The original documents are located in Box 13, folder "1974/10/29 HR14225 Amendments to the Rehabilitation Act of 1973 and the Randolph-Sheppard Act of 1936 (vetoed) (2)" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 22, 1974

MEMORANDUM FOR: PHILIP W. BUCHEN

FROM: ROBERT D. LINDER RDL

The Rehabilitation Act Amendments of 1974 (H.R. 14225) has been received at the White House for the President's signature, but the enrolled bill does not contain an enacting clause (see attachment). The House enrolling clerk is willing to have a new first page printed to substitute for the one we have. Ordinarily, if an error of this magnitude is made while Congress is in session, we would request a concurrent resolution to correct the error and to ask the President to return the bill. Staff members in HEW and possibly other agencies are aware of the defect.

I understand that there may be substantive grounds for a veto of the bill. The Domestic Council is now looking at this possibility. Last day for action is October 29, but we will want to have the bill ready for the President on Friday, the 25th.

May we have your guidance on the following:

1. Accept the new page on an informal basis _____.

2. Process the bill we now have which would go to the President with either a sign or veto recommendation _____.

Attachment

Copies to:
William E. Casselmann, II
Kenneth R. Cole
Jerry H. Jones
Stanley Ebner, OMB
William E. Timmons

October 22, 1974

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RDL:cmf

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RDL:cmf

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

October 23, 1974

MEMORANDUM FOR ROBERT D. LINDER

Subject: Rehabilitation Act Amendments (H.R. 14225)

In response to your memo of yesterday to Phil Buchen, my preliminary examination into the issue of the absence of an enacting clause on subject bill indicates that the enrolled bill nevertheless represents a valid enactment. My understanding is the White House Counsel's Office has reached a similar conclusion.

However, OMB does intend to recommend a veto on substantive grounds. In addition, Section 101 of the bill raises a constitutional issue similar to the one which produced a Presidential veto of the original OMB Director confirmation bill: namely, legislative removal of a Presidentially appointed officer. Both we and the Counsel's Office are looking into this further.

Stanley Ebner
General Counsel

cc:
William E. Casselman, II
Kenneth R. Cole
Jerry H. Jones
Phillip Areeda

THE WHITE HOUSE

WASHINGTON

October 23, 1974

MEMORANDUM FOR: ROBERT LINDER

FROM: PHILLIP AREEDA PA

With respect to your question about the Rehabilitation Act Amendments of 1974, H. R. 14225:

1. It is perfectly all right to process the bill we now have and to sign it or veto it as the President chooses.

2. We should accept a new page from the House Enrolling Clerk only on a formal basis. He could make a formal substitution if he is empowered by the Adjournment Resolution to make minor technical corrections in enrolled bills. This correction would seem to fall within that "minor" category.

H. R. 14225

Ninety-third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-first day of January, one thousand nine hundred and seventy-four

An Act

To extend the authorizations of appropriations in the Rehabilitation Act of 1973 for one year, to transfer the Rehabilitation Services Administration to the Office of the Secretary of Health, Education, and Welfare, to make certain technical and clarifying amendments, and for other purposes; to amend the Randolph-Sheppard Act for the blind; to strengthen the program authorized thereunder; and to provide for the convening of a White House Conference on Handicapped Individuals.

SEC. 100. This title shall be known as the "Rehabilitation Act Amendments of 1974".

REHABILITATION SERVICES ADMINISTRATION

SEC. 101. (a) Section 3(a) of the Rehabilitation Act of 1973 is amended to read as follows:

"(a) There is established in the Office of the Secretary a Rehabilitation Services Administration which shall be headed by a Commissioner (hereinafter in this Act referred to as the 'Commissioner') appointed by the President by and with the advice and consent of the Senate. Except for titles IV and V and as otherwise specifically provided in this Act, such Administration shall be the principal agency, and the Commissioner shall be the principal officer, of such Department for carrying out this Act. In the performance of his functions, the Commissioner shall be directly responsible to the Secretary or to the Under Secretary or an appropriate Assistant Secretary of such Department, as designated by the Secretary. The functions of the Commissioner shall not be delegated to any officer not directly responsible, both with respect to program operation and administration, to the Commissioner.".

(b) The amendment made by subsection (a) of this section shall be effective sixty days after the date of enactment of this Act.

EXTENSION OF AUTHORIZATION OF APPROPRIATIONS FOR VOCATIONAL REHABILITATION SERVICES

SEC. 102. (a) Section 100(b) of such Act is amended by—

(1) striking out "and" after "1974," in paragraph (1) and inserting before the period at the end of such paragraph a comma and "and $720,000,000 for the fiscal year ending June 30, 1976"; and

(2) striking out "and" after "1974," in the first sentence of paragraph (2) and inserting after "1975," in such sentence "and $42,000,000 for the fiscal year ending June 30, 1976;".

(b) Section 112(a) of such Act is amended by striking out "and" after "1974," and by inserting "and up to $2,500,000 but no less than $1,000,000 for the fiscal year ending June 30, 1976," after "1975,".

(c) Section 121(b) of such Act is amended by striking out "1976" and inserting in lieu thereof "1977".

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405

OCT 16 1974

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

Dear Mr. Ash:

This letter is in response to a telephone request from a member of your staff for our views on H.R. 14225 as it appears in a conference report beginning on page H10229 of the Congressional Record for October 9, 1974.

Our interest in the bill is limited to title II - Randolph Sheppard Act Amendments.

The Randolph-Sheppard Act provides that preference be granted to licensed blind persons to operate vending stands and machines on Federal property. It provides blind persons with remunerative employment, enlarges the economic opportunities of the blind and stimulates blind persons to greater efforts in striving to make themselves self-supporting.

GSA has traditionally recognized preference for the blind in buildings it operates. According to Department of Health, Education and Welfare statistics, there are 456 blind-operated vending stands in GSA buildings. This represents 52 percent of all blind-operated vending stands on Federal property, even though GSA controls only 8.2 percent of all Federal property. These stands gross approximately $16.8 million in annual sales, which provide an estimated $3.4 million in annual earning for 514 visually handicapped persons who, in turn, employ over 340 sighted assistants. Many of the sighted assistants are also handicapped individuals.

GSA affords the blind an opportunity to establish Randolph-Sheppard Act facilities in every building under GSA control, whether federally-owned or leased, as long as the building's population will justify a profit potential for the blind. Our involvement with the Randolph-Sheppard program has not been limited to our basic statutory responsibilities of authorizing stands, providing space, conducting inspections, etc. We have also lent technical assistance to the blind to enhance the efficiency and viability of blind-operated vending stands in areas not technically within our jurisdiction. We have provided direct operational assistance to several State licensing agencies to help improve their efficiency and usefulness.

We vigorously object, however, to certain provisions of title II of H.R. 14225, particularly those which, we think, adversely affect cafeteria operations in our buildings.

GSA manages approximately 10,800 buildings, housing roughly 805,000 Federal employees. In many of the larger buildings there is a cafeteria which is operated for the benefit of the employees. At the present time there are 113 cafeterias in GSA controlled buildings housing roughly 275,000 employees.

It is a fundamental policy of GSA that Federal employees be provided good wholesome food, well prepared, under sanitary, healthful, and attractive conditions, at reasonable prices. To do this the cafeterias, which are operated under commercial standards, must attract substantial patronage from the building population inasmuch as the cafeterias are restricted to essentially a one-meal per day, five day-per-week service. There is a widely held misconception that cafeteria operators are reaping substantial profits at the expense of the blind. Our cafeteria contracts limit operation maximum profits from as low as 2 percent to a high of 6 percent of sales. There are no guarantees that contractors will realize the top allowable, however modest, profit figure. These cafeterias depend to a large degree on income from vending machines to enable them to show a profit. The inherent problems in attempting to manage cafeteria facilities have been greatly amplified within the last 12 months due to dramatic increases in the cafeteria operating expenses, most notably in the cost of food.

At many locations throughout the Nation, where the building population is small and the viability of the cafeteria is marginal, the vending machine income makes possible an essential basic food service for Federal employees who are practically restricted to eating lunch nearby due to the limited lunch period.

With respect to the provision in H.R. 14225 providing that blind persons may be authorized to operate manual full-line cafeterias, we would like to stress that there are 113 contract food operations in buildings under GSA management which house approximately 275,000 Federal employees. To subject operations of this magnitude to possible control by the various State licensing agencies would, we believe, be decidedly unwise. We do not believe that GSA could adequately discharge its basic responsibility to provide eating facilities for Federal employees through operation of cafeterias by blind persons. For this reason we cannot support the portion of H.R. 14225 providing that cafeteria operations be covered by the Randolph-Sheppard Act.

Also, GSA has traditionally relied upon private industry to operate its cafeterias and other basic food service facilities. We believe that to depart significantly from this practice would invite justifiable criticism from the private sector. We do not enter into cafeteria contracts when suitable commercial dining facilities are available within walking distance of our buildings.

It is to be pointed out that of the 10,800 buildings we manage, only 113 of them have cafeterias. In many of these buildings the vending machines income is shared between the blind and the cafeteria operator on a mutually agreeable basis. This leaves many buildings for almost exclusive assignment of vending machines income to the blind, although in some cases vending machine income is shared with employee groups under a formula agreed to by the Department of Health, Education, and Welfare as set forth in our vending stand regulations.

With respect to some of the specific provisions of H.R. 14225, we believe the heads of the departments and agencies should be responsible for the establishment of vending facilities. We also believe that arbitration panels are not necessary, since most agencies have contract appeals boards to which disputes involving blind operators and State licensing agencies can be referred for adjudication.

Section 202 provides that any limitation on the placement or operation of a vending facility because it would adversely affect the interests of the United States must be justified in writing to the Secretary of HEW and the Secretary's decision must be published in the Federal Register. It is our view that this provision takes away management prerogatives of the agency which controls the property. We think DHEW can exercise adequate control over the vending facility situation through its role, delegated to it from the President, of approving regulations promulgated under the Randolph-Sheppard Act.

GSA opposes section 203(d) of H.R. 14225 because it would require Federal agencies to consult with the Secretary of HEW and the State licensing agency before undertaking to acquire or to occupy any building and would require the prior approval of the Secretary to the proposed acquisition or occupation in the form of a determination by the Secretary that such building includes a satisfactory site or sites for the location and operation of a vending facility by a blind person. It also would require consultation with the Secretary of HEW and the State licensing agency and the Secretary's approval when a building is to be constructed, substantially altered, or renovated.

Sections 204 and 206 deal largely with the arbitration of disputes between the blind operator, the State licensing agency, and Federal agencies controlling real property. Since GSA and most other Federal property controlling agencies have independent Boards of contract Appeals and/or Administrative Law Judges who can hear these matters, we see no need for arbitration panels.

Section 206 also proposes a new section 7 to the Randolph-Sheppard Act, under which vending machine income on Federal property would be assigned to blind vendors and State licensing agencies under a formula based upon whether the machines are in direct competition with a blind vendor.

The new section 7 also would place conditions on cafeteria operations. The amendments would cause considerable problems in buildings where we have a contract food service. It would take, in most cases, all of the vending commission away from the food service contractor and in some cases provide direct competition between food service contractors and blind vendors. If the bill becomes law, GSA will have to renegotiate an undetermined number of cafeteria contracts to accommodate the loss of income to cafeteria concessionaires. As a result, cafeteria prices would be increased. We therefore strongly oppose section 206.

We believe, and have repeatedly testified in person and by letter to the involved Committees, that Federal employees, who are the primary source for depositing coins in vending machines in buildings which we operate, are entitled to high quality and convenient food service under sanitary, healthful and environmentally attractive conditions at the most reasonable prices possible. This can continue only as long as vending machine income is available for cafeteria operations. In support of this philosophy, we have over the years worked out income sharing arrangements with the State licensing agencies which, by and large, have been satisfactory to all concerned parties. We urge that our ability to maintain high quality food services for Federal employees not be undermined by passage of section 206.

For the reasons stated above, we cannot favor Presidential approval of the bill.

Sincerely,

Arthur F. Sampson
Administrator

LAW DEPARTMENT
Washington, DC 20260

October 18, 1974

Dear Mr. Rommel:

This is in response to your request for the views of the Postal Service with respect to the enrolled bill:

H. R. 14225, "To amend and extend the Rehabilitation Act of 1973 for one additional year."

1. Purpose of Legislation.

The interest of the Postal Service in this legislation centers on title II, the proposed "Randolph-Sheppard Act Amendments of 1974", the general purpose of which, according to section 201, is to remove various obstacles to the growth, expansion, and continued vitality of the Randolph-Sheppard program for the blind.

To carry out this purpose, title II of the bill would, among other things, (1) require new construction projects and extension, modification, and improvement projects to be examined and cleared in advance by the Secretary of Health, Education and Welfare and the appropriate state licensing agency to assure maximum provision for blind vendors; (2) assign vending machine income on Federal property to blind vendors and state licensing agencies under a formula based on whether machines are in

direct competition with a blind vendor; (3) provide for HEW regulation of the placement and operation of vending facilities on postal property; (4) provide for compulsory arbitration of disagreements between Federal agencies and state agencies; and (5) extend the priority for blind vendors to include cafeteria operations.

2. Position of the Postal Service.

On November 19, 1973, the Postal Service testified against S. 2581, the predecessor in the Senate of title II of this bill. The Postal Service also filed on July 22, 1974, a report with the Office of Management and Budget on S. 2581 as it passed the Senate. Since most of the objections we expressed in our testimony and report have not been met by the subsequent amendments to the legislation, our position remains unchanged.[1/]

3. Timing.

We have no recommendation to make as to when the measure should be signed.

4. Cost or Savings.

We have no method of accurately determining the administrative costs resulting from the enactment of title II of this legislation.

5. Recommendation of Presidential Action.

The Postal Service makes no recommendation with regard to Presidential action because approval or disapproval of H.R. 14225 should properly turn on the probable effect on the economy of Title I of the bill with regard to which the Postal Service has no special knowledge or expertise. However, should the

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1/
Copies of our testimony on S. 2581 and our report to the Office of Management and Budget on S. 2581, as passed by the Senate, are attached.

bill be disapproved because of its potentially inflationary impact, we urge that the message of the President also recommend revision of title II of the bill in order to simplify the unnecessarily complicated provisions of that title which would be awkward and difficult to administer. In particular the Postal Service objects to the provisions of that title which would involve the layering of bureaucracy on top of bureaucracy by requiring the Postal Service to obtain advance approval by the Secretary of HEW and state licensing agencies before undertaking ". . . to acquire by ownership, rent, lease, or to otherwise occupy, in whole or in part, any building . . . ." Such provisions cannot be squared with the general postal exemption from cumbersome Federal construction and procurement requirements and regulations, an exemption intended to reflect an overriding national priority to modernize long-neglected postal facilities and equipment with all possible speed.

Sincerely,

W. Allen Sanders

W. Allen Sanders
Assistant General Counsel
Legislative Division

Encl.

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

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

CHAIRMAN

October 22, 1974

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

Attention: Assistant Director for
Legislative Reference

Dear Mr. Ash:

This is in reply to your request for the views of the Civil Service Commission on enrolled bill H.R. 14225, a bill "To Amend the Rehabilitation Act of 1973."

H.R. 14225 would extend the authorization of appropriations in the Rehabilitation Act of 1973 for one year, transfer the Rehabilitation Services Administration to the Office of the Secretary of Health, Education, and Welfare, amend the Randolph-Sheppard Act for the blind, and provide for the convening of a White House Conference on Handicapped Individuals.

We are commenting only on the provisions relating to personnel contained in Sections 111(p), 208, and 302.

Section 111(p) of the enrolled bill concerns the Architectural and Transportation Barriers Compliance Board that was set up by the Rehabilitation Act of 1973. That Act provided no permanent staff for the Board, intending that it would obtain assistance from Federal agencies and departments and utilize experts and consultants as needed. The enrolled bill provides that the Board shall appoint an executive director and such professional and clerical personnel as are necessary to carry out its functions. Since the bill is silent on the matter, we may assume that these personnel will be covered by title 5.

Section 208. This section calls for the creation of ten additional positions in the Office for the Blind and Visually Handicapped of the Rehabilitation Services Administration (DHEW), including one at the supergrade level. It also provides that preference will be given to blind individuals in filling these positions.

The Commission has on numerous occasions objected to legislation adding supergrade positions by earmarking them for specific agencies rather than approving them through the proper House and Senate Committees for Government-wide allocation by the Civil Service Commission. This kind of legislation denies the flexibility needed for the Civil Service Commission to successfully manage supergrade resources. Hence, we object to this feature of the enrolled bill.

We do not object to the preference provision. The Randolph-Sheppard Act has contained a similar provision since its original enactment in 1936. We note that Section 208(d) strikes the requirement in the earlier act that "at least 50 per centum of such additional personnel shall be blind persons."

Section 302 of the bill calls for the establishment of a National Planning and Advisory Council, appointed by the Secretary of Health, Education and Welfare, to provide guidance and planning for a White House Conference on Handicapped Individuals. This Council would be authorized to hire staff without regard to the provisions of title 5 governing appointment, classification, or General Schedule pay rates, except that rates of pay for such staff may not exceed the rate prescribed for GS-18. We do not object to the exclusion of these employees from title 5, since the council is a temporary entity that will expire within three years of its establishment.

This is the first opportunity the Commission has had to comment on this legislation. Notwithstanding the objection noted above, we recommend that the President sign enrolled bill H.R. 14225.

Sincerely yours,

Robert Hampton

Robert E. Hampton
Chairman

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

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

OCT 22 1974

Dear Mr. Ash:

This is in response to Mr. Rommel's request of October 17, 1974, for a report on H.R. 14225, an enrolled bill "To extend the authorizations of appropriations in the Rehabilitation Act of 1973 for one year, to transfer the Rehabilitation Services Administration to the Office of the Secretary of Health, Education, and Welfare, to make certain technical and clarifying amendments, and for other purposes; to amend the Randolph-Sheppard Act for the blind; to strengthen the program authorized thereunder; and to provide for the convening of a White House Conference on Handicapped Individuals."

Section 101(a) of the enrolled bill amends section 3(a) of the Rehabilitation Act of 1973 to establish the Rehabilitation Services Administration (RSA) in the Office of the Secretary of Health, Education, and Welfare. The RSA would be headed by a Commissioner, appointed by the President by and with the advice and consent of the Senate. The functions of the Commissioner could not be delegated to any officer not directly responsible to the Commissioner.

Sections 102 through 110 of the bill would extend the authorizations of appropriations in the Act for one year, through fiscal year 1976.

Section 111(a) of the bill would amend the definition of the term "handicapped individual" to make it clear that sections 503 (relating to affirmative action with regard to the handicapped by Federal contractors) and 504 (prohibiting discrimination against the handicapped in any activity receiving Federal financial assistance) of the Act apply to all handicapped individuals, not just

those who have benefitted or expect to benefit from vocational rehabilitation services.

Section 111(g) of the bill would extend from February 1, 1975, to June 30, 1975, the time during which the Secretary is to conduct, under section 130 of the Act, a comprehensive study on service needs for handicapped individuals. The Department had requested such an extension through September 30, 1975.

The other subsections of section 111 contain numerous miscellaneous amendments to the Act relating to affirmative action in employment under State vocational rehabilitation plans, requirements for early eligibility determinations, individualized written rehabilitation programs, and other matters, including a prohibition of any delegation of the Secretary's responsibilities under section 405 of the Act (relating to planning, research, and evaluation in programs for the handicapped) to any person with operational responsibilities for any programs designed to benefit handicapped individuals. Under this prohibition, the Office for the Handicapped and the Rehabilitation Services Administration could both be placed under the Assistant Secretary for Human Development, but those functions would have to be separated within that Office.

Title II of the enrolled bill contains amendments to the Randolph-Sheppard Act, the blind vendor program. Section 202 amends the first section of that Act to require the Secretary of Health, Education, and Welfare to prescribe regulations designed to assure that priority is given to blind persons in authorizing vending facilities on Federal property and that such facilities are, wherever feasible, located on all Federal property. Any limitation on the placement of such a facility on any Federal property based on a determination that it would adversely affect the interests of the United States would have to be made in writing to the Secretary who would be required to make a binding determination as to whether such limitation is justified.

Sections 203 through 205 of the bill contain a number of miscellaneous amendments relating to Federal and State responsibilities under the Act and repeal of outdated provisions in the Act. The most significant of these amendments would require that after January 1, 1975, no department or agency of the United States shall acquire or substantially alter or renovate any building unless it contains satisfactory sites for blind vending facilities.

Section 206 adds a number of new sections to the Act. New section 5 would provide for arbitration of grievances of blind licensees and State licensing agencies before a panel convened by the Secretary. Section 6 would establish procedures for such arbitration. Section 7 would require (with certain exceptions) income from the operation of vending machines on Federal property to accrue to blind licensees or to retirement, pension, health insurance, and paid sick leave or vacation plans for such licensees. Section 8 would require the Commissioner of RSA to promulgate regulations designed to provide certain rehabilitation services for blind individuals.

Section 209 of the bill would require the Secretary to assign ten additional personnel to the Office of the Blind and Visually Handicapped, five of whom would be required to carry out duties related to the Randolph-Sheppard program.

Section 210 would require the Secretary to promulgate national standards for pension and health insurance funds and provisions for sick and annual leave for blind vendors. The section would also require the Secretary to conduct a study of the feasibility of establishing a nationally-administered retirement, pension, and health insurance fund for such persons.

Title III of the enrolled bill would authorize the President to call a White House Conference on Handicapped Individuals within two years from the date of enactment. The Conference would be planned and directed under the direction of a National Planning and Advisory Council. The bill sets

forth a list of 17 problem areas which the Conference shall consider.

Section 305 of the bill authorizes grants to States of from $10,000 to $25,000 each to defray the expenses of participating in the program. Section 306 authorizes the appropriation of a total of $2,000,000 to carry out the Conference.

Rehabilitation Act Amendments

The Department has consistently opposed the provisions in this bill which require the transfer of the Rehabilitation Services Administration from the Social and Rehabilitation Service to the Office of the Secretary and which prohibit the delegation of any functions of the Commissioner of RSA to any officer not directly responsible to him. We have also opposed the provisions of the bill which would limit the ability of the Secretary to delegate functions relating to the Office of the Handicapped, although the bill as finally passed would permit such delegation to persons other than those responsible for the operation of programs to benefit handicapped individuals.

The basis of our objections to these provisions is that the mandating of organizational structures and relationships within the Department seriously infringes upon the ability of the Secretary to marshall the Department's resources in an efficient and effective manner. Furthermore, the transfer of RSA would come at a time when that agency is in the midst of implementing the numerous requirements in the Rehabilitation Act of 1973, particularly the major new emphasis on the most severely handicapped. An administrative restructuring at this time would unduly interfere with the ability of the agency to carry out its responsibilities in a timely manner.

The Conference Report on the enrolled bill clarifies somewhat the provisions relating to delegation of RSA functions by indicating that routine administrative services

such as budget formulation, grant administration, financial administration, and personnel administration could be carried out by the centralized offices in the Department responsible for those functions. We remain concerned, however, that the restriction on the delegation of such functions will substantially inhibit our efforts to develop and operate coordinated service delivery systems at the regional level.

Because the provisions of the enrolled bill discussed above would result in undue interference by the Congress in functions of the Executive Branch with regard to the administration of this program, we remain opposed to this portion of the bill.

We also object to that portion of the Amendments that would require Senate confirmation of the incumbent RSA Commissioner. In the message accompanying his veto of S. 518, a bill to subject the incumbent Director and Deputy Director of the Office of Management and Budget to Senate confirmation, the President, treating the bill as a removal of officers previously appointed by him, stated:

> "The constitutional principle involved in this removal is not equivocal; it is deeply rooted in our system of government. The President has the power and authority to remove, or retain, executive officers appointed by the President. The Supreme Court of the United States in a leading decision . . . has held that this authority is incident to the power of appointment and is an exclusive power that cannot be infringed upon by the Congress."

The objection raised by the President in connection with S. 518 has equal application to the instant bill.

Randolph-Sheppard Amendments

We agree with the provisions in section 202 of the bill regarding the priority that should be given to blind persons

in operating vending facilities on Federal property. However, the bill contains a number of amendments to the Randolph-Sheppard Act concerning which we have reservations:

(1) Section 203(d) of the bill would require that the Secretary of Health, Education, and Welfare determine that satisfactory sites for blind vending facilities exist in each building acquired, constructed, or substantially renovated by Federal departments and agencies. Such a determination should more appropriately be made by the head of each agency.

(2) The provisions for arbitration contained in the new sections 5 and 6 of the Act are unnecessary. Current fair hearing procedures are adequate to protect the rights of blind persons and the State licensing agency. To impose an arbitration procedure on top of that machinery would be costly, time consuming, and administratively burdensome.

(3) Although the provisions concerning the assignment of vending machine income to blind licensees have been modified by eliminating the requirement for the Secretary to determine by regulation how vending machine income not required to be assigned to blind licensees shall be used, we still are concerned as to the effect of this provision on the financial base of employee welfare activities. We do not object to blind licensees being assigned some income from vending machines with which they compete, but the amount of such income required to be assigned under this bill--100 percent of such income from machines in direct competition with blind vending facilities and 50 percent of such income from machines not in direct competition--seem excessive.

(4) The requirement in section 209 for 10 additional personnel to be assigned to RSA for the Office for the Blind and Visually Handicapped is another example of Congressional infringement on the management prerogatives of the Secretary. We continue to object to such requirements being imposed as a matter of law.

(5) We do not believe that the study into the feasibility of a nationally-administered retirement, pension, and health insurance program for blind licensees is desirable. Such systems would be a more appropriate function of the State agency.

We have been unable in the short time available to make a realistic estimate of the number of additional positions which would be required by the Department to implement the requirements described above. However, in view of the many additional responsibilities that would devolve upon the Secretary--reviewing building plans of each agency to determine the adequacy of facilities for blind vendors, supervising the new arbitration mechanism, and conducting an extensive study into a nationally-administered retirement and health insurance program--enactment of this bill would undoubtedly require a substantial increase in the number of persons assigned to administer this program.

White House Conference on Handicapped Individuals

We believe that the convening of a White House Conference on the Handicapped at this time would be duplicative of completed, current, and anticipated activities relating to the handicapped. In particular, the Rehabilitation Act of 1973, which has been effective only since December of 1973, contains several provisions for conducting special studies on the various needs of the handicapped, including a study of comprehensive services needs, the role of workshops in the rehabilitation process, the method of allotting basic support funds and the housing and transportation needs of the handicapped. The Act also contains authority for the establishment of interagency activities designed to further meet the needs of the handicapped in such areas as employment, architectural and transportation barriers, and nondiscrimination in the use of Federal contract and grant funds.

The Rehabilitation Act of 1973 also assigns to the Secretary specific responsibilities for long-range planning, continuing evaluation of program effectiveness, coordinating planning

for maximum effectiveness of all programs serving the handicapped, utilization of research affecting the handicapped, and establishing a central clearinghouse for information and resource availability for handicapped individuals.

Given the Departmental activities outlined above which are designed to accomplish essentially the same functions as the White House Conference, we feel that such a conference is unnecessary and might even interfere with our ability to proceed effectively in carrying out the requirements of the 1973 Act.

We have outlined above our major reasons for objecting to the enactment of the enrolled bill. We believe those objections are serious and well-founded. Furthermore, except for the extension of the Rehabilitation Act appropriations authorities, the extension of time for the comprehensive needs study, and the clarification of the definition of "handicapped individuals", the bill contains very little of a desirable nature.

On the other hand, you should be aware that there is overwhelming Congressional support for this bill. The bill was originally passed by the House of Representatives on a roll call vote of 400 to 1 and by the Senate on a voice vote. The conference report was adopted by the House by a roll call vote of 334 to 0 and was adopted by the Senate again by a voice vote. In view of that fact, it is doubtful that a veto by the President would be upheld.

Nonetheless, our objections to the bill are so substantial that we recommend that it not be approved. A proposed veto message is enclosed.

Sincerely,

Frank Carlucci

Acting Secretary

Enclosure

VETERANS ADMINISTRATION
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS
WASHINGTON, D.C. 20420

October 22, 1974

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

Dear Mr. Ash:

This will respond to the request of the Assistant Director for Legislative Reference for the views of the Veterans Administration on the enrolled enactment of H. R. 14225, 93d Congress, an act "To authorize the operation of stands in Federal buildings by blind persons, to enlarge the economic opportunities of the blind, and for other purposes."

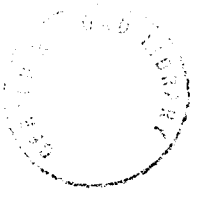
Our comments will be confined to Title II of the act--Randolph-Sheppard Act Amendments--as it might affect the Veterans Administration. This Title provides that, after January 1, 1975, no department, agency, or instrumentality of the United States shall undertake to acquire by ownership, rent, lease, or to otherwise occupy, in whole or in part, any building unless, after consultation with the head of such department, agency or instrumentality and the State licensing agency, it is determined by the Secretary, Department of Health, Education, and Welfare that such building includes a satisfactory site or sites for the location and operation of a vending facility by a blind person. Any limitation on the placement or operation of a vending facility based on a finding that such placement or operation would adversely affect the interests of the United States would, under the act, be required to be justified in writing to the Secretary, who would determine

whether such limitation is justified. Such determination would be binding on any department, agency, or instrumentality of the United States which is affected.

While the Veterans Administration supports wholeheartedly the general purpose of the Randolph-Sheppard Act, that the blind should be provided employment and business opportunities wherever practicable, we feel the provisions of Title II of the enrolled bill could have an adverse effect on the Canteen Service activities of the Veterans Administration. Enactment of this legislation could result in giving priority to blind persons licensed by a State agency for the operation of vending, and possibly cafeteria, facilities in future VA facilities. This could conflict with the basic purpose of the Veterans' Canteen Service authorized by chapter 75 of title 38, which is to provide merchandise and services at reasonable prices to veterans hospitalized or domiciled at VA facilities.

Prior to the establishment of the Veterans Canteen Service, vending operations in VA health care facilities did not provide adequate service, reasonable prices, nor in large numbers of instances, service at all. Vending facilities existed primarily to return a profit to their operators, and often offered merchandise which would provide the most profit rather than which best met the needs of veterans. Prices varied markedly from location to location, even though the cost to the vendor may have been uniform. Today we have uniform prices throughout the VA system, and provide a needed service at both profitable and unprofitable locations.

In Fiscal Year 1974 eighty of our one hundred seventy one canteens operated at a net loss on the types of operations envisioned by the proposed legislation. The net revenue from the remaining canteens was required



to offset those losses. The Veterans' Canteen Service does not operate its program to produce a profit. It meets the expenses of the program without tax revenues and maintains its prices at an equitable level for the patients. Hospitalized veterans obviously cannot shop to find favorable prices. They are captive customers of the vending facilities they patronize. Any program aimed at producing revenue for other purposes can only succeed at the expense of these hospitalized veterans. Operation of canteen facilities by blind vendors could defeat our objective. Blind vendors would need to set prices at levels which would produce profits, whereas the Veterans' Canteen Service does not operate with this in mind. The result would be higher prices at those locations operated by blind vendors, thereby resulting in inequities throughout our system, and causing financial hardship to veterans in the affected localities. The result could be destructive to the Veterans' Canteen Service, and could bring about a return to the chaotic conditions which led to its establishment.

In addition, we can envision that the controlling agencies would select for blind vending operation those locations which are profit producing. Thus, the Veterans Administration would be left with those facilities which cannot be self-supporting. It would then become necessary to either discontinue them and deny service to hospitalized veterans, or subsidize them from tax revenues at increased cost to the Federal Government.

While we cannot recommend approval of this provision of the enrolled bill, we do not feel we can recommend a Presidential disapproval solely on this basis, especially if it is determined that the other provisions of the bill require approval by the President. However, if the

bill does become law, it may be necessary in the future to seek legislation clearly exempting VA health care facilities from the provisions of the Randolph-Sheppard Act.

Sincerely,

RICHARD L. ROUDEBUSH
Administrator

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

22 October 1974

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

Dear Mr. Ash:

Reference is made to your request for the views of the Department of Defense with respect to the enrolled enactment of H. R. 14225, 93d Congress, an Act "To amend and extend the Rehabilitation Act of 1973 for one additional year."

The Department of Defense interest is contained in Title II of the Act, "Randolph-Sheppard Act Amendments of 1974."

The purpose of Title II of this Act is to revise and modernize the 1936 Randolph-Sheppard Act for the blind and to strengthen the program authorized thereunder. Among the stated legislative purposes of the amendments is to insure the continued vitality and expansion of the Randolph-Sheppard program. In accomplishing this, the amended Act will "establish uniformity of treatment of blind vendors by all Federal departments, agencies, and instrumentalities" and will also "establish priority for vending facilities operated by blind vendors on Federal property."

The greatest impact of this legislation within the Department of Defense will be on the military exchanges, officer and enlisted messes and other nonappropriated fund instrumentalities which are essential in providing for the well-being and morale of military personnel. These facilities are only secondarily a means of contributing to the revenue to support various community activities; nevertheless, they provide an expedient and practical means of accomplishing this function. The income from vending machines makes up a significant portion of the total revenues generated by these facilities in the Department of Defense. In light of the diminishing appropriated funds being made available for essential well rounded morale, recreation and welfare programs within the military communities, it is very unlikely that additional appropriated funds will

be made available to replace the loss of income from vending machines.

In regard to the above, the House of Representatives in its consideration of the Act as presented by a Joint Conference Report specifically stated in its discussion, the intent to exempt military exchanges, officer and enlisted messes, and other military nonappropriated fund instrumentalities. In view of this intent as expressed in legislative history, our concern regarding the lack of specificity as to the applicability to military non-appropriated fund instrumentalities is satisfactorily overcome.

Accordingly, the Department of Defense interposes no objection to approval of Title II of this enrolled Act, H. R. 1422. As to the remaining provisions of the Act, the Department of Defense defers to other more interested governmental agencies.

Sincerely,

for Martin R. Hoffmann

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

OCT 23 1974

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

Dear Mr. Ash:

This is in response to your request for our views on the enrolled enactment of H.R. 14225, the "Rehabilitation Act Amendments of 1974."

H.R. 14225 makes a number of amendments to the Rehabilitation Act of 1973. Of particular interest to the Department of Labor is section 111(a), which amends the definition of "handicapped individual" under section 7(6) of the Rehabilitation Act of 1973 for purposes of Titles IV and V of that Act. This Department is responsible for administering section 503 of the Act which requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified handicapped individuals.

Section 7(6) of the Act presently defines the term "handicapped individual" to mean any individual who (A) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment, and (B) can reasonably be expected to benefit in terms of employability from vocational rehabilitation services provided pursuant to Title I and Title III of the Rehabilitation Act. Section 111(a) amends section 7(6) by adding a new provision which provides that "For the purpose of Titles IV and V of this Act, such term means any person who (A) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (B) has a record of such impairment, or (C) is regarded as having such an impairment."

With respect to subpart (A), we believe this proposed definition could create serious problems in terms of an effective affirmative action program for the handicapped under section 503. The success of an affirmative action program is in large measure dependent on the ability to readily and objectively identify the members of the affected class. We recognize that the Rehabilitation Act's present definition raises some difficulties in this regard. However, H.R. 14225's changes would create even greater confusion with respect to the membership of the class of handicapped individuals. The new definition of "handicapped individual" is so broad that it could be interpreted to include both minor "handicaps" as well as the terminally ill. Specifically, we question the introduction of the new term "impairment," rather than the term "handicap" which is used in the present definition.

Subpart (B) would further expand the definition to include persons with a record of a physical or mental "impairment" which substantially limits one or more major life activities. While we understand the desire to provide coverage for persons who have recovered from mental, neurological or emotional disorders, this provision would potentially cover anyone who once had temporary medical illness or injury. The Conference Committee itself states that this provision would apply to persons who once had "a heart attack" or "cancer". This provision's coverage could include almost anyone in the workforce.

We also oppose subpart (C) of the proposed definition. Whether or not a person is regarded as having an impairment which substantially limits one or more life activities is likely to be purely a subjective matter. We believe such a provision would be impossible to administer with any certainty.

The effect of these provisions is to weaken rather than strengthen the affirmative action program. This Department opposes section 111(a) of the bill. However, in view of

the primary interest of the Department of Health, Education, and Welfare in this legislation, we defer to that agency's views with respect to Presidential approval of this enrolled bill.

Sincerely,

Peter J. Brennan

Secretary of Labor

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

OCT 24 1974

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

Dear Mr. Ash:

This is in response to your request for the views of the Department of Justice on the constitutionality of section 101 of the enrolled bill H.R. 14225, the Rehabilitation Act Amendments of 1974.

Section 101 would amend section 3(a) of the Rehabilitation Act of 1973, 87 Stat. 357, which deals with the office of the Commissioner of the Rehabilitation Services Administration in the Department of Health, Education and Welfare. Under existing law the Commissioner is appointed by the President alone. The amendment would provide for the appointment of the Commissioner by the President by and with the advice and consent of the Senate. The bill would also provide that the Commissioner shall be the principal officer of the department charged with the enforcement of the Act and prohibit the delegation of his functions to any person not responsible to him. The amendment would become effective sixty days after the day of its enactment.

Whether an officer is to be appointed by the President alone or by the President by and with the advice and consent of the Senate is a matter primarily within the discretion of Congress and does not in itself raise a constitutional issue. Problems of that nature, however, do arise if a statute modifying the method of appointment seeks to affect the tenure of an incumbent validly appointed by the President pursuant to existing law. As you know, President Nixon in 1973 disapproved S. 518, 93d Cong., 1st Sess., which would have required Senate confirmation of certain appointments in your agency and further required such appointments to be made within 31 days following

the enactment of that bill. The underlying basis for the veto was that the bill interfered with the President's exclusive power to remove incumbent officers. See the veto recommendation of the Department of Justice on that bill, and President Nixon's veto message attached hereto.

This bill, in contrast to S. 518, does not expressly require the President to make a new appointment subject to Senate confirmation to the office of the Commissioner within a specified period after its enactment. At the worst the bill is ambiguous. While it is possible to read the bill to that effect, it would be equally, if not even more, justified to read it as merely requiring that an appointment made after its effective date must be made by and with the advice and consent of the Senate.

The conference report indicates (at Cong. Rec. Oct. 10, 1974, S 18878 and S 18885) that the Senate version of the bill specifically provided that "the amendment shall not take effect with respect to any individual holding the Office of RSA Commissioner on the date of enactment until such individual ceases to hold office." The House bill did not contain a comparable provision and the clause was deleted in conference without, however, providing expressly that the amendment should apply to the incumbent.

There are thus two possible interpretations of the bill. Under one, there is no question as to its constitutionality; under the other, its constitutionality is seriously open to question. There is, however, a well-established rule of constitutional interpretation that in such a situation, the former interpretation must prevail. United States v. Rumely, 345 U.S. 41, 47 (1953); United States v. Thirty-Seven Photographs, 402 U.S. 363, 369 (1971); 41 Op. A.G. 507, 525 (1960).

In our view, section 101 of the bill should be read as not affecting the tenure of the incumbent Commissioner, and accordingly it does not present a substantial constitutional issue.

Sincerely,

W. Vincent Rakestraw
Assistant Attorney General

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

MAY 9 1973

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

Dear Mr. Ash:

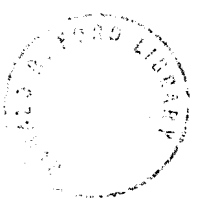
In compliance with your request, I have examined a facsimile of enrolled bill S. 518, to abolish and reestablish the offices of Director and Deputy Director of the Office of Management and Budget.

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

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

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

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



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

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

I.

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

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

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

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

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

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

II.

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

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

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

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

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

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

Sincerely,

MIKE MCKEVITT
Assistant Attorney General

To the Senate of the United States:

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

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

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

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

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

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

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

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

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

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

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

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

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

LAW DEPARTMENT
Washington, DC 20260

July 22, 1974

Dear Mr. Rommel:

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

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

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

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

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

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

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

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

Sincerely,

W. Allen Sanders

W. Allen Sanders
Assistant General Counsel
Legislative Division

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

TESTIMONY OF WILLIAM EUDEY

ASSISTANT POSTMASTER GENERAL

FOR EMPLOYEE RELATIONS

BEFORE THE

SUBCOMMITTEE ON THE HANDICAPPED

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

November 19, 1973

Mr. Chairman and Members of the Subcommittee:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

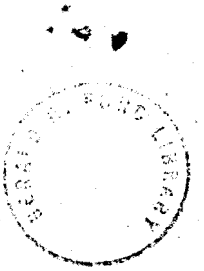
We are fully determined to implement our responsibilities under the Randolph-Sheppard Act and will make every effort necessary to maintain continued compliance. Local performance under the revised instructions, when promulgated, will be monitored and supervised at the headquarters level.

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

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

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

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



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

OCT 24 1974

MEMORANDUM FOR THE PRESIDENT

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

Last Day for Action

October 29, 1974 - Tuesday

Purpose

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

Agency Recommendations

Office of Management and Budget	Disapproval (Veto message attached)
Department of Health, Education, and Welfare	Disapproval (Veto message attached)
General Services Administration	Cannot favor approval
Veterans Administration	Cannot recommend approval of Title II
Department of Defense	No objection to approval of Title II
Department of Labor	Defers to HEW
Postal Service	No recommendation
Civil Service Commission	Approval

Discussion

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

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

Title I -- Rehabilitation Act Amendments of 1974

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

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

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

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

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

(In millions of dollars)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Title II -- Randolph-Sheppard Act Amendments

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

The major changes proposed by Title II are:

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

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

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

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

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

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

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

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

Title III -- White House Conference on Handicapped Individuals

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

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

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

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

Arguments for approval

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

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

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

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

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

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

Arguments against approval.

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

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

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

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

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

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

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

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

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

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

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

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

Agency recommendations

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

(Signed) Roy L. Ash
Director

Enclosures

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

TO THE HOUSE OF REPRESENTATIVES

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

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

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

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

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

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

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

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

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

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

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

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

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

THE WHITE HOUSE

October , 1974

To Norma Hendricks
10-25-74
10:10 a.m.

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

OCT 25 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 13342 - Farm Labor Contractor Registration Act Amendments of 1974
Sponsor - Rep. Ford (D) Michigan and 12 others

Last Day for Action

October 29, 1974 - Tuesday

Purpose

Amends the Farm Labor Contractor Registration Act of 1963 by extending coverage, strengthening enforcement mechanisms, and establishing a Federal civil remedy for persons aggrieved by violations of the Act; contains a rider which would make claims under Labor's "black lung" program subject to the Administrative Procedure Act and upgrade all Labor Department hearing examiner positions to Administrative Law Judges at the GS-16 level.

Agency Recommendations

Office of Management and Budget	Disapproval (Veto message attached)
Civil Service Commission	Disapproval (Veto message attached)
Department of Labor	Approval (Signing statement attached)
Department of Agriculture	Approval
Department of Commerce	Defers to Labor
Department of Justice	Defers to Labor
Administrative Conference of the United States	No objection to Sec. 13
Interstate Commerce Commission	No objection
Department of Transportation	Supports Sec. 5 and 6

Discussion

The Labor Department, in testimony before the House and Senate Committees, expressed support for most of the

THE WHITE HOUSE

WASHINGTON

October 25, 1974

MEMORANDUM FOR: WARREN HENDRIKS

FROM: WILLIAM E. TIMMONS

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

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

ACTION MEMORANDUM WASHINGTON LOG NO.: 712

Date: October 25, 1974 Time: 9:30 a.m.

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

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

FROM THE STAFF SECRETARY

DUE: Date: Today, October 25, 1974 Time: 3:00 p.m.

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

ACTION REQUESTED:

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

REMARKS:

Please return to Kathy Tindle - West Wing

1- Stafford called Pres. on this to urge signing. I took call & sent note in.
2- QUIE plans to call π to urge signing
3- I don't think we cud sustain
House will override - [illegible]

TK

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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

Warren K. Hendriks
For the President

ACTION MEMORANDUM WASHINGTON LOG NO.: 712

Date: October 25, 1974 Time: 9:30 a.m.

FOR ACTION: James Cavanaugh
Phil Buchen
Bill Timmons
Paul Theis

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

FROM THE STAFF SECRETARY

DUE: Date: Today, October 25, 1974 Time: 3:00 p.m.

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

ACTION REQUESTED:

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

REMARKS:

Please return to Kathy Tindle - West Wing

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

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

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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

Warren K. Hendriks
For the President

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

To Warren Hendricks
10-24-74
7:30 p.m.

OCT 24 1974

MEMORANDUM FOR THE PRESIDENT

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

Description of the Bill

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

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

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

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

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 712

Date: October 25, 1974 Time: 9:30 a.m.

FOR ACTION: James Cavanaugh
Phil Buchen
Bill Timmons
Paul Theis

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

FROM THE STAFF SECRETARY

DUE: Date: Today, October 25, 1974 Time: 3:00 p.m.

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

ACTION REQUESTED:

____ For Necessary Action

__XX__ For Your Recommendations

____ Prepare Agenda and Brief

____ Draft Reply

____ For Your Comments

____ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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

K. R. COLE, JR.
For the President

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Christina Wagner, RESEARCH

1974 OCT 25 AM 11 10

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Warren K. Hendriks
For the President