Sub-

section (a)(2) provides for staggered appointments of Panel members, and that the Chairman shall serve for a five-year term. Any member of the Panel may be removed by the President. Subsection (a)(3) provides that the Panel may appoint an executive secretary. It also provides for the pay rates of members of the Panel.

Subsection (b) provides that the Federal Mediation and Conciliation Service upon request shall provide service and assistance to agencies and labor unions in the resolution of negotiation impasses.

Subsection (c) provides if voluntary arrangements fail either the labor union or the agency may request the Panel to consider the matter.

Subsection (d) provides that the Panel shall promptly investigate any impasse, and recommend procedures for resolving the matter. If the parties do not arrive at a settlement through means of one of the procedures recommended, the Panel may hold hearings and then take whatever action is necessary that is not inconsistent with the provisions of this chapter to resolve the impasse. Notice of the Panel's final action shall be promptly served and shall be binding for the term of the agreement unless the parties mutually agree otherwise.

*Section 7231. Allotments to representatives*

This section provides for agency payroll deduction of labor organization dues pursuant to written employee assignment and for the right to terminate such assignment at intervals of not more than 6 months. A similar provision is contained in Executive Order 11491 except that the Executive Order's requirement that such a payroll deduction be subject to the regulations of the Civil Service Commission has been deleted. Subsection (b) requires that an allotment for the deduction of dues terminates when the dues withholding agreement between the agency and the exclusive representative is terminated or ceases to be applicable to the employee. The allotment would also be terminated if the employee has been suspended or expelled from the labor organization which is the exclusive representative.

*Section 7232. Use of official time.*

This section provides for limitations on the use of official time by employees for labor organization activities. The same limitations are contained in Executive Order 11491. The limitations contained in the first part of this provision concern the use of official time for internal labor organization business and are directed toward restricting to nonduty hours activities which are of primary concern and benefit only to the labor organization. The second part of the provision prohibits employees who represent a labor organization from being on official time when negotiating an agreement, except to the extent that the negotiating parties agree otherwise within certain specified limits. Under the second part, the negotiating parties may agree to authorize official time for a reasonable number of labor organization negotiators, normally not to exceed the number of management representatives, for up to 40 hours or one-half the time spent in negotiations relating to the negotiation or renewal of a basic collective bargaining agreement, as opposed to negotiations which arise out of circumstances during the term of the basic agreement (midcontract negotiations). But nothing in the provision prohibits an agency and labor organization from negotiating provisions which provide

for official time for labor organization representatives to engage in contract administration and other representational activities (including negotiations which arise out of circumstances during the term of the basic agreement) which are of mutual interest to both the agency and the labor organization and which relate to the labor-management relationship and not to "internal" labor organization business. Examples of such representational and contract administration activities include the investigation and attempted informal resolution of employee grievances, participation in formal grievance resolution procedures, attending or preparing for meetings of committees on which both the labor organization and management are represented and discussing problems in agreement administration with management officials. The types of representational activities described, when the agency determines that such activities are related to the performance of labor-management functions contributing to the efficient administration of the agency, are consistent with the stated purposes of this chapter and agreement provisions pertaining to the use of official time for such contract administration purposes are of wide application throughout the Federal sector.

*Section 7233. Remedial actions*

This section provides that remedial action may be directed by appropriate authority, including an arbitartor, in order to effectuate the purposes and policies expressed in this subchapter, so long as such remedial action is consistent with the statute, including the backpay provisions of section 5596 of title 5, United States Code (Back Pay Act of 1966).

*Section 7234. Subpenas*

This section provides for the issuance of subpenas by any Authority member, the General Counsel, the Panel, or any employee designated by the Authority requiring the attendance and testimony of witnesses and the production of evidence. It provides that no subpena shall issue requiring disclosure of intra-management guidance, advice or training within an agency or between an agency and the Office of Personnel Management. It also provides for the administration of oaths, the examination of witnesses and the receipt of evidence. In the case of failure to obey a subpena, a United States district court is authorized by this section to issue an order requiring the appearance of witnesses or the production of evidence. Failure to comply with the court's order could be punished as contempt of court. This section also provides that witnesses be paid the same fees and mileage allowances which are paid subpenaed witnesses in the courts of the United States.

*Section 7235. Regulations*

This section provides for the issuance of regulations by the Authority, the General Counsel, the Panel, and the Federal Mediation and Conciliation Service, to carry out their respective functions. The requirements of the Administrative Procedure Act shall be applicable to the adoption, amendment or repeal of such regulations. This provision is consistent with the practice which obtained in the issuance of regulations under Executive Order 11491.

Subsection 701(b) of the bill specifies that certain laws, agreements, recognitions, policies, regulations, procedures and decisions would not be precluded by the amendments adopted earlier in section 701.

Paragraph (1) sanctions the maintenance of exclusive recognitions, certifications, or lawful bargaining agreements entered into before the effective date of this subchapter, and the maintenance of recognition for units of management officials or supervisors by labor organizations which traditionally represent such personnel in private industry and which hold recognition in an agency on the effective date of this subchapter. Similar "grandfather" provisions are contained in Executive Order 11491.

Paragraph (2) provides for the continuation of policies, regulations, procedures, and decisions established or issued under Executive Order 11491 or any related Executive order, until revised or revoked by law, or until superseded by action of the Authority. Under this provision, cases which arose under Executive Order 11491 shall continue to be processed after the effective date of this subchapter in the same manner as before such effective date, except to the extent otherwise provided by law or by appropriate decision or regulation of the Authority.

Subsection 701(c) of the bill provides that the terms of office of members of the Authority, and the General Counsel, which terms are fixed under Reorganization Plan No. 2 of 1978, shall continue in effect until those terms would expire under the reorganization plan, and that, upon the expiration of those terms, appointments to office will be made for the respective 5-year terms provided in section 7203 of title 5. It further provides that the terms of office of Impasse Panel members, which terms are not fixed under the reorganization plan, shall continue in effect until members of the Panel are appointed for the respective fixed terms provided in section 7222 of title 5.

Subsection 701(d) authorizes the appropriation of such funds as are necessary to carry out the functions of the Authority, the General Counsel, and the Panel, and the functions of the Assistant Secretary under this section.

The next subsection provides for an amendment of the analysis to add to this chapter.

Subsections 701 (f), (g), and (h) amend sections 5314–5316 of title 5, United States Code, to add the Chairmen, the Members, and the General Counsel of the Federal Labor Relations Authority to positions at levels III, IV, and V (respectively) of the Executive Schedule.

*Section 702. Remedial Authority*

This section of the Act amends the Back Pay Act of 1966 to reflect the broader interpretation of the statute that has been given the Back Pay Act in recent years by the Comptroller General and the Civil Service Commission through decision and regulations. It also reflects the 1976 decision of the Supreme Court in *United States* v. *Testan* by explicitly exempting reclassification actions from its provisions.

This provision would strike out subsections (b) and (c) of section 5596 of title 5, United States Code, and add new subsections (b) and

(c). The new subsection (b) provides for coverage under the Back Pay Act for any employee who is found by an appropriate authority to have suffered a withdrawal, reduction, denial, or denial of an increase in, all or part of the employee's pay, allowances, differentials or any other monetary or employment benefits which would not have occurred but for an unjustified or unwarranted action taken by an agency.

Subsection (b)(1) provides that when any of the above-described circumstances are found, the employee is entitled to be made whole for any losses found to have been suffered by the employee, less any interim earnings the employee may have earned and would not have earned if the unjustified or unwarranted action had not been taken. It specifically provides that a make-whole remedy may include reinstatement to the same position that the employee was in before the unjustified or unwarranted action was taken or for restoration to a substantially similar position. It also provides for directing a promotion to a higher level position when such an order would effectuate the make-whole purposes of the Act.

Subsection (b)(2) maintains the current provisions of the Back Pay Act regarding annual leave restoration that were added to the Act by Pub. L. 94–172 section 1(a) Dec. 23, 1975, 89 Stat. 1025. It provides that for all purposes an employee is deemed to have performed service for the agency during the period of the unjustified or unwarranted action.

Subsection (c)(1) defines an "unjustified or unwarranted action" to include acts of commission as well as omission with respect to nondiscretionary provision of law, Executive order, regulation or collective bargaining agreement.

Subsection 5596(c)(2) defines administrative determination. The listed agencies and persons are not meant to be all-inclusive.

Subsection (c)(3) lists certain agencies and persons who, for purposes of applying the provisions of the Act, are deemed to be an "appropriate authority." The list is not meant to be all-inclusive.

Subsection (d) provides that the provisions of the section shall not apply to reclassification actions, thus specifically recognizing the Supreme Court decision in *United States* v. *Testan*. It also provides that in formulating a remedy under the Act an otherwise proper promotion action by a selecting official from a group of properly ranked and certified candidates cannot be set aside.

Subsection (e) provides that the Office of Personnel Management shall prescribe regulations to carry out the section. It specifically provides that the regulations do not apply to the Tennessee Valley Authority.

## TITLE VIII—MISCELLANEOUS

### SECTION 801. SAVINGS PROVISIONS

Subsection (a) of section 801 provides that all Executive orders, rules, and regulations shall continue in effect except as the provisions of this Act may govern. Such Executive Orders, rules, and regulations, are to continue in effect, according to their terms, until modified, terminated, suspended or repealed by the President, the Office of Personnel Management, the Merit System Protection Board, the Equal Em-

ployment Opportunity Commission, or the Federal Labor Relations Authority as to matters within their respective jurisdictions.

Subsection (b) provides that no provision of the Act shall affect any administrative proceedings pending at the time the provision takes effect. Orders are to beissued in such proceedings and appeals taken from those proceedings as if this Act has not been enacted.

Subsection (c) provides for the continuation of any suit by or against the heads of the Office of Personnel Management and Merit Systems Protection Board or officers or employers of those agencies, as in effect immediately before the effective date of the Act. Such suits, actions, or other proceedings are to be determined as if the Act had not been enacted.

SECTION 802. AUTHORIZATION OF APPROPRIATIONS

This section authorizes to be appropriated out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act.

It is expected that most of the funds necessary to carry out the provisions of this Act will be derived from appropriations under current law. The moneys needed for the Office of Personnel Management, Merit Systems Protection Board, and Office of Special Counsel are largely to be derived from current Civil Service Commission authorizations. The original estimates supplied by the Administration as to the allocation of resources among the new agencies and units, however, needs to be revised. The Committee has substantially increased the authority and responsibilities of the Merit Systems Protection Board and the Special Counsel. The resources allocated to these bodies should therefore be substantially greater than original Administration estimates.

SECTION 803. POWERS OF PRESIDENT UNAFFECTED EXCEPT BY EXPRESS PROVISIONS

This section makes clear that except as expressly provided in this Act, nothing in it shall be construed to limit, curtail, abolish, or terminate any function of, or authority available to, the President which the President had immediately before the effective date of this Act. Nor is it to be construed to limit, curtail, or terminate the President's authority to delegate, redelegate, or terminate any delegation of functions which he had immediately before the effective date of this Act.

SECTION 804. TECHNICAL AND CONFORMING AMENDMENTS

Subsection (a) of this section provides that any provision in either Reorganization Plan Numbers 1 or 2 of 1978 inconsistent with any provision of this Act is repealed.

Subsection (b) authorizes the President or his designee to submit to the Senate Committee on Governmental Affairs and the House Committee on Post Office and Civil Service a draft of any technical and conforming amendments to title 5 of the United States Code which have not been made by this Act and which are necessary to reflect the amendments to the substantive provisions of law made by this Act and Reorganization Plan Numbered 2 of 1978. Such technical and conforming amendments must be submitted as soon as practicable but not later than 30 days after the date of enactment of this Act.

quired. This is in addition to existing staff transferred from other agencies to this function. The estimated costs are as follows:

Estimated cost—labor-management relations:

| Fiscal year: | *Millions* |
|---|---|
| 1979 | $0.3 |
| 1980 | .5 |
| 1981 | .6 |
| 1982 | .6 |
| 1983 | .7 |

OTHER COSTS

There are a number of sections of this legislation which authorize or require the development of rules and regulations and require the submission of various new reports, but for which no specific costs have been attributed. It has been assumed that these new requirements will cost an additional $1 million in the first year. Regulation development costs are expected to decrease over the projection period, and reporting costs to remain constant. The actual physical moving costs resulting from the reorganization have been estimated to be $1 million in fiscal year 1979.

Estimated costs—general:

| Fiscal year: | *Millions* |
|---|---|
| 1979 | $2.0 |
| 1980 | 0.4 |
| 1981 | .4 |
| 1982 | .5 |
| 1983 | .5 |

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Mary Maginniss and Kathy Weiss.
10. Estimate approved by:

C. G. NUCKOLS
For James L. Blum,
Assistant Director for Budget Analysis.

## IX. RECORD VOTE IN COMMITTEE

June 14, 1978

In compliance with section 133 of the Legislative Reorganization Act of 1946, as amended, rollcall votes taken during Committee consideration of this legislation are as follows: Vote on Eagleton/Javits Amendment on Veterans Preference: 7 yeas—9 nays.

| YEAS | NAYS |
|---|---|
| Eagleton | Muskie |
| Sasser | Chiles |
| Humphrey | Nunn |
| Percy | Glenn |
| Javits | Stevens |
| Danforth | Mathias |
| Ribicoff | (Proxy) |
| | Jackson |
| | Roth |
| | Heinz |

Vote on Study on Veterans Preference: 13 yeas—1 nay:

| YEAS | NAYS |
|---|---|
| Muskie | Eagleton |
| Chiles | |
| Nunn | |
| Glenn | |
| Sasser | |
| Humphrey | |
| Percy | |
| Javits | |
| Stevens | |
| Mathias | |
| Danforth | |
| Heinz | |
| Ribicoff | |

June 29, 1978

Vote on Javits/Ribicoff Amendment on appellate procedures in mixed discrimination cases: 7 yeas—4 nays:

| YEAS | NAYS |
|---|---|
| Percy | Glenn |
| Javits | Sasser |
| Danforth | Mathias |
| Ribicoff | Heinz |
| (Proxy) | |
| Jackson | |
| Nunn | |
| Humphrey | |

FINAL PASSAGE: Ordered reported:[1] 8 yeas—2 nays:

| YEAS | NAYS |
|---|---|
| Eagleton | Stevens |
| Chiles | Mathias |
| Glenn | |
| Sasser | |
| Percy | |
| Javits | |
| Danforth | |
| Ribicoff | |
| (Proxy) | |
| Jackson | |
| Nunn | |
| Humphrey | |

[1] Committee rules provide that on "Final Passage" proxies may be allowed solely for the purpose of recording a member's position on the pending question.