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John C. Brown 11-16-87

Archivist hires lawyers at help of Pres personnel... for express
purpose

501(c)(3) lobby for S Ct nominees? Recall Pres letter
ruling.

208 (b)(2) waiver for Task Force.

LEGISLATIVE HISTORY
P.L. 95-590

REGULATORY IMPACT EVALUATION

In compliance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 3392.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals or businesses. Other than studies and corresponding reports to the President and to Congress, little if any additional paperwork would result from enactment of S. 3392.

EXECUTIVE COMMUNICATION

The committee received no executive communication on bill S. 3392.

* * * * *

PRESIDENTIAL RECORDS ACT OF 1978

P.L. 95-591, see page 92 Stat. 2523

House Report (Government Operations Committee) No. 95-1487,
Aug. 14, 1978 [To accompany H.R. 13500]
Cong. Record Vol. 124 (1978)

DATES OF CONSIDERATION AND PASSAGE

House October 10, 15, 1978

Senate October 13, 1978

No Senate Report was submitted with this legislation.

HOUSE REPORT NO. 95-1487

[page 1]

The Committee on Government Operations, to whom was referred the bill (H.R. 13500) to amend title 44 to insure the preservation of and public access to the official records of the President, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

* * * * *

[page 2]

EXPLANATION OF AMENDMENTS

The first two amendments clarify that in order for documentary materials involving the political activities of the President or his staff to be considered "Presidential records", the activities in question must relate to or have a "direct" effect upon the carrying out of the official or ceremonial duties of the President. These changes were made so that the act would not impinge on the President's first amendment right to free speech or political association by including as gov-

LEGISLATIVE HISTORY

P.L. 95-591

SUMMARY OF MAJOR PROVISIONS

The provisions of the bill are in three basic categories: (1) definition and declaration of ownership of Presidential records; (2) public access to Presidential records after a President leaves office; and (3) records management procedures during and after a President's term.

Presidential records are defined as those records created or received by the President and his aides, the purpose of which is the advise and assist the President in the performance of his official duties. The definition of Presidential records was designed to encompass those records which currently fall outside the scope of the Freedom of Information Act (FOIA) 5 U.S.C. section 552. See, e.g., *Soucie v. David*, 448 F. 2d 1068 (1971) and H. Rept. No. 93-876, 93d Cong., 2d sess. 13 (1974). The intent is that all records which are neither agency records subject to FOIA nor personal records would fall within the ambit of Presidential records. Personal records are defined as those materials which are neither developed in connection with nor utilized during the transaction of Government business.

The legislation declares Presidential records to be Government property and provides that immediately upon the conclusion of a President's tenure in office these records are transferred to the custody of the Archivist of the United States. The Archivist is given the responsibility for the placement of the records in a Presidential library or other federally operated facility.

An outgoing President would be permitted to place mandatory restrictions of up to 10 years on the availability to the general public of certain types of information. The six restrictive categories are modeled after several of the exemptions of the Freedom of Information Act. But unlike the FOIA exemptions which may be applied in a discretionary fashion by federal agencies, the statutorily permitted restrictions chosen by the former President are binding and must be observed. The six types of information that may be restricted are: data classified for national defense reasons pursuant to Executive order; material related to Presidential appointments; material exempted from disclosure by another statute; trade secrets and confidential business information; confidential communications between the President and his advisers; and information whose disclosure would result in a clearly unwarranted invasion of personal privacy.

The President is given the option of choosing to impose some, all, or none of the restrictive categories; or of being more selective and designating particular records or portions thereof which fall within the six categories. Additionally, he could vary the term of years for each category, picking for example, 6 years for one, 8 for another, and zero for a third.

The Freedom of Information Act, with its procedural requirements and provision for judicial review, would govern the public availability of all Presidential records not subject to mandatory restrictions. For example, there is no mandatory restriction category for investigatory

[page 4]

files compiled for law enforcement purposes, but such records would be exempt from public disclosure under the seventh exemption of the FOIA, 5. U.S.C. section 553(b)(7). The Freedom of Information Act would also govern access to previously restricted information once

PRESIDENTIAL RECORDS ACT

P.L. 95-591

the mandatory Presidential restriction was no longer in effect. The term of a mandatory restriction would end (1) when the period of up to 10 years selected by the outgoing President has passed, (2) when a restriction is lifted with the former President's consent at a date earlier than the one he had initially chosen, or (3) when it has been determined by the Archivist that information contained in records covered by a Presidential restriction has been placed in the public domain through publication by the former President, his White House aides, or his associates.

The Archivist would be given up to 5 years from the end of a President's tenure in office to complete archival processing of the records. During this period the Archivist would be under no legal compulsion to make documents available to the general public. Once processed, the Archivist's determinations whether particular documents fell within a mandatory restriction imposed by the former President would not be subject to judicial review during the term of the restriction. The Archivist would, however, be required to establish an administrative appeal procedure which would require a written determination within 30 working days on whether access to a record was properly denied on the grounds that it came within a mandatory restriction.

Although materials would be closed to the general public during the term of a Presidentially imposed mandatory restriction, the materials would be accessible to an incumbent President or the Congress when not otherwise available and necessary to conduct the ongoing business of Government; and would also be accessible under demand of subpoena or other judicial process. Accessibility would be subject to any rights, defenses, or privileges a former or sitting President or others might assert, however.

To facilitate the compiling of a complete record and the orderly transfer of materials, the President is encouraged to implement sound records management practices and is required as far as practicable to make and separate personal papers from Presidential records. The President is required to adequately document the performance of his functions and may not dispose of Presidential records without first obtaining the written views of the Archivist concerning their historical value. A records disposal schedule, accompanied by the Archivists' comments, must then be submitted to Congress 60 legislative days in advance of actual disposal.

Finally, the legislation provides for the similar treatment of Vice-Presidential records. Although it allows the Archivist discretion in selecting the depository, it does not authorize the Archivist to establish separate depositories for Vice-Presidential records.

COMMITTEE VOTE

H.R. 13500, as amended, was reported by the Committee on Government Operations by a vote of 33 ayes and 2 nays, with a quorum present.

[page 5]

HEARINGS

H.R. 13500 is a clean bill incorporating changes made by the Government Information and Individual Rights Subcommittee in

LEGISLATIVE HISTORY

P.L. 95-591

H.R. 13364, an earlier version of the Presidential Records Act of 1978. H.R. 13364 was a compromise between two earlier bills, H.R. 10998 and H.R. 11001, on which the subcommittee held 4 days of hearings in early 1978.

DISCUSSION

In his treatise, "The Records of A Nation,"¹ H. G. Jones wrote that—

To recognize the constitutional independence of the Presidency is not to establish a sound premise for the conclusion that presidential records are the private property of the incumbent, whether in or out of office. On the contrary, it would seem that if any proposition collides with constitutional principles it is that the President should be exempted from the legal obligation that rests upon other officials in government to protect and refrain from appropriating to personal use records produced or received into custody by virtue of the exercise of a public office. To assume otherwise would be to vest in the highest office of the land, or in his heirs or descendants, the right to sell, to destroy, to disclose, to refuse to disclose, or otherwise to dispose of documents of the highest official nature involving information that, if improperly, prematurely, or irresponsibly revealed, could not only wreck private lives, but also endanger the security of the nation.

From the founding of the country until 1974, however, the tradition of treating Presidential records as the personal property of a President was never seriously challenged. In enacting the Presidential Libraries Act of 1955,² Congress merely encouraged Presidents to deposit the records of their administrations within Presidential libraries or other Government-operated facilities, but did not require them to do so. That act also allowed Presidents to specify the terms under which access to any papers deposited with the Government would be permitted. Volunteerism is the basis of this existing system with respect to both the preservation and public availability of Presidential records.

In 1974, shortly after his resignation, President Nixon concluded an agreement with Arthur F. Sampson, Administrator of General Services, regarding the disposition of the materials of his Presidency.³ Partly because the agreement provided for eventual destruction of the tape recordings made by President Nixon, Congress objected to the agreement and abrogated it by passing the Presidential Recordings and Materials Preservation Act of 1974.⁴ This act gave custody of the materials to the GSA and banned destruction of the tapes or any other items.

¹ H. G. Jones, "The Records of a Nation," 161-2 (1969).

² 69 Stat. 695 (1955), 44 U.S.C. sec. 2101, 2107-08.

³ H. Rept. No. 93-1507, app. (1974).

⁴ Public Law 93-526, 88 Stat. 1695 (1974).

PRESIDENTIAL RECORDS ACT

P.L. 95-591

[page 6]

The Supreme Court in 1977 upheld the constitutionality of the act in *Nixon v. Administrator of General Services*. Writing for a 7-to-2 majority, Justice Brennan declared:

Congress can legitimately act to rectify the hit-or-miss approach that has characterized past attempts to protect these substantial [Government and public] interests [in the records].⁵

Although the 1974 act concerned itself only with materials of the Nixon administration, the Court's decision upholding the act nonetheless established principles that would govern legislation dealing more broadly with control of and access to Presidential papers. The following areas of the Court's opinion in *Nixon* are relevant to the bill considered in this report:

1. *Separation of Powers*.—The Court found that Congress did not breach the separation of powers in ceding control of the papers to the General Services Administration, inasmuch as the executive branch remained in full control of the Nixon materials with their release permitted only when not barred by some applicable privilege inherent in the Executive branch. Were Congress to give control of the papers to some entity outside the executive branch, the Court might well find such legislation unconstitutional.

2. *Presidential Privilege*.—The Court restated its holding of *United States v. Nixon*⁶ that the President has a qualified privilege in the confidentiality of his communications. The Court further said that the privilege survives the particular President's tenure and may be invoked by him after he has left office. The Court noted, however, that "the privilege is not for the benefit of the President as an individual but for the benefit of the Republic."⁷ As such, the Court continued, "the expectation of confidentiality of Executive communications thus has always been limited and subject to erosion over time after an administration leaves office."⁸

3. *Right of Privacy*.—The Court found that Mr. Nixon's legitimate expectation of privacy in his materials which did not relate to the conduct of his Presidential duties must be viewed in the context of his status as a public figure, his lack of any expectation of privacy in the overwhelming majority of the materials, the important public interest in preservation of the materials, and the limited intrusion of the screening process which would determine which materials were public and which were private. The Court found no merit in the privacy claim. The Court also noted that Nixon, like his predecessors, "made no systematic attempt to segregate official materials from personal or private materials."⁹ It suggested that such segregation would have further minimized the likelihood of any privacy infringement.

⁵ 97 S. Ct. 2795 (1977).

⁶ 418 U.S. 683 (1974).

⁷ 97 S. Ct. at 2793.

⁸ *Id.* at 2794.

⁹ *Id.* at 2796.

LEGISLATIVE HISTORY

P.L. 95-591

[page 7]

4. *First Amendment.*—The Court agreed that involvement in partisan politics is closely protected by the first amendment and that compelled disclosure in itself can seriously infringe on privacy and belief guaranteed by the first amendment. But the Court said a compelling public need that cannot be met in a less restrictive way will override those interests, particularly when the free functioning of national institutions is involved. The Court equated the first amendment claim to the broader privacy claim, implying that the closer the relationship between a President's partisan political activities and his conduct of Presidential duties, the less a Presidential Records Act intrudes on first amendment interests.

5. *Standards of Control and Access.*—The Court repeatedly referred to the specific statutory access guidelines in the 1974 act and the GSA regulations promulgated pursuant to that act as being determinative in the protection of constitutional and legal rights. This supports the view that legislation should include detailed standards of control and access.

6. *Ownership.*—The Court concluded that the question of ownership was irrelevant to the issues before it. Therefore, it reserved judgment on the question of whether, under the existing law, legal title lies with a President or the Government.

DISCUSSION OF HEARINGS

During 4 days of hearings in 1978, the Government Information and Individual Rights Subcommittee received testimony on two proposals dealing with the preservation and availability of a President's papers once the President has left office. Under consideration by the subcommittee were H. R. 10998 and H. R. 11001.¹⁰

Basically, the bills:

Declared official papers of any President whose term began on or after January 20, 1981 to be government property;

Distinguished between official and personal papers;

Imposed records management requirements during the incumbency of future Presidents in order to assure creation and maintenance of the fullest possible documentation of White House activities; and

Provided a scheme for public access to those records at the end of an administration.

H.R. 10998 would have applied Freedom of Information Act standards to govern public access immediately upon conclusion of a President's tenure. H.R. 11001 would have allowed the former President unlimited control over the access restrictions to be placed on his administration's records for 15 years after leaving office.

The principal issue, and the one on which all of the witnesses were in agreement, was that action should be taken by Congress to declare a President's official records the property of the United States. No definitive legal decision is currently available concerning the ownership of these papers. This is largely because, with the exception of the

¹⁰ The Presidential Records Act of 1978: Hearings Before a Subcommittee of the House Committee on Government Operations, 95th Cong., 2d Sess. (Feb. 23 and 28, Mar. 2 and 7, 1978).

PRESIDENTIAL RECORDS ACT

P.L. 95-591

[page 8]

Nixon Presidential materials, the nearly 600-year tradition of Presidents removing their papers has never been seriously challenged. On policy grounds, however, the witnesses were in general harmony that that which is generated, created, produced or kept by a public official in that administration and performance of the powers and duties of a public office belongs to the Government and may not be considered private property of the individual.

The Department of Justice witness testified that action by Congress to prospectively declare a President's official papers public property would not be subject to serious challenge. This is despite the earlier 1974 opinion by Attorney General Saxbe¹¹ that Presidents owned their White House records, which was used to buttress the agreement between President Nixon and General Services Administrator Sampson. The National Study Commission on Records and Documents of Federal Officials, set up in the wake of the dispute over the Nixon papers by title II of Public Law 93-526, strongly recommended legislation to settle the ownership question in favor of the public.¹²

Both bills before the subcommittee shared this premise. The major difference centered around the means of controlling public access to the Presidential records entrusted to the Archivist at the end of an administration. At issue was balancing ready availability of the records against the prospect that premature disclosure might have a "chilling effect" on Presidents and the frankness of advice they could expect from their staffs. Although the chill concept was acknowledged to be a subjective one, with few specifics to point to, it was generally felt that failure to recognize its possibility might eventually diminish the completeness of the written record created and left by Chief Executives.

On the other hand, it was felt important that once having declared the President's papers to be Government records, they be governed to the extent feasible by the same statutory standards controlling Cabinet members' records and all other Government records. Consistency in application of the rules seemed critical.

The majority of the witnesses urged recognition of some period of time after a President leaves office to control access—but to do so in a manner that would not show favoritism to particular Government insiders or scholars. It was urged as well that due consideration be given to the expectation of confidentiality of Executive communications to avoid the prospect of a constitutional infirmity.

Some form of statutory access provisions, rather than leaving the choice entirely up to the former President, was considered necessary to shield the Archivist from unnecessary pressure. The Archivist, it was felt, would be susceptible to possible pressure from the incumbent

¹¹ 43 Op. Attorney General No. 1 (Sept. 6, 1974).

¹² Report of the National Study Commission on Records and Documents of Federal Officials, at 29 (1977). The Commission pointed to the profound problems created by the voluntary nature of the Presidential Libraries Act and the tradition of treating the papers as personal property. The Commission noted in its Memorandum of Findings on Existing Custom or Law, Fact and Opinion (March 31, 1977), at p. 30: "[B]y custom the only files left for an incoming administration, other than those units of the Executive Office covered by the Federal Records Act, have been the Precedent File in Central Files, the Administrative Office files, and the card file in the Records Office. There are numerous instances in which an incoming administration has been handicapped by the lack of records or documents of its predecessor." A number of Presidents or their heirs have retained physical control over significant Presidential materials for varying lengths of time. For example, the files maintained by President Eisenhower's personal secretary were retained by the General at his Gettysburg residence and were deposited in the Eisenhower Library only after his death, nearly 10 years after he left office. Report, at p. 16.

LEGISLATIVE HISTORY

P.L. 95-591

[page 9]

President to release embarrassing and inappropriate material concerning a predecessor or rival, and from the predecessor to withhold materials when no sound policy reason for doing so would be evident. The unlimited right to restrict access would also allow the outgoing President to close availability entirely during a set period; to permit trusted researchers to view the materials to the exclusion of others; and set mandatory restrictions which would be akin to assertions of privilege over the materials against the public.

The hearing record and subsequent communications indicated that 16 of the 18 witnesses felt that a period of 10 years or less in which the President could assert some restrictions would be sufficient to accommodate these policy and legal concerns. The statutory restrictions which the President might impose were modeled after the Freedom of Information Act's exemptions and the restrictions Presidents had traditionally included in the deeds of gifts which had accompanied their donations of papers to the Government.

The Archivist of the United States asked that there be a period of from 3 to 5 years after the President left office before public access would be allowed, to permit adequate time for his staff to arrange, screen, describe and process the huge set of records turned over.

The bill eventually adopted, H.R. 13500, sets a 5 year or less period for such archival processing; allows up to 10 years after leaving office for the ex-President to control access through statutorily-provided restrictions to certain categories of information; and applies the Freedom of Information Act to all Presidential records after archival processing which do not fall within the Presidentially-imposed mandatory restrictions, and to all Presidential records by the end of 10 years.

COST ESTIMATE

H.R. 13500 does not provide any new budget authority; its costs would be financed from future appropriations for the National Archives and Records Service. Although the bill declares certain materials to be Government property and establishes statutory standards for providing public access, no major change is anticipated in the daily operation of the Presidential Library system. The basic purpose of the system—to preserve, describe, and render reference service on Presidential papers and collections in a library setting—remains unchanged.

The committee's cost estimate is consistent with that of the Congressional Budget Office, which appears below. No other cost estimates were received from any Federal agency.

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., July 14, 1978.

HON. RICHARDSON PREYER,
Chairman, Subcommittee on Government Information and Individual Rights, Committee on Government Operations, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed

PRESIDENTIAL RECORDS ACT

P.L. 95-591

[page 10]

H.R. 13364, the Presidential Records Act of 1978, as ordered reported by the House Subcommittee on Government Information and Individual Rights, July 13, 1978.

Based on this review, it appears that no additional cost to the government would be incurred as a result of enactment of this bill.

Sincerely,

ROBERT A. LEVINE,
(For Alice M. Rivlin, Director).

INFLATIONARY IMPACT

H.R. 13500 would have no inflationary impact in the operation of the national economy.

OVERSIGHT FINDINGS

The Congress examined to a limited extent the general treatment of Presidential records in its consideration of the Presidential Records and Recordings Preservation Act of 1974, Public Law 93-526, 88 Stat. 1695, placing the records of the Nixon Presidency in the custody of the U.S. Government (*See* H. Rpt. No. 93-1507), and in subsequent consideration of the regulations issued by the General Services Administration to implement that act. (Committee on House Administration, Hearings on GSA regulations to implement Title I of the Presidential Recordings and Materials Preservation Act, 94th Cong., 1st Sess., May 22, and June 3, 1975; Senate Committee on Government Operations, Hearings on GSA regulations implementing Presidential Recordings and Materials Preservation Act, 94th Cong., 1st Sess., May 13, 1975; House Report Nos. 94-1485 and 94-560; and Senate Report Nos. 94-748, 94-368, and 93-1181).

The committee concluded that, based on its hearings, the current legal situation involving Presidential records and their disposition necessitated the legislative remedies which were incorporated in this act.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

This section provides that the bill may be cited as the "Presidential Records Act of 1978."

SECTION 2. RECORDS MANAGEMENT PRESERVATION AND PUBLIC AVAILABILITY

Subsection (a) of this section amends Title 44 of the United States Code by adding Chapter 22—Presidential Records.

Section 2201 defines terms used in Chapter 22.

(1) "Documentary material" is defined to include all types of written, recorded verbal or visual communications regardless of the form or medium. The definition is an expansion upon the traditional notion of the form a government record may assume, but still relies heavily on the definition of the term "record" in 44 U.S.C. section 301 and the practice that has evolved in the administration of Chapter 29 of that title. To the extent that certain categories of documentary materials are not considered to be records under that chapter, the

LEGISLATIVE HISTORY

P.L. 95-591

[page 11]

same categories of materials generated or received by the President and his aides would generally also fall outside the ambit of what constitutes a record.

(2) "Presidential records" is defined to mean any documentary material connected with the execution of the constitutional, statutory or other official and ceremonial duties of the President, either created or received by the President, his immediate personal staff, or units or individuals within the Executive Office whose function is to advise and assist the President. This includes documentary material involving political activities related to or having a direct effect upon the President's official or ceremonial duties. The term does not include agency records subject to the Freedom of Information Act, stocks of publications, extra copies of documents, or personal records.

The act does not modify the applicability of the Freedom of Information Act (5 U.S.C. Section 552) to White House and Executive Office records of a particular administration during its tenure. That is, it does not redefine the term agency to include entities not now covered by the FOIA. The Conference Report for the 1974 Freedom of Information Act amendments stated that "[w]ith respect to the meaning of the term 'Executive Office of the President' the conferees intend the result reached in *Soucie v. David*, 448 F.2d 1067 (C.A.D.C. 1971). The term is not interpreted as including the President's immediate personal staff or units in the Executive Office whose sole function is to advise and assist the President." H. Rpt. No. 93-1380, 93d Cong., 2d Sess. 13 (1974). (See also Hearings appendix, "Applicability of the Freedom of Information Act to the Executive Office of the President.")

The term "presidential records" is intended, however, to encompass all White House and Executive Office records, except those of a purely private or nonpublic nature, which, as a consequence of the Conference Report language, fall *outside* the scope of the FOIA because they are not agency records. In other words, that which is now subject to FOIA would remain so and that which is *not* now subject to FOIA would be subject to the Presidential Records Act including those provisions of the latter act which in specified circumstances specially apply the FOIA to these non-agency records after a President leaves office.

(3) "Personal Records" is defined to mean those documentary materials which do not relate to the performance of the President's duties. Included in this term are materials involving private political association, and diaries, journals and their functional equivalents that are not utilized in transacting government business.

Defining the types of documentary materials falling within the ambit of either "presidential" or "personal" records is of primary importance to the act. The definitions of these terms must be both mutually exclusive and all encompassing. Furthermore, in order to properly protect a President's privacy interests and his first amendment associational rights there must be a careful delineation of how, why and by whom documents are created and maintained. The term "presidential records" has, therefore, been couched in terms of "materials created or received . . . in the course of conducting activities which relate to or have an effect upon the carrying out or constitutional, statutory or other official or ceremonial duties of the President." The scope of this term is very broad since a great number of what

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PRESIDENTIAL RECORDS ACT

P.L. 95-591

[page 12]

might ordinarily be construed as one's private activities are, because of the nature of the presidency, considered to be of a public nature, i.e., they affect the discharge of his official or ceremonial duties.

Among the lines that would be drawn as a consequence, are: (1) when the President's spouse or other family member or associate serves as a de facto member of the President's staff, the documents which reflect such service are included in the ambit of Presidential records; and (2) almost all of the President's political activities relate to or have a direct effect on his official duties and, as such, records reflecting these activities would be included within the scope of what constitutes a Presidential record.

While the need to protect the President's first amendment right of freedom of political association is clear, an examination of the nature of political activities in which a President becomes involved shows that few are truly private and unrelated to the performance of his duties. For example, political activities of a President might fall into the following categories: public activities as leader of his party; actions taken privately as head of his political party involving the exchange of advice and information affecting the fortunes of his party, particular candidates for office, or his legislative program; actions involving his own campaign and related fund-raising efforts seeking re-election as President; and actions involving the exercise, as a private citizen, of his political preferences by voting or making campaign contributions. Records pertaining to activities in all but the last category would appear generally to fall within the ambit of Presidential records without presenting a serious threat of infringement of the President's first amendment right to free association.

(4) "Archivist" is defined to mean the Archivist of the United States.

(5) "Former President" is defined to mean each President whose Presidential records are subsequently administered under the provisions of this chapter.

SECTION 2202. OWNERSHIP OF PRESIDENTIAL RECORDS

This section provides that the ownership, possession and control of those "documentary materials" which fall within the ambit of "Presidential records" shall be with the United States and shall be administered in accordance with provisions of the chapter.

SECTION 2203. MANAGEMENT AND CUSTODY OF PRESIDENTIAL RECORDS

Subsection (a) provides that an incumbent President shall implement records management practices to assure that the carrying out of the constitutional, statutory and other official and ceremonial duties of the President are adequately documented and that such documentary materials are treated as Presidential records in accordance with the records management provisions of the section.

Subsection (b) provides that, to the extent practicable, documentary materials be categorized and filed as either Presidential or personal records as they are produced or received in the White House or Executive Office. The requirement is expected to involve relatively little burden because the volume of truly personal material is considered minuscule.

LEGISLATIVE HISTORY

P.L. 95-591

[page 13]

Subsection (c) provides that an incumbent President may dispose of those Presidential records he considers to have no administrative, historical, informational or evidentiary value. However, he must first obtain the views of the Archivist and transmit these views, along with the proposed disposal schedule, to the Congress at least 60 legislative days in advance of taking action. This requirement is based on the maxim that "those closest to the making of history are often the least able to judge the significance of their actions."

The section gives the Archivist authority to examine any or all of the records the incumbent President proposes to keep or destroy, in order to properly comment on their value. It is anticipated that the actual examination will only involve a sampling of those records about which there is question. There is no requirement, nor is there an expectation that the Archivist will find it necessary to review each and every document proposed for disposal.

The records schedules to be filed with the Congress are to follow the model of schedules currently filed with the Archivist by Federal agencies pursuant to Title 44. Once a schedule of destruction or maintenance for a particular category of documents has been established, materials falling within the category will continue to be disposed of accordingly unless later amended. The Congress is not given a veto over the disposal schedule filed by the President. The filing is solely for notification though the Congress would have its traditional means of voicing objection to particulars in the proposal directly to the President, or ultimately by passing legislation to block the destruction of certain records.

Subsection (d)(1) provides that immediately upon the conclusion of a President's tenure in office responsibility for custody, control, preservation, and accessibility of Presidential records transfers to the Archivist.

Subsection (d)(2) directs the Archivist to deposit the Presidential records under his control in a Presidential library or other archival depository operated by the United States. The Archivist is authorized to designate a library director (after consulting with the President to whose administration the records pertain) who shall be responsible for the records processing and care. The requirement that the Archivist consult with the former President about the appointment is included to allow the ex-President, as long as he is living, some voice regarding the person who is to administer the access restrictions of his Presidency, particularly during the 10-year maximum period of mandatory Presidential access restrictions. This is not authority for the former President to veto an appointment made or proposed by the Archivist, however.

Subsection (d)(3) authorizes the Archivist to dispose of those Presidential records in his custody which he judges to have no administrative, historical, informational, or evidentiary value. He must, however, publish notice in the *Federal Register* of the proposed disposal and the details of the proposed disposal schedule 60 days in advance of taking action.

Inasmuch as the notice in this case represents a final agency action under 5 U.S.C. section 553, public inspection of the documents slated for disposal is anticipated during the 60 day period. Such inspection is crucial to any effort aimed at enjoining the proposed action.

PRESIDENTIAL RECORDS ACT

P.L. 95-591

[page 14]

SECTION 2204. RESTRICTIONS ON ACCESS TO PRESIDENTIAL RECORDS

Subsection (a) provides that prior to leaving office a President may impose mandatory restrictions of up to 10 years on the public availability of certain types of information contained in the Presidential records of his administration. The types of information to which access may be restricted are set forth in paragraphs 1-6, as follows:

(1) Information authorized by an Executive order to be kept secret in the interest of national defense or foreign policy [The scope of this category is comparable to the (b)(1) exemption of the FOIA];

(2) Information pertaining to Presidential appointments to Federal office [no comparable FOIA exemption exists];

(3) Information which is specifically exempted from disclosure by another statute [The scope of this category is comparable to the (b)(3) exemption of the FOIA];

(4) Trade secrets and privileged or confidential commercial and financial information [The scope of this category is comparable to the (b)(4) exemption of the FOIA];

(5) Confidential communications between the President and/or his advisers [The scope of this category is not comparable to the (b)(5) exemption of the FOIA dealing with inter and intra-agency memorandums and letters. The courts have interpreted the fifth exemption of the Freedom of Information Act to compel the release of all policy and advice memoranda which formed the basis for an agency decision once the decision has been made. Under the provision in this act, on the other hand, the President may bar the release of pre-decisional advice submitted in confidence by or between his official and unofficial advisers many years after a decision was reached. However, these confidential communications would be publicly made available upon the termination of the mandatory restrictive period set by the former President, unless an appropriate FOIA exemption other than (b)(5) were available. This is because the material falling within the scope of the provision here, § 2205(a)(5) of the Presidential Records Act, would not qualify as an agency record for protection under the FOIA's exemption for inter- and intra-agency memorandums. As noted elsewhere, the term agency is defined for FOIA purposes as not "including the President's immediate staff or units in the Executive office whose sole function is to advise and assist the President."]; and

(6) Information the disclosure of which would result in a clearly unwarranted invasion of personal privacy [The scope of this category is comparable to the (b)(6) exemption of the FOIA].

These are the only categories of records of his administration to which the outgoing President may restrict public access. He is given no authority to impose additional restraints beyond those itemized in subsection (a).

The authority granted to the President under this act to establish mandatory restrictions of up to 10 years on public disclosure of certain types of information should not be construed as a reflection of the Congress' views on the extent to which a former President may assert a constitutionally based privilege. The selection of the 10-year period represents an attempt to formulate a statutory access

LEGISLATIVE HISTORY

P.L. 95-591

[page 15]

policy which balances the objectives of assuring early public availability with the concern that the premature disclosure of sensitive presidential records will eventually result in less candid advice being placed on paper and a depleted historical record. The President was not given this authority because of any right he had in the data, but to accommodate the practical concerns about possible chill on advice. The restrictions provided follow closely the restrictive categories chosen by previous Presidents in drawing up donor agreements entrusting the records of their administration to the government.

Subsection (b)(1) requires that the Archivist identify and limit access to records in accordance with restrictions imposed by a President prior to his leaving office. The Archivist's authority to limit access in accordance with mandatory Presidential restrictions ends upon (A)(i) consent by the former President to lift a restriction he had previously imposed; or (ii) the expiration of the time periods of up to 10 years designated by the President under subsection (a) for certain categories of data.

It is anticipated that the Archivist will process the former administration's papers in a manner roughly similar to current practices. Detailed processing will involve going through the records page by page and applying to the information contained in them the restrictive categories chosen by the former head of state. Where only a portion of a record is determined to be exempt from disclosure, the record must be disclosed with the reasonably segregable restricted portion deleted. This follows the segregability requirement contained in the Freedom of Information Act, 5 U.S.C. 552(b). (See description of the requirement in S. Rept. No. 93-854, Amending the Freedom of Information Act, 93d Cong., 2d Sess., May 16, 1974, at 31.) It is also expected that the Archivist will follow past practice in applying the restrictive categories in former Presidents' deeds of gift, and negotiate with the ex-President or his representative on an on-going basis to lessen the number of years chosen for particular mandatory restriction categories, to eliminate entire categories, or to permit release of particular records otherwise restricted, when there is no longer a policy reason to justify continued withholding. This is similar to the Attorney General's May 5, 1977, policy instructions to agency Freedom of Information Act officers that they release materials even though they fall within one of the FOIA's legal exemptions unless demonstrable harm to private or public interests can be shown. [The Attorney General's letter is reproduced in 123 Congressional Record S7763 (daily ed. May 17, 1977) (remarks of Sen. Kennedy).] The distinction here is that the Archivist has no authority to release information which falls within restrictive categories chosen by the former President without the former President's consent.

Under subsection (b)(1)(B), a third means for the termination of mandatory Presidential restrictions is provided whereby the Archivist determines, during the term of a restriction, that information falling within the restricted category has been placed in the public domain through publication by the former President or his aides or associates. The word "associates" is meant to include unofficial advisers to the President.

The termination of a mandatory Presidential restriction, regardless of the cause, does not render a previously restricted record automatically available to the public. It simply means that the record in question

PRESIDENTIAL RECORDS ACT

P.L. 95-591

[page 16]

would be subject to availability under the Freedom of Information Act.

Subsection (b)(2) provides that for those records which do not contain information falling within a restriction imposed by the President under subsection (a), the Archivist is not obligated to make them available to the public until the earlier of (A) 5 years from the date on which he obtained the records, or (B) when he completes processing all of the Presidential records he has assumed custody of from the earlier administration, or logically distinguishable subunits of those files.

Subsection (b)(3) establishes that the final determination as to whether particular records fall within a mandatory Presidential restriction is to be made by the Archivist. Although the subsection provides for consultation with the former President in this process, current practice is expected to continue whereby the former President is consulted in situations requiring his personal assessment of the nature of a particular document, or when there is negotiation over the continued validity of certain restrictions he has imposed. The actual identification and segregation of materials pursuant to the restrictions is left to the Archivist. The subsection also provides that when a Presidential restriction is in effect, a determination by the Archivist regarding access is not subject to judicial review, except where initiated by the former President. However, the Archivist is directed to establish an administrative appeal procedure whereby individuals denied access to records on the basis of their being Presidentially-restricted will receive a written determination by the Archivist within 30 working days of receipt of appeal. The Archivist has already provided an administrative appeal mechanism consistent in most respects with the requirement here. See General Services Administration Handbook, "Presidential Libraries," NAR P 1856.1 CHGE 8 (February 16, 1977) at chapter 6.12.

Subsection (c) provides that when records are no longer subject to withholding under a mandatory Presidential restriction, and when the grace period provided for archival processing of unrestricted records has ended, the records shall be administered in accordance with the Freedom of Information Act.

For example, a record involving the Presidential appointment of an individual to Federal office might be subject to mandatory withholding if a President so chose; however, once the mandatory restriction was no longer in effect, the same document, or parts thereof, could only be withheld under existing FOIA exemptions. Similarly, a law enforcement investigative record that contained no information subject to being withheld under the President's mandatory restrictions could be withheld from the very outset under the seventh exemption of the FOIA.

While Presidential records are not currently covered by the Freedom of Information Act, they effectively become agency records for the purposes of this provision in applying FOIA requirements to them. As discussed above, however, since Presidential records as defined by this act are not actually agency records under the FOIA, they may not be withheld from public release by the Archivist under the fifth exemption of the Freedom of Information Act, dealing with inter- and intra-agency records.

LEGISLATIVE HISTORY

P.L. 95-591

[page 17]

Subsection (d) provides that upon the death or disability of a President or former President any discretion or authority he may have had under the chapter will be exercised by the Archivist, unless the President or former President has specifically provided otherwise. Written notice of the fact the President has so provided must be given to the Archivist in advance of occurrence of death or disability.

However, since the selection by the President of mandatory restrictions on access must take place "prior to the conclusion of his term in office" under section 2204(a), this authority may not be delegated to the Archivist or to any other individual to exercise after the President has died or left office under the terms of the 25th amendment. In situations where the President has not chosen access restrictions while still in office, therefore, the Freedom of Information Act would be the sole governance on public availability of the Presidential records of that administration.

SECTION 2205. EXCEPTIONS TO RESTRICTED ACCESS

This section sets forth the parties to whom, and situations in which, access will be granted to otherwise restricted Presidential records. They would be available:

(1) To the Archivist and his staff for the purpose of archival processing;

(2) Subject to any rights, defenses and privileges which the United States or any party may invoke, (A) under subpoena or other judicial process issued in connection with any civil or criminal investigation or proceeding. (It is anticipated that when the substance of a record sought under this provision is particularly sensitive, the court will exercise discretion and review the document *in camera* to determine its relevance.); (B) to the incumbent President when needed for official business and the information was not available from other sources; and (C) to either House of Congress or, to the extent within its jurisdiction, any committee or subcommittee thereof, if such records contained information needed for the conduct of its business was not otherwise available. (This provision is not intended to modify the legal and constitutional rights of parties concerning the availability of Presidential or Executive branch records.); and

(3) To the former President to whose administration the records pertain, or to his designated representative.

SECTION 2206. REGULATIONS

This section authorizes the Archivist to promulgate such regulations as necessary to carry out the provisions of the new chapter. Specifically required are regulations addressing the requirement of public notice for proposed destruction of Presidential records held by the Archivist, and notice to the former President when access is sought under section 2205(2) to materials he has restricted.

It should be noted that no requirement of formal notice or consultation with the former President has been included for access to materials beyond the 10-year period of mandatory restrictions. Just as the power of a former Chief Executive to assert a claim of privilege

PRESIDENTIAL RECORDS ACT

P.L. 95-591

[page 18]

dissipates over time once he has left, so too should the obligation of actual notice to the ex-President in advance of disclosure of previously protected Presidential records. While predisclosure notice is not required, however, the act does not preclude notice or consultation once the papers become subject to FOIA. The practice which has grown around the Freedom of Information Act's implementation recognizes the authority of agencies to consult with interested parties prior to FOIA disclosures. It is anticipated that since the outgoing President has had a hand in selecting the library director overseeing his administration's collection, consultation will occur.

SECTION 2207. VICE PRESIDENTIAL RECORDS

This section establishes that the Vice President has the same authority and responsibility with respect to his records, as does the President with respect to Presidential records. It is possible, therefore, that the Vice President may designate different access provisions to his records than those specified by the President for his.

The authority and responsibility of the Archivist also applies with respect to Vice Presidential records. It is expected that the Vice Presidential records of an individual who subsequently becomes President will be deposited with the records of his administration. However, the Archivist is vested with discretion as to the facility in which the papers will be placed. The Vice Presidential records of an individual who does not subsequently serve as President might be deposited by the Archivist in (1) the Presidential library containing the records of the administration under which he served as Vice President, (2) another Federal depository, or (3) a non-Federal depository, upon determination that such placement is in the public interest. This discretion is not intended to authorize the establishment of separate Federal depositories for Vice Presidential records, however.

Subsection (b)(1) of the bill conforms the table of chapters of title 44 by inserting reference to new chapter 22—Presidential records.

Subsections (b)(2) and (3) conform provisions in sections 2107 and 2108(c) of Title 44, respectively.

SECTION 3. EFFECTIVE DATE

This section provides that the act will be effective with respect to Presidential records created or received during a Presidential term of office beginning on or after January 20, 1981. Article II, section 1 of the Constitution provides that "he [the President] shall hold his office during a term of four years." Therefore the individual who takes the oath of office on January 20, 1981, is deemed to take office on that date, regardless of his previous service in that office.

* * * * *

PUBLIC LAW 98-497 [S. 905]; October 19, 1984
NATIONAL ARCHIVES AND RECORD ADMINISTRATION
ACT OF 1984

For Legislative History of Act, see Pamphlet No. 10A

An Act to establish the National Archives and Records Administration, and for other purposes.

National
Archives and
Records
Administration
Act of 1984.
44 USC 101 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Archives and Records Administration Act of 1984".

TITLE I—ESTABLISHMENT OF AN INDEPENDENT
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

ESTABLISHMENT

SEC. 101. Section 2102 of title 44, United States Code, is amended to read as follows:

“§ 2102. Establishment

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

ORGANIZATION AND GENERAL AUTHORITY

SEC. 102. (a) Chapter 21 of title 44, United States Code, is amended—

44 USC
2107-2118.

- (1) by redesignating sections 2103 through 2114 as sections 2107 through 2118, respectively; and
- (2) by inserting after section 2102 the following new sections:

44 USC 2103.

“§ 2103. Officers

President of U.S.

“(a) The Archivist of the United States shall be appointed by the President by and with the advice and consent of the Senate. The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist. The Archivist may be removed from office by the President. The President shall communicate the reasons for any such removal to each House of the Congress.

5 USC 5314.

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

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

office of the Archivist, the Deputy Archivist shall act as Archivist until an Archivist is appointed under subsection (a).

"§ 2104. Administrative provisions

44 USC 2104.
Regulations.

"(a) The Archivist shall prescribe such regulations as the Archivist deems necessary to effectuate the functions of the Archivist, and the head of each executive agency shall cause to be issued such orders and directives as such agency head deems necessary to carry out such regulations.

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

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

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

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

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

5 USC 5703.

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

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

"§ 2105. Personnel and services

44 USC 2105.

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

5 USC 2101.

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

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

10 USC 973.

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

Voluntarism.

44 USC 2106.

"§ 2106. Reports to Congress

"The Archivist shall submit to the Congress, in January of each year and at such other times as the Archivist finds appropriate, a report concerning the administration of functions of the Archivist, the Administration, the National Historical Publications and Records Commission, and the National Archives Trust Fund. Such report shall describe—

"(1) program administration and expenditures of funds, both appropriated and nonappropriated, by the Administration, the Commission, and the Trust Fund Board;

"(2) research projects and publications undertaken by Commission grantees, and by Trust Fund grantees, including detailed information concerning the receipt and use of all appropriated and nonappropriated funds;

"(3) by account, the moneys, securities, and other personal property received and held by the National Archives Trust Fund Board, and of its operations, including a listing of the purposes for which funds are transferred to the National Archives and Records Administration for expenditure to other Federal agencies; and

"(4) the matters specified in section 2904(c)(8) of this title."

(b) Section 2101 of title 44, United States Code, is amended—

(1) by designating the two indented paragraphs as paragraphs (1) and (2), respectively;

(2) by striking out "sections 2103-2113 of this title" in the matter preceding the first such paragraph and inserting in lieu thereof "this chapter";

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

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

"(3) 'Archivist' means the Archivist of the United States appointed under section 2103 of this title; and

"(4) 'Administration' means the National Archives and Records Administration established under section 2102 of this title."

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

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

"Sec.

"2101. Definitions.

"2102. Establishment.

"2103. Officers.

"2104. Administrative provisions.

"2105. Personnel and services.

"2106. Reports to Congress.

"2107. Acceptance of records for historical preservation.

"2108. Responsibility for custody, use, and withdrawal of records.

"2109. Preservation, arrangement, duplication, exhibition of records.

"2110. Servicing records.

"2111. Material accepted for deposit.

"2112. Presidential archival depository.

"2113. Depository for agreements between States.

"2114. Preservation of motion-picture films, still pictures, and sound recordings.

"2115. Reports; correction of violations.

"2116. Legal status of reproductions; official seal; fees for copies and reproductions.

"2117. Limitation on liability.

"2118. Records of Congress."

Post, p. 2288.

Ante, p. 2280.

Ante, p. 2280.

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

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

TRANSFERS

SEC. 103. (a) The National Archives and Records Service of the General Services Administration is transferred to the National Archives and Records Administration.

44 USC 2102
note.

(b)(1) All functions which were assigned to the Administrator of General Services by section 6 of Executive Order No. 10530 of May 11, 1954 (19 Fed. Reg. 2709; relating to documents and the Administrative Committee of the Federal Register), and by Executive Order Numbered 11440 of December 11, 1968 (33 Fed. Reg. 18475; relating to supplemental use of Federal exhibits and displays), shall be exercised by the Archivist of the United States.

3 USC 301 note.

44 USC 2105
note.

(2) All functions pertaining to the maintenance, operation, and protection of a Presidential archival depository which were assigned to the Administrator of General Services by the Act of September 6, 1965 (Public Law 89-169, 79 Stat. 648), relating to the Lyndon Baines Johnson Presidential Archival Depository, and by the Act of August 27, 1966 (Public Law 89-547, 80 Stat. 370) and the Act of May 26, 1977 (Public Law 95-84, 91 Stat. 174), relating to the John Fitzgerald Kennedy Library, shall be exercised by the Archivist of the United States.

44 USC 2108
note.

44 USC 2108
note.

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

(d) Prior to the appointment and confirmation of an individual to serve as Archivist of the United States under section 2103 of title 44, United States Code, the individual holding the office of Archivist of the United States on the day before the effective date of this Act may serve as Archivist under such section, and while so serving shall be compensated at the rate provided under subsection (b) of such section.

Ante, p. 2280.

TRANSFER OF PERSONNEL

SEC. 104. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions and agencies transferred by this Act and the amendments made by this Act, subject to section 1531 of title 31, United States Code, are transferred to the Archivist for appropriate allocation. Pursuant to the preceding sentence, there shall be transferred to the Archivist for appropriate allocation (1) for the remainder of fiscal year 1985, an amount equal to not less than \$2,760,000 (adjusted to reflect actual salaries and benefits of transferred employees and other costs) from the unexpended balances of the fiscal year 1985 funds and appropriations available to the General Services Administration, and (2) 115.5 full-time equivalent employee positions, of which not less than 30 percent shall be vacant. Unexpended funds transferred pursuant to this subsection shall be used

44 USC 2102
note.

only for the purposes for which the funds were originally authorized and appropriated.

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

SAVINGS PROVISIONS

44 USC 2102
note.

SEC. 105. (a) All orders, determinations, rules, regulations, grants, contracts, agreements, permits, licenses, privileges, and other actions which have been issued, granted, made, undertaken, or entered into in the performance of any function transferred by this Act or the amendments made by this Act shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by any authorized official, a court of competent jurisdiction, or by operation of law.

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

Regulations.

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

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

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

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

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

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

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

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

REFERENCE

SEC. 106. With respect to any functions transferred by this Act or by an amendment made by this Act and exercised after the effective date of this Act, reference in any other Federal law to the office of the Archivist of the United States as in existence on the date before the effective date of this Act, or the National Archives and Records Service of the General Services Administration, or any office or officer thereof, shall be deemed to refer to the Archivist or the Administration.

44 USC 2102
note.

CONFORMING AMENDMENTS

SEC. 107. (a)(1) Section 2107 of title 44, United States Code, as redesignated by section 102(a)(1), is amended—

Ante, p. 2280.

(A) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist";

(B) by striking out "or of the Congress" in paragraph (1) and inserting in lieu thereof "the Congress, the Architect of the Capitol, or the Supreme Court";

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

(D) by striking out "section 2107" in paragraph (4) and inserting in lieu thereof "section 2111".

(2) Section 2108 of such title, as redesignated by section 102(a)(1), is amended—

44 USC 2108.

(A) by striking out "the Administrator, the Archivist of the United States, and to the employees of the General Services Administration" in subsection (a) and inserting in lieu thereof "the Archivist and to the employees of the National Archives and Records Administration";

(B) by striking out "and in consultation with the Archivist of the United States" in such subsection;

(C) by striking out "the Archivist and" in the fifth sentence of such subsection;

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

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

(3) Section 2109 of such title, as redesignated by section 102(a)(1), is amended—

44 USC 2109.

- (A) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist"; and
(B) by inserting "and Records" immediately following "National Historical Publications".
- 44 USC 2110.
Ante, p. 2280. (4) Section 2110 of such title, as redesignated by section 102(a)(1), is amended by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist".
- 44 USC 2111. (5) Section 2111 of such title, as redesignated by section 102(a)(1), is amended—
(A) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist"; and
(B) by striking out "Administrator" and inserting in lieu thereof "Archivist".
- 44 USC 2112. (6) Section 2112 of such title, as redesignated by section 102(a)(1), is amended—
(A) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist";
(B) by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist"; and
(C) by striking out "section 2107" each place it appears and inserting in lieu thereof "section 2111".
- 44 USC 2113,
2114, 2117. (7) Sections 2113, 2114, and 2117 of such title, as redesignated by section 102(a)(1), are amended by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist".
- 44 USC 2115. (8) Section 2115 of such title, as redesignated by section 102(a)(1), is amended to read as follows:
"§ 2115. Reports; correction of violations
"(a) In carrying out their respective duties and responsibilities under chapters 21, 25, 29, 31, and 33 of this title, the Archivist and the Administrator may each obtain reports from any Federal agency on such agency's activities under such chapters.
"(b) When either the Archivist or the Administrator finds that a provision of any such chapter has been or is being violated, the Archivist or the Administrator shall (1) inform in writing the head of the agency concerned of the violation and make recommendations for its correction; and (2) unless satisfactory corrective measures are inaugurated within a reasonable time, submit a written report of the matter to the President and the Congress."
- 44 USC 2101,
2501, 2901, 3101,
3301. (9) Section 2116 of such title, as redesignated by section 102(a)(1), is amended—
(A) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist"; and
(B) by striking out "Administrator" and inserting in lieu thereof "Archivist".
- 44 USC 2116.
Ante, p. 2280. (10) Section 2118 of such title, as redesignated by section 102(a)(1), is amended by striking out "General Services Administration" and inserting in lieu thereof "National Archives and Records Administration".
(b)(1) Sections 710, 711, and 729 of title 44, United States Code, are amended by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States".
- 44 USC 1501. (2) Section 1501 of such title is amended—
(A) by striking out the period at the end of the last paragraph and inserting in lieu thereof a semicolon and "and"; and
(B) by adding at the end thereof the following new paragraph:

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

(3) Section 1502 of such title is amended by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States". 44 USC 1502.

(4) Section 1503 of such title is amended— 44 USC 1503.

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

(B) by striking out "General Services Administration" and inserting in lieu thereof "National Archives and Records Administration"; and

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

(5) Section 1506 of such title is amended by striking out the third sentence. 44 USC 1506.

(6) Section 1714 of such title is amended by striking out "General Services Administration" and inserting in lieu thereof "National Archives and Records Administration". 44 USC 1714.

(7) Sections 2204(c)(1) and 2205 of such title are amended by striking out "National Archives and Records Service of the General Services Administration" and inserting in lieu thereof "National Archives and Records Administration". 44 USC 2204, 2205.

(8) Section 2301 of such title is amended by striking out the second sentence thereof. 44 USC 2301.

(9) Section 2501 of such title is amended by striking out the last sentence thereof. 44 USC 2501.

(10) Section 2504 of such title is amended— 44 USC 2504.
97 Stat. 1323.

(A) by striking out "Administrator of General Services" in the third sentence of subsection (a) and inserting in lieu thereof "Archivist of the United States";

(B) by inserting "and Records" after "Historical Publications" in the fourth sentence of such subsection;

(C) by striking out "Administrator" in the fourth sentence of such subsection and inserting in lieu thereof "Archivist";

(D) by striking out "transmit to the Administrator" in the last sentence of such subsection and inserting in lieu thereof "transmit to the President and the Congress"; and

(E) by striking out "General Services Administration" in subsection (b) and inserting in lieu thereof "National Archives and Records Administration".

(11) Section 2506 of such title is amended— 44 USC 2506.

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

(B) by striking out "Administrator" in subsection (b) and inserting in lieu thereof "Archivist".

(12)(A) Section 2507 of such title is repealed. Repeal.

(B) The table of sections for chapter 25 of such title is amended by striking out the item relating to section 2507. 44 USC 2507.

(13) Section 2901 of such title is amended— 44 USC 2901.

(A) by striking out "27," in the matter preceding paragraph (1);

(B) by inserting before the semicolon at the end of paragraph (2) the following: "in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations";

(C) by striking out "Administrator" each place it appears in paragraphs (6), (9), and (11) and inserting in lieu thereof "Archivist"; and

(D) by striking out paragraphs (12) and (13) and inserting in lieu thereof the following:

"(12) the term 'Archivist' means the Archivist of the United States;

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

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

"(15) the term 'Administrator' means the Administrator of General Services."

44 USC 2902.

(14) Section 2902(7) of such title is amended by inserting "or the Archivist" after "Administrator".

44 USC 2903,
2907.

(15)(A) Sections 2903 and 2907 of such title are amended by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist".

44 USC 2905,
2908, 2909.

(B) Sections 2905, 2908, and 2909 of such title are amended by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist".

44 USC 2904.

(16) Section 2904 of such title is amended to read as follows:

"§ 2904. General responsibilities for records management

"(a) The Archivist shall provide guidance and assistance to Federal agencies with respect to ensuring adequate and proper documentation of the policies and transactions of the Federal Government and ensuring proper records disposition.

"(b) The Administrator shall provide guidance and assistance to Federal agencies to ensure economical and effective records management by such agencies.

"(c) In carrying out their responsibilities under subsection (a) or (b), respectively, the Archivist and the Administrator shall each have the responsibility—

"(1) to promulgate standards, procedures, and guidelines with respect to records management and the conduct of records management studies;

"(2) to conduct research with respect to the improvement of records management practices and programs;

"(3) to collect and disseminate information on training programs, technological developments, and other activities relating to records management;

"(4) to establish such interagency committees and boards as may be necessary to provide an exchange of information among Federal agencies with respect to records management;

"(5) to direct the continuing attention of Federal agencies and the Congress on the need for adequate policies governing records management;

"(6) to conduct records management studies and, in his discretion, designate the heads of executive agencies to conduct records management studies with respect to establishing sys-

Studies.

tems and techniques designed to save time and effort in records management;

"(7) to conduct inspections or surveys of the records and the records management programs and practices within and between Federal agencies;

"(8) to report to the appropriate oversight and appropriations committees of the Congress and to the Director of the Office of Management and Budget in January of each year and at such other times as the Archivist or the Administrator (as the case may be) deems desirable—

"(A) on the results of activities conducted pursuant to paragraphs (1) through (7) of this section,

"(B) on evaluations of responses by Federal agencies to any recommendations resulting from inspections or studies conducted under paragraphs (6) and (7) of this section, and

"(C) to the extent practicable, estimates of costs to the Federal Government resulting from the failure of agencies to implement such recommendations.

"(d) In addition, the Administrator, in carrying out subsection (b), shall have the responsibility to promote economy and efficiency in the selection and utilization of space, staff, equipment, and supplies for records management."

(17) Section 2906 of such title is amended to read as follows:

Report.

44 USC 2906.

"§ 2906. Inspection of agency records

"(a)(1) In carrying out their respective duties and responsibilities under this chapter, the Administrator of General Services and the Archivist (or the designee of either) may inspect the records or the records management practices and programs of any Federal agency solely for the purpose of rendering recommendations for the improvement of records management practices and programs. Officers and employees of such agencies shall cooperate fully in such inspections, subject to the provisions of paragraphs (2) and (3) of this subsection.

"(2) Records, the use of which is restricted by law or for reasons of national security or the public interest, shall be inspected, in accordance with regulations promulgated by the Administrator and the Archivist, subject to the approval of the head of the agency concerned or of the President. The regulations promulgated by the Administrator and the Archivist under this paragraph shall, to the extent practicable, be identical.

Regulations.

"(3) If the Administrator or the Archivist (or the designee of either) inspects a record, as provided in this subsection, which is contained in a system of records which is subject to section 552a of title 5, such record shall be—

5 USC 552a.

"(A) maintained by the Administrator, the Archivist, or such designee as a record contained in a system of records; or

"(B) deemed to be a record contained in a system of records for purposes of subsections (b), (c), and (i) of section 552a of title 5.

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

(18)(A) The heading of chapter 29 of title 44, United States Code, is amended to read as follows:

44 USC prec.
2901.

**"CHAPTER 29—RECORDS MANAGEMENT BY THE
ARCHIVIST OF THE UNITED STATES AND BY
THE ADMINISTRATOR OF GENERAL SERV-
ICES".**

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

**"29. Records Management by the Archivist of the United States and by the
Administrator of General Services..... 2901".**

44 USC 3102.

(19) Section 3102 of such title is amended—

(A) by inserting "and the Archivist" after "Administrator of General Services" in paragraph (2);

(B) by striking out "sections 2101-2118" and inserting in lieu thereof "sections 2101-2117"; and

(C) by striking out "2701,".

44 USC 3103.

(20) Section 3103 of such title is amended by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist".

44 USC 3104,
3106.

(21) Sections 3104 and 3106 of such title are amended—

(A) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist"; and

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

44 USC 3105.

(22) Section 3105 of such title is amended by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist".

44 USC 3302,
3303, 3308, 3311.

(23) Sections 3302, 3303, 3308, and 3311 of such title are amended by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist".

44 USC 3303a,
3310.

(24) Sections 3303a and 3310 of such title are amended—

(A) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist"; and

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

44 USC 3303.

(25)(A) The heading of section 3303 of such title is amended to read as follows:

"§ 3303. Lists and schedules of records to be submitted to the Archivist by head of each Government agency".

44 USC 3303a.

(B) The heading of section 3303a of such title is amended to read as follows:

"§ 3303a. Examination by Archivist of lists and schedules of records lacking preservation value; disposal of records".

44 USC 3311.

(C) The heading of section 3311 of such title is amended to read as follows:

"§ 3311. Destruction of records outside continental United States in time of war or when hostile action seems imminent; written report to Archivist".

(D) The table of sections for chapter 33 of such title is amended by striking out "Administrator of General Services" in the items pertaining to sections 3303, 3303a, and 3311 and inserting in lieu thereof "Archivist".

Oct. 19

ARCHIVES AND RECORD ACT

P.L. 98-497
Sec. 107

(26) Section 3504(e) of such title is amended by inserting "the Archivist of the United States and" before "the Administrator of General Services" each place it appears in paragraphs (1) and (2).

44 USC 3504.

(27) Section 3513 of such title is amended by inserting "and the Archivist of the United States" after "Administrator of General Services".

44 USC 3513.

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

44 USC 2111
note.

(A) by striking out "section 2107" each place it appears and inserting in lieu thereof "section 2111";

(B) by striking out "Administrator of General Services (hereinafter in this title referred to as the 'Administrator')" and inserting in lieu thereof "Archivist of the United States (hereinafter referred to as the 'Archivist')"; and

(C) by striking out "Administrator" and inserting in lieu thereof "Archivist".

(2) Section 102 of such Act is amended—

44 USC 2111
note.

(A) by striking out "section 2107" and inserting in lieu thereof "section 2111", and

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

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

44 USC 2111
note.

(4) Section 104 of such Act is amended—

44 USC 2111
note.

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

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

"(b) The regulations proposed by the Archivist in the report required by subsection (a) shall not take effect until the expiration of the first period of 60 calendar days of continuous session of the Congress after the date of the submission of such regulations to each House of the Congress. For the purposes of this subsection, continuity of session is broken only by an adjournment of Congress sine die, but the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded."

Regulations.

(d) Sections 106a, 106b, 112, 113, and 201 of title 1, United States Code, are amended by striking out "Administrator of General Services" and "General Services Administration" each place they appear and inserting in lieu thereof "Archivist of the United States" and "National Archives and Records Administration", respectively.

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

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

3 USC 6.

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

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

3 USC 12.

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

3 USC 1 *et seq.*

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

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

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

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

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

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

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

"Archivist of the United States."

(i) Section 4(5) of the Act of October 25, 1951 (25 U.S.C. 199a) is amended by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States".

DEFINITIONS

44 USC 2102
note.

SEC. 108. For purposes of sections 103 through 106—

(1) the term "Archivist" means the Archivist of the United States appointed under section 2103 of title 44, United States Code, as added by section 102(a)(2) of this Act;

(2) the term "Administration" means the National Archives and Records Administration established under section 2102 of such title (as amended by section 101 of this Act); and

(3) the term "function" includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

Ante, p. 2280.

Ante, p. 2280.

TITLE II—ADMINISTRATIVE PROVISIONS

COPYING AND AUTHENTICATING CHARGES

Ante, p. 2280.

SEC. 201. Section 2116(c) of title 44, United States Code (as redesignated by section 102(a)), is amended to read as follows:

"(c) The Archivist may charge a fee set to recover the costs for making or authenticating copies or reproductions of materials transferred to his custody. Such fee shall be fixed by the Archivist at a level which will recover, so far as practicable, all elements of such costs, and may, in the Archivist's discretion, include increments for the estimated replacement cost of equipment. Such fees shall be paid into, administered, and expended as a part of the National

Archives Trust Fund. The Archivist may not charge for making or authenticating copies or reproductions of materials for official use by the United States Government unless appropriations available to the Archivist for this purpose are insufficient to cover the cost of performing the work."

NATIONAL ARCHIVES TRUST FUND BOARD

SEC. 202. (a) Chapter 23 of title 44, United States Code, is amended by striking out sections 2302 through 2305 and inserting in lieu thereof the following:

"§ 2302. Authority of the Board; seal; services; bylaws; rules; regulations; employees

44 USC 2302.

"In carrying out the purposes of this chapter, the Board—

"(1) may adopt an official seal, which shall be judicially noticed;

"(2) may utilize on a reimbursable basis the services and personnel of the National Archives and Records Administration necessary (as determined by the Archivist) to assist the Board in the administration of the trust fund, and in the preparation and publication of special works and collections of sources and preparation, duplication, editing, and release of historical photographic materials and sound recordings, and may utilize on a reimbursable basis the services and personnel of other Federal agencies for such purposes;

"(3) may adopt bylaws, rules, and regulations necessary for the administration of its functions under this chapter; and

"(4) may, subject to the laws and regulations governing appointments in the civil service, appoint and fix the compensation of such personnel as may be necessary to carry out its functions.

"§ 2303. Powers and obligations of the Board; liability of members

44 USC 2303.

"Except as otherwise provided by this chapter, the Board shall have all the usual powers and obligations of a trustee with respect to property and funds administered by it, but the members of the Board are not personally liable, except for malfeasance.

"§ 2304. Compensation of members; availability of trust funds for expenses of the Board

44 USC 2304.

"Compensation may not be paid to the members of the Board for their services as members. Costs incurred by the Board in carrying out its duties under this chapter, including the obligations necessarily incurred by the members of the Board in the performance of their duties and the compensation of persons employed by the Board, shall be paid by the Archivist of the United States from trust funds available to the Board for this purpose. The Board, by resolution, may authorize the transfer of funds (including the principal or interest of a gift or bequest) to the National Archives and Records Administration to be expended on an archival or records activity approved by the Board or to accomplish the purpose of a gift or bequest.

"§ 2305. Acceptance of gifts

44 USC 2305.

"The Board may solicit and accept gifts or bequests of money, securities, or other personal property, for the benefit of or in connec-

tion with the national archival and records activities administered by the National Archives and Records Administration. Moneys that are for deposit into the trust fund shall be deposited within 10 working days of the receipt thereof."

(b) Section 2307 of title 44, United States Code, is amended to read as follows:

"§ 2307. Trust fund account; disbursements; sales of publications and releases

"The income from trust funds held by the Board and the proceeds from the sale of securities and other personal property, as and when collected, shall be covered into the Treasury of the United States in a trust fund account to be known as the National Archives Trust Fund, subject to disbursement on the basis of certified vouchers of the Archivist of the United States (or his designee) for activities approved by the Board and in the interest of the national archival and records activities administered by the National Archives and Records Administration, including but not restricted to the preparation and publication of special works, and collections of sources and the preparation, duplication, editing, and release of historical photographic materials and sound recordings. The Archivist may sell publications and releases authorized by this section and paid for out of the income derived from trust funds at a price which will cover their cost, plus 10 percent, and moneys received from these sales shall be paid into, administered, and expended as part of the National Archives Trust Fund."

(c) The table of sections for chapter 23 of title 44, United States Code, is amended by striking out the item pertaining to section 2302 and inserting in lieu thereof the following:

"2302. Authority of the Board; seal; services; bylaws; rules; regulations; employees."

SECURITY OF RECORDS

SEC. 203. (a) Section 2905(a) of title 44, United States Code, is amended by adding at the end thereof the following new sentence: "In any case in which the head of the agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made."

(b) Section 3106 of title 44, United States Code, is amended by adding at the end thereof the following new sentence: "In any case in which the head of the agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made."

PUBLIC NOTICE

SEC. 204. Section 3303a(a) of title 44, United States Code, is amended by inserting ", after publication of notice in the Federal Register and an opportunity for interested persons to submit comment thereon" immediately after "may" in the second sentence thereof.

Federal
Register,
publication.

Oct. 19

ARCHIVES AND RECORD ACT

P.L. 98-497
Sec. 302

TITLE III—GENERAL PROVISIONS

EFFECTIVE DATE

SEC. 301. The provisions of this Act (including the amendments made by this Act) shall be effective on April 1, 1985.

44 USC 2102
note.

SPENDING AUTHORITY

SEC. 302. Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974) which is provided under this Act shall be effective for any fiscal year only to the extent or in such amounts as provided in appropriations Acts.

44 USC 2102
note.
2 USC 651.

Approved October 19, 1984.

LEGISLATIVE HISTORY—S. 905 (H.R. 3987):

HOUSE REPORTS: No. 98-1124 (Comm. of Conference) and No. 98-707 accompanying H.R. 3987 (Comm. on Government Operations).

SENATE REPORT No. 98-373 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 130 (1984):

June 21, considered and passed Senate.

Aug. 2, H.R. 3987 considered and passed House; S. 905 amended, passed in lieu.

Oct. 3, Senate agreed to conference report.

Oct. 4, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 42 (1984):

Oct 19, Presidential statement.

reasonable, equitable and financially sustainable basis. It would be a strong step toward improving the Government's fiscal condition and citizen confidence in our ability to govern. Both are badly needed.

□ 2110

In closing, Mr. Speaker, let me say that we do not serve the cause of Federal employees any more than we serve good Government by failing to correct the imbalances and inequities in the Federal pension system. Excessive abuses unheeded lead to an excess of zeal when reform comes. We serve no one by letting a ticking timebomb blow up in our faces when we have the capacity to disarm it but lack the courage to act.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. WALKER] is recognized for 60 minutes.

[Mr. WALKER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Minnesota [Mr. WEBER] is recognized for 60 minutes.

[Mr. WEBER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

CONFERENCE REPORT ON S. 905

Mr. BROOKS submitted the following conference report and statement on the bill (S. 905) to establish the National Archives and Records Administration as an independent agency:

CONFERENCE REPORT (H. REPT. NO. 98-1124)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 905) to establish the National Archives and Records Administration as an independent agency, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

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

TITLE I—ESTABLISHMENT OF AN INDEPENDENT NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

ESTABLISHMENT

Sec. 101. Section 2102 of title 44, United States Code, is amended to read as follows:

"§ 2102. Establishment

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

ORGANIZATION AND GENERAL AUTHORITY

Sec. 102. (a) Chapter 21 of title 44, United States Code, is amended—

(1) by redesignating sections 2103 through 2114 as sections 2107 through 2118, respectively; and

(2) by inserting after section 2102 the following new sections:

"§ 2103. Officers

"(a) The Archivist of the United States shall be appointed by the President by and with the advice and consent of the Senate. The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist. The Archivist may be removed from office by the President. The President shall communicate the reasons for any such removal to each House of the Congress.

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

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

"§ 2104. Administrative provisions

"(a) The Archivist shall prescribe such regulations as the Archivist deems necessary to effectuate the functions of the Archivist, and the head of each executive agency shall cause to be issued such orders and directives as such agency head deems necessary to carry out such regulations.

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

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

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

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

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

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

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

"§ 2105. Personnel and services

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

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

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

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

"§ 2106. Reports to Congress

"The Archivist shall submit to the Congress, in January of each year and at such other times as the Archivist finds appropriate, a report concerning the administration of functions of the Archivist, the Administration, the National Historical Publications and Records Commission, and the National Archives Trust Fund. Such report shall describe—

"(1) program administration and expenditures of funds, both appropriated and non-appropriated, by the Administration, the Commission, and the Trust Fund Board;

"(2) research projects and publications undertaken by Commission grantees, and by Trust Fund grantees, including detailed information concerning the receipt and use of all appropriated and nonappropriated funds;

"(3) by account, the moneys, securities, and other personal property received and held by the National Archives Trust Fund Board, and of its operations, including a listing of the purposes for which funds are transferred to the National Archives and Records Administration for expenditure to other Federal agencies; and

"(4) the matters specified in section 2904(c)(8) of this title."

(b) Section 2101 of title 44, United States Code, is amended—

(1) by designating the two indented paragraphs as paragraphs (1) and (2), respectively;

(2) by striking out "sections 2103-2113 of this title" in the matter preceding the first such paragraph and inserting in lieu thereof "this chapter";

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

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

"(3) 'Archivist' means the Archivist of the United States appointed under section 2103 of this title; and

"(4) 'Administration' means the National Archives and Records Administration established under section 2102 of this title."

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

"CHAPTER 21—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

"Sec.

"2101. Definitions.

"2102. Establishment.

"2103. Officers.

"2104. Administrative provisions.

"2105. Personnel and services.

"2106. Reports to Congress.

- "2107. Acceptance of records for historical preservation.
- "2108. Responsibility for custody, use, and withdrawal of records.
- "2109. Preservation, arrangement, duplication, exhibition of records.
- "2110. Servicing records.
- "2111. Material accepted for deposit.
- "2112. Presidential archival depository.
- "2113. Depository for agreements between States.
- "2114. Preservation of motion-picture films, still pictures, and sound recordings.
- "2115. Reports; correction of violations.
- "2116. Legal status of reproductions; official seal; fees for copies and reproductions.
- "2117. Limitation on liability.
- "2118. Records of Congress."

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

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

TRANSFERS

SEC. 103. (a) The National Archives and Records Service of the General Services Administration is transferred to the National Archives and Records Administration.

(b)(1) All functions which were assigned to the Administrator of General Services by section 6 of Executive Order No. 10530 of May 11, 1954 (19 Fed. Reg. 2709; relating to documents and the Administrative Committee of the Federal Register), and by Executive Order No. 11440 of December 11, 1968 (33 Fed. Reg. 18475; relating to supplemental use of Federal exhibits and displays), shall be exercised by the Archivist of the United States.

(2) All functions pertaining to the maintenance, operation, and protection of a Presidential archival depository which were assigned to the Administrator of General Services by the Act of September 6, 1965 (Public Law 89-169, 79 Stat. 648), relating to the Lyndon Baines Johnson Presidential Archival Depository, and by the Act of August 27, 1966 (Public Law 89-547, 80 Stat. 370) and the Act of May 26, 1977 (Public Law 95-34, 91 Stat. 174), relating to the John Fitzgerald Kennedy Library, shall be exercised by the Archivist of the United States.

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

(d) Prior to the appointment and confirmation of an individual to serve as Archivist of the United States under section 2103 of title 44, United States Code, the individual holding the office of Archivist of the United States on the day before the effective date of this Act may serve as Archivist under such section, and while so serving shall be compensated at the rate provided under subsection (b) of such section.

TRANSFER OF PERSONNEL

SEC. 104. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions and agencies transferred by this Act and the amendments made by this Act, subject to section 1531 of title 31, United States Code, are transferred to the Archivist for appropriate allocation. Pursuant to the preceding sentence, there shall be transferred to

the Archivist for appropriate allocation (1) for the remainder of fiscal year 1985, an amount equal to not less than \$2,760,000 (adjusted to reflect actual salaries and benefits of transferred employees and other costs) from the unexpended balances of the fiscal year 1985 funds and appropriations available to the General Services Administration, and (2) 115.5 full-time equivalent employee positions, of which not less than 30 percent shall be vacant. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

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

SAVINGS PROVISIONS

SEC. 105. (a) All orders, determinations, rules, regulations, grants, contracts, agreements, permits, licenses, privileges, and other actions which have been issued, granted, made, undertaken, or entered into in the performance of any function transferred by this Act or the amendments made by this Act shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by any authorized official, a court of competent jurisdiction, or by operation of law.

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

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

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

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

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

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

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

REFERENCE

SEC. 106. With respect to any functions transferred by this Act or by an amendment made by this Act and exercised after the effective date of this Act, reference in any other Federal law to the office of the Archivist of the United States as in existence on the date before the effective date of this Act, or the National Archives and Records Service of the General Services Administration, or any office or officer thereof, shall be deemed to refer to the Archivist or the Administration.

CONFORMING AMENDMENTS

SEC. 107. (a)(1) Section 2107 of title 44, United States Code, as redesignated by section 102(a)(1), is amended—

(A) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist";

(B) by striking out "or of the Congress" in paragraph (1) and inserting in lieu thereof "the Congress, the Architect of the Capitol, or the Supreme Court";

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

(D) by striking out "section 2107" in paragraph (4) and inserting in lieu thereof "section 2111".

(2) Section 2108 of such title, as redesignated by section 102(a)(1), is amended—

(A) by striking out "the Administrator, the Archivist of the United States, and to the employees of the General Services Administration" in subsection (a) and inserting in lieu thereof "the Archivist and to the employees of the National Archives and Records Administration";

(B) by striking out "and in consultation with the Archivist of the United States" in such subsection;

(C) by striking out "the Archivist and" in the fifth sentence of such subsection;

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

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

(3) Section 2109 of such title, as redesignated by section 102(a)(1), is amended—

(A) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist"; and

(B) by inserting "and Records" immediately following "National Historical Publications";

(4) Section 2110 of such title, as redesignated by section 102(a)(1), is amended by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist";

(5) Section 2111 of such title, as redesignated by section 102(a)(1), is amended—

(A) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist"; and

(B) by striking out "Administrator" and inserting in lieu thereof "Archivist";

(6) Section 2112 of such title, as redesignated by section 102(a)(1), is amended—

(A) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist";

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

(C) by striking out "section 2107" each place it appears and inserting in lieu thereof "section 2111";

(7) Sections 2113, 2114, and 2117 of such title, as redesignated by section 102(a)(1), are amended by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist";

(8) Section 2115 of such title, as redesignated by section 102(a)(1), is amended to read as follows:

"§ 2115. Reports; correction of violations

"(a) In carrying out their respective duties and responsibilities under chapters 21, 25, 29, 31, and 33 of this title, the Archivist and the Administrator may each obtain reports from any Federal agency on such agency's activities under such chapters.

"(b) When either the Archivist or the Administrator finds that a provision of any such chapter has been or is being violated, the Archivist or the Administrator shall (1) inform in writing the head of the agency concerned of the violation and make recommendations for its correction; and (2) unless satisfactory corrective measures are inaugurated within a reasonable time, submit a written report of the matter to the President and the Congress."

(9) Section 2116 of such title, as redesignated by section 102(a)(1), is amended—

(A) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist"; and

(B) by striking out "Administrator" and inserting in lieu thereof "Archivist";

(10) Section 2118 of such title, as redesignated by section 102(a)(1), is amended by striking out "General Services Administration" and inserting in lieu thereof "National Archives and Records Administration";

(b)(1) Sections 710, 711, and 729 of title 44, United States Code, are amended by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States";

(2) Section 1501 of such title is amended—

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

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

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

(3) Section 1502 of such title is amended by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States";

(4) Section 1503 of such title is amended—

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

(B) by striking out "General Services Administration" and inserting in lieu thereof "National Archives and Records Administration"; and

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

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

(6) Section 1714 of such title is amended by striking out "General Services Administration" and inserting in lieu thereof "National Archives and Records Administration";

(7) Sections 2204(c)(1) and 2205 of such title are amended by striking out "National Archives and Records Service of the General Services Administration" and inserting in lieu thereof "National Archives and Records Administration";

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

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

(10) Section 2504 of such title is amended—

(A) by striking out "Administrator of General Services" in the third sentence of subsection (a) and inserting in lieu thereof "Archivist of the United States";

(B) by inserting "and Records" after "Historical Publications" in the fourth sentence of such subsection;

(C) by striking out "Administrator" in the fourth sentence of such subsection and inserting in lieu thereof "Archivist";

(D) by striking out "transmit to the Administrator" in the last sentence of such subsection and inserting in lieu thereof "transmit to the President and the Congress"; and

(E) by striking out "General Services Administration" in subsection (b) and inserting in lieu thereof "National Archives and Records Administration";

(11) Section 2506 of such title is amended—

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

(B) by striking out "Administrator" in subsection (b) and inserting in lieu thereof "Archivist";

(12)(A) Section 2507 of such title is repealed.

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

(13) Section 2901 of such title is amended—

(A) by striking out "27," in the matter preceding paragraph (1);

(B) by inserting before the semicolon at the end of paragraph (2) the following: "in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations";

(C) by striking out "Administrator" each place it appears in paragraphs (6), (9), and (11) and inserting in lieu thereof "Archivist"; and

(D) by striking out paragraphs (12) and (13) and inserting in lieu thereof the following:

"(12) the term 'Archivist' means the Archivist of the United States;

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

"(14) the term 'Federal agency' means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Supreme Court, the

Senate, the House of Representatives, and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol); and

"(15) the term 'Administrator' means the Administrator of General Services."

(14) Section 2902(7) of such title is amended by inserting "or the Archivist" after "Administrator";

(15)(A) Sections 2903 and 2907 of such title are amended by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist";

(B) Sections 2905, 2908, and 2909 of such title are amended by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist";

(16) Section 2904 of such title is amended to read as follows:

"§ 2904. General responsibilities for records management

"(a) The Archivist shall provide guidance and assistance to Federal agencies with respect to ensuring adequate and proper documentation of the policies and transactions of the Federal Government and ensuring proper records disposition.

"(b) The Administrator shall provide guidance and assistance to Federal agencies to ensure economical and effective records management by such agencies.

"(c) In carrying out their responsibilities under subsection (a) or (b), respectively, the Archivist and the Administrator shall each have the responsibility—

"(1) to promulgate standards, procedures, and guidelines with respect to records management and the conduct of records management studies;

"(2) to conduct research with respect to the improvement of records management practices and programs;

"(3) to collect and disseminate information on training programs, technological developments, and other activities relating to records management;

"(4) to establish such interagency committees and boards as may be necessary to provide an exchange of information among Federal agencies with respect to records management;

"(5) to direct the continuing attention of Federal agencies and the Congress on the need for adequate policies governing records management;

"(6) to conduct records management studies and, in his discretion, designate the heads of executive agencies to conduct records management studies with respect to establishing systems and techniques designed to save time and effort in records management;

"(7) to conduct inspections or surveys of the records and the records management programs and practices within and between Federal agencies;

"(8) to report to the appropriate oversight and appropriations committees of the Congress and to the Director of the Office of Management and Budget in January of each year and at such other times as the Archivist or the Administrator (as the case may be) deems desirable—

"(A) on the results of activities conducted pursuant to paragraphs (1) through (7) of this section,

"(B) on evaluations of responses by Federal agencies to any recommendations resulting from inspections or studies conducted under paragraphs (6) and (7) of this section, and

"(C) to the extent practicable, estimates of costs to the Federal Government resulting from the failure of agencies to implement such recommendations.

"(d) In addition, the Administrator, in carrying out subsection (b), shall have the responsibility to promote economy and efficiency in the selection and utilization of space, staff, equipment, and supplies for records management."

(17) Section 2906 of such title is amended to read as follows:

"§ 2906. Inspection of agency records

"(a)(1) In carrying out their respective duties and responsibilities under this chapter, the Administrator of General Services and the Archivist (or the designee of either) may inspect the records or the records management practices and programs of any Federal agency solely for the purpose of rendering recommendations for the improvement of records management practices and programs. Officers and employees of such agencies shall cooperate fully in such inspections, subject to the provisions of paragraphs (2) and (3) of this subsection.

"(2) Records, the use of which is restricted by law or for reasons of national security or the public interest, shall be inspected, in accordance with regulations promulgated by the Administrator and the Archivist, subject to the approval of the head of the agency concerned or of the President. The regulations promulgated by the Administrator and the Archivist under this paragraph shall, to the extent practicable, be identical.

"(3) If the Administrator or the Archivist (or the designee of either) inspects a record, as provided in this subsection, which is contained in a system of records which is subject to section 552a of title 5, such record shall be—

"(A) maintained by the Administrator, the Archivist, or such designee as a record contained in a system of records; or

"(B) deemed to be a record contained in a system of records for purposes of subsections (b), (c), and (1) of section 552a of title 5.

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

(18)(A) The heading of chapter 29 of title 44, United States Code, is amended to read as follows:

"CHAPTER 29—RECORDS MANAGEMENT BY THE ARCHIVIST OF THE UNITED STATES AND BY THE ADMINISTRATOR OF GENERAL SERVICES"

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

"29. Records Management by the Archivist of the United States and by the Administrator of General Services..... 2901"

(19) Section 3102 of such title is amended—

(A) by inserting "and the Archivist" after "Administrator of General Services" in paragraph (2);

(B) by striking out "sections 2101-2113" and inserting in lieu thereof "sections 2101-2117"; and

(C) by striking out "2701."

(20) Section 3103 of such title is amended by striking out "Administrator" each place it appears and inserting in lieu thereof "Archivist".

(21) Sections 3104 and 3106 of such title are amended—

(A) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist"; and

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

(22) Section 3105 of such title is amended by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist".

(23) Sections 3302, 3303, 3308, and 3311 of such title are amended by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist".

(24) Sections 3303a and 3310 of such title are amended—

(A) by striking out "Administrator of General Services" and inserting in lieu thereof "Archivist"; and

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

(25)(A) The heading of section 3303 of such title is amended to read as follows:

"§ 3303. Lists and schedules of records to be submitted to the Archivist by head of each Government agency."

(B) The heading of section 3303a of such title is amended to read as follows:

"§ 3303a. Examination by Archivist of lists and schedules of records lacking preservation value; disposal of records."

(C) The heading of section 3311 of such title is amended to read as follows:

"§ 3311. Destruction of records outside continental United States in time of war or when hostile action seems imminent; written report to Archivist."

(D) The table of sections for chapter 33 of such title is amended by striking out "Administrator of General Services" in the items pertaining to sections 3303, 3303a, and 3311 and inserting in lieu thereof "Archivist".

(26) Section 3504(e) of such title is amended by inserting "the Archivist of the United States and" before "the Administrator of General Services" each place it appears in paragraphs (1) and (2).

(27) Section 3513 of such title is amended by inserting "and the Archivist of the United States" after "Administrator of General Services".

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

(A) by striking out "section 2107" each place it appears and inserting in lieu thereof "section 2111";

(B) by striking out "Administrator of General Services (hereinafter in this title referred to as the 'Administrator') and inserting in lieu thereof 'Archivist of the United States (hereinafter referred to as the 'Archivist')"; and

(C) by striking out "Administrator" and inserting in lieu thereof "Archivist".

(2) Section 102 of such Act is amended—

(A) by striking out "section 2107" and inserting in lieu thereof "section 2111"; and

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

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

(4) Section 104 of such Act is amended—

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

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

"(b) The regulations proposed by the Archivist in the report required by subsection (a) shall not take effect until the expiration of the first period of 60 calendar days of continuous session of the Congress after the date of the submission of such regulations to each House of the Congress. For the purposes of this subsection, continuity of session is broken only by an adjournment of Congress sine die, but the days on which either House

is not in session because of an adjournment of more than three days to a day certain are excluded."

(d) Sections 106a, 106b, 112, 113, and 201 of title 1, United States Code, are amended by striking out "Administrator of General Services" and "General Services Administration" each place they appear and inserting in lieu thereof "Archivist of the United States" and "National Archives and Records Administration", respectively.

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

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

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

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

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

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

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

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

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

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

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

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

"Archivist of the United States."

(i) Section 4(5) of the Act of October 25, 1951 (25 U.S.C. 199a) is amended by striking out "Administrator of General Services" each place it appears and inserting in lieu thereof "Archivist of the United States".

DEFINITIONS

SEC. 108. For purposes of sections 103 through 106—

(1) the term "Archivist" means the Archivist of the United States appointed under section 2103 of title 44, United States Code, as added by section 102(a)(2) of this Act;

(2) the term "Administration" means the National Archives and Records Administration established under section 2102 of such title (as amended by section 101 of this Act); and

(3) the term "function" includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

TITLE II—ADMINISTRATIVE PROVISIONS

COPYING AND AUTHENTICATING CHARGES

SEC. 201. Section 2116(c) of title 44, United States Code (as redesignated by section 102(a)), is amended to read as follows:

"(c) The Archivist may charge a fee set to recover the costs for making or authenticating copies or reproductions of materials transferred to his custody. Such fee shall be fixed by the Archivist at a level which will recover, so far as practicable, all elements of such costs, and may, in the Archivist's discretion, include increments for the estimated replacement cost of equipment. Such fees shall be paid into, administered, and expended as a part of the National Archives Trust Fund. The Archivist may not charge for making or authenticating copies or reproductions of materials for official use by the United States Government unless appropriations available to the Archivist for this purpose are insufficient to cover the cost of performing the work."

NATIONAL ARCHIVES TRUST FUND BOARD

SEC. 202. (a) Chapter 23 of title 44, United States Code, is amended by striking out sections 2302 through 2305 and inserting in lieu thereof the following:

"§ 2302. Authority of the Board; seal; services; bylaws; rules; regulations; employees

"In carrying out the purposes of this chapter, the Board—

"(1) may adopt an official seal, which shall be judicially noticed;

"(2) may utilize on a reimbursable basis the services and personnel of the National Archives and Records Administration necessary (as determined by the Archivist) to assist the Board in the administration of the trust fund, and in the preparation and publication of special works and collections of sources and preparation, duplication, editing, and release of historical photographic materials and sound recordings, and may utilize on a reimbursable basis the services and personnel of other Federal agencies for such purposes;

"(3) may adopt bylaws, rules, and regulations necessary for the administration of its functions under this chapter; and

"(4) may, subject to the laws and regulations governing appointments in the civil service, appoint and fix the compensation of such personnel as may be necessary to carry out its functions.

"§ 2303. Powers and obligations of the Board; liability of members

"Except as otherwise provided by this chapter, the Board shall have all the usual powers and obligations of a trustee with respect to property and funds administered by it, but the members of the Board are not personally liable, except for malfeasance.

"§ 2304. Compensation of members; availability of trust funds for expenses of the Board

"Compensation may not be paid to the members of the Board for their services as members. Costs incurred by the Board in carrying out its duties under this chapter, including the obligations necessarily incurred by the members of the Board in the performance of their duties and the compensation of persons employed by the Board, shall be paid by the Archivist of the United States from trust funds available to the Board for this purpose. The Board, by resolution, may authorize the transfer of funds (including the principal or interest of a gift or bequest) to the National Archives and Records Administration to be expended on an archival or records activity approved by the Board or to accomplish the purpose of a gift or bequest.

"§ 2305. Acceptance of gifts

"The Board may solicit and accept gifts or bequests of money, securities, or other personal property, for the benefit of or in connection with the national archival and records activities administered by the National Archives and Records Administration. Moneys that are for deposit into the trust fund shall be deposited within 10 working days of the receipt thereof."

(b) Section 2307 of title 44, United States Code, is amended to read as follows:

"§ 2307. Trust fund account; disbursements; sales of publications and releases

"The income from trust funds held by the Board and the proceeds from the sale of securities and other personal property, as and when collected, shall be covered into the Treasury of the United States in a trust fund account to be known as the National Archives Trust Fund, subject to disbursement on the basis of certified vouchers of the Archivist of the United States (or his designee) for activities approved by the Board and in the interest of the national archival and records activities administered by the National Archives and Records Administration, including but not restricted to the preparation and publication of special works, and collections of sources and the preparation, duplication, editing, and release of historical photographic materials and sound recordings. The Archivist may sell publications and releases authorized by this section and paid for out of the income derived from trust funds at a price which will cover their cost, plus 10 percent, and moneys received from these sales shall be paid into, administered, and expended as part of the National Archives Trust Fund."

(c) The table of sections for chapter 23 of title 44, United States Code, is amended by striking out the item pertaining to section 2302 and inserting in lieu thereof the following:

"2302. Authority of the Board; seal; services; bylaws; rules; regulations; employees

SECURITY OF RECORDS

SEC. 203. (a) Section 2905(a) of title 44, United States Code, is amended by adding at the end thereof the following new sentence: "In any case in which the head of the agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made."

(b) Section 3106 of title 44, United States Code, is amended by adding at the end thereof the following new sentence: "In any case in which the head of the agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made."

PUBLIC NOTICE

SEC. 204. Section 3303a(a) of title 44, United States Code, is amended by inserting "after publication of notice in the Federal Register and an opportunity for interested persons to submit comment thereon" immediately after "may" in the second sentence thereof.

TITLE III—GENERAL PROVISIONS

EFFECTIVE DATE

SEC. 301. The provisions of this Act (including the amendments made by this Act) shall be effective on April 1, 1985.

SPENDING AUTHORITY

SEC. 302. Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974) which is provided under this Act shall be effective for any fiscal year only to the extent or in such amounts as provided in appropriations Acts.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same with an amendment as follows:

Amend the title so as to read: "An Act to establish the National Archives and Records Administration, and for other purposes."

And the House agree to the same.

JACK BROOKS,
DON FUQUA,
GLENN ENGLISH,
FRANK HORTON,

Managers on the Part of the House.

W.V. ROTH, JR.,
CHARLES MCC. MATHIAS,
JR.,
TOM EAGLETON,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 905) to establish the National Archives and Records Administration as an independent agency, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute next.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

STATEMENT OF PURPOSE

Current Law

No statement of purpose of the National Archives and Records Service and its related agencies, the National Historical Publications and Records Commission and the National Archives Trust Fund Board, exists in current law.

Senate Bill

The Senate bill contains a statement of purpose.

House Amendment

The House bill contains a statement of purpose.

Conference Agreement

The Senate recedes.

TENURE AND TERM OF ARCHIVIST

Current Law

The Archivist is appointed by the Administrator of General Services. No term of office or professional qualifications are defined (44 USC 2102).

Senate Bill

The Archivist would be appointed by the President by and with the advice and consent of the Senate for a ten year term. Appointment would be without regard to polit-

ical affiliations and solely on the basis of professional qualifications.

House Amendment

The Archivist would be appointed by the President by and with the advice and consent of the Senate, without regard to political affiliations and solely on the basis of professional qualifications. Should the President remove the Archivist, the reasons for removal shall be communicated to each House of the Congress.

Conference Agreement

The Senate recedes.

The Archivist is to be appointed by the President by and with the advice and consent of the Senate. A term of office is not specified. Although the Archivist may be removed from office by the President, the conferees intend that he be an officer performing archival and records management functions insulated from the political orientation of a particular administration. Because of the non-political nature of the Archivists' duties, the office ought not to change hands automatically with the election of the new President.

The Archivist has responsibilities that range across the Federal Government. Insulation from political pressure is necessary to insure confidence and cooperation from all agencies. Public confidence in the Archivist's role will also be enhanced if the office is permitted to pursue objectively and independently the archival responsibilities necessary to insure preservation of the Nation's historically valuable records. Changes in the office of Archivist coincident with changes in administrations would undermine the independent and non-partisan role envisioned for the Archivist. The President can remove the Archivist, but if he does so, he must share his reasons for such action with the Congress.

RULEMAKING AUTHORITY

Current Law

Section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 USC 486(c)), authorizes the Administrator of General Services to prescribe rules to carry out his functions under the Act. The Property Act includes the Federal Records Act, which was codified in a separate title of the United States Code, title 44, P.L. 90-620.

Senate Bill

The Senate bill does not provide explicit rulemaking authority. Rulemaking authority is implied from section 4(a) and (d), which transfer certain functions of the General Services Administrator to the Archivist and invest the latter official, in his exercise of those functions, with the authority which the former had prior to the transfer.

House Amendment

Explicit rulemaking authority would be provided in new section 2104(a) of Title 44.

Conference Agreement

Current law is repeated in the conference agreement with conforming changes, explicitly vesting the Archivist with exactly the same rulemaking authority with respect to the Archivist's functions described in this legislation as is now exercised by the Administrator of General Services.

The Conferees emphasize that this rulemaking authority for the Archivist is not "new" authority, but simply a restatement of the current authority held by the GSA Administrator under section 205(c) of the Federal Property and Administrative Services Act of 1949.

INFORMATION GATHERING AUTHORITY OF THE ARCHIVIST

Current Law

Several sections of title 44 provide for Federal agencies to report to, or consult with, the Administrator of General Services with respect to records management, disposal, and preservation. For example:

Section 2111 provides that when the Administrator considers it necessary, he may obtain reports from Federal agencies on their activities under chapters 21, 25, 29, 31, and 33;

Section 3106 requires the head of each Federal agency to notify the Administrator of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency of which he is the head, whenever such an action comes to his attention; and

Section 3303 requires the head of each agency of the United States Government to submit to the Administrator lists of records and schedules proposed for the disposal of such records.

Senate Bill

The Senate bill maintains current law.

House Amendment

The House amendment would add a separate, generic requirement that each Federal agency be required to furnish to the Archivist, upon request, any information or other data which the Archivist finds necessary to carry out his duties.

Conference Agreement

The House recedes, thereby maintaining the status quo.

The conferees intend that Federal agencies will cooperate with the Archivist (44 U.S.C. 3102) in establishing records systems, managing them, jointly determining disposition schedules, and in transferring thirty-year-old permanently valuable records to the Archives. Such cooperation and sharing of information is essential to the effective functioning of government.

ANNUAL REPORT

Current Law

An annual report on the activities of the National Historical Publications and Records Commission is now required (44 USC 2507). Current law does not require a separate annual report on the activities of the National Archives Trust Fund Board or on the activities of the National Archives and Records Service generally. Current law does require a separate annual report on the records management activities of the Administrator of General Services (44 USC 2904(10)).

Senate Bill

The Senate bill requires a consolidated annual report to the Congress on the activities of the National Archives and Records Administration, the National Archives Trust Fund Board, and the National Historical Publications and Records Commission.

House Amendment

The House amendment requires separate, annual reports of all three aforementioned agencies, and the records management activities of NARA and GSA.

Conference Agreement

The Conference agreement requires a consolidated report by the National Archives and Records Administration as to the activities of all three agencies (and a separate report by the General Services Administration on its records management activities) with the specific information prescribed in both the Senate bill and the House amendment.

The conferees intend to continue their oversight of the newly independent agency,

its use of appropriated and nonappropriated (including donated) funds; Federal Government records management activities; inter-agency coordination and cooperation; research projects and publications directly and indirectly fostered; preservation activities of archived material; user group needs and services; and the use of new technology to save space, time, and personnel costs. The conferees expect the comprehensive annual report of the National Archives and Records Administration and the General Services Administration annual report to address the subjects mentioned above as well as any other emerging issues or opportunities affecting records management and archival responsibilities.

DEFINITION OF "FEDERAL AGENCY"

Current Law

As used in chapters 21, 25, 29, 31, and 33 of title 44, U.S. Code, section 2901(13) of title 44 provides that the term "Federal agency" shall have the meaning given such term by section 3(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472(b)). That section defines a Federal agency as any executive agency (defined by section 3(a) of that Act as any executive department or independent establishment in the executive branch, including any wholly-owned Government corporation) or any establishment in the legislative or judicial branch of the government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction).

The effect of this definition through the use of the term "Federal agency" in the aforementioned chapters of title 44 is to exempt only the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction from the archival, records management, and records disposition laws, codified in title 44.

Senate Bill

The Senate bill modifies the definition of "Federal agency" as it is used in title 44 so that the Supreme Court would be specifically exempted from the archival, records management, and records disposition laws, codified in title 44.

The Senate bill would also specifically authorize the Archivist to accept the donation of records from the Supreme Court.

House Amendment

The House amendment applies a different definition of "Federal agency" to chapter 21, on archival administration, while retaining the current law definition of "Federal agency" in section 2901 and the application of the section 2901 definition to chapters 25, 29, 31, and 33 of title 44.

The effect of these provisions of the House bill is to subject the Architect of the Capitol to chapter 21 of title 44, while retaining the Architect's exemption from the requirements of chapters 25, 29, 31, and 33.

Conference Agreement

The conference agreement modifies the definition of "Federal agency" and its application so that the Supreme Court would be exempted from the requirements of chapters 21, 25, 29, 31, and 33 of such title.

The conference agreement also specifically authorizes the Archivist to accept the donation of records from the Supreme Court and the Architect of the Capitol.

TRANSFERS OF ADMINISTRATIVE AND OVERHEAD SUPPORT RESOURCES

Senate Bill

The Senate bill transfers personnel, assets, liabilities, contracts, property, records, and funds associated with the functions transferred by this legislation from

the General Services Administration to the National Archives and Records Administration.

House Amendment

The House amendment is identical to the Senate bill, except that it specifically allocates to the National Archives and Records Administration a percentage of the funds and positions in the General Services Administration's General Management Account.

Conference Agreement

Not less than \$2.76 million (adjusted to reflect actual salaries and benefits of transferred employees and other costs) and 115.5 full-time equivalent (FTE) positions, 30 percent of which are to be vacant, are transferred from the General Services Administration to the National Archives and Records Administration.

This reflects an agreement reached between the General Services Administration and the National Archives and Records Service and formalized in an August 6, 1984 memo from the Archivist to the Acting Administrator, signed by both, and entitled "NARS Independence—Resource Transfers" (See Appendix). The conferees intend that this memo and its attached breakdown of FTE's and dollars by office serve as the basis for such transfer.

That memo reflects a cooperative relationship between the two agencies which the conferees expect will continue.

FEDERAL REGISTER ADMINISTRATIVE COMMITTEE Current Law

Composition of this committee, which regulates the operation, manner and form in which the Federal Register is printed, reprinted, compiled, indexed, bound, and distributed, is: The Archivist of the United States (Chairman); a designee of the Attorney General; and the Public Printer (44 U.S.C. 1506).

Senate Bill

The Senate bill adds two members to the Committee: The GSA Administrator and the Administrator of the Office of Management and Budget's Office of Information and Regulatory Affairs.

House Amendment

The House amendment makes no change in current law.

Conference Agreement

The Senate recedes.

The conference agreement preserves current law.

RECORDS MANAGEMENT

Current Law

Chapters 29 and 31 of title 44, U.S. Code, impose certain responsibilities for records management upon the Administrator of General Services and the heads of each Federal Agency. Chapter 33 of title 44, U.S. Code, imposes certain responsibilities upon both the Administrator and Federal agency heads regarding the disposal of records. Section 2111 of title 44, U.S. Code, provides the Administrator with the authority to obtain reports from Federal agencies on their activities under chapters 21, 25, 29, 31, and 33, and mandates that he inform agency heads of violations by their agencies of the provisions of those chapters. Much of the authority provided the Administrator in these chapters has been delegated to the Archivist of the United States.

Pursuant to the Paperwork Reduction Act of 1980 (P.L. 96-511), the General Services Administration assumed a lead role in policy formulation and oversight with regard to information resources management. The legislative history of that Act suggested that the

General Services Administration consolidate its activities pertaining to automatic data processing, telecommunications, and records management.

As a result, in early 1982, the Administrator of General Services created the Office of Information Resources Management (OIRM) and delegated certain records management functions under chapters 29 and 31 of title 44, U.S. Code, to it, transferring those functions (and personnel and resources) from the National Archives and Records Service. The Archivist retained records, management functions pertaining to the adequacy of documentation and records disposition.

Senate Bill

The Senate bill would transfer OIRM to the new agency and would vest all records management responsibilities of current law in the Archivist of the United States.

House Amendment

The House amendment rewrites current law to reflect and, in effect, codify, the current delegations of the various records management responsibilities in title 44, between the National Archives and Records Service and OIRM.

Conference Agreement

The Senate recedes.

The conference agreement maintains the status quo as to the division of responsibility for certain records management functions between OIRM and the National Archives and Records Administration.

The conferees are sensitive to the need for archival involvement in the complete life cycle of records, particularly in the creation of records by means of electronic impulses. The new technology of the paperless society has added new considerations to the creation, storage, and preservation of federal records. Floppy discs and video screen terminals have increased the information capacity of the Federal Government, while threatening to short-circuit its institutional memory. The capability to erase drafts and early alternative position papers from the word processor can circumvent future research and historians' efforts to understand how a decision, policy, or program was developed.

The conferees intend that the Archivist involve himself in those decisions of other agencies affecting the creation, storage, and retrieval of information which document the policies and transactions of the government. The increasing use of computers and word processors in government can be of enormous benefit in terms of cost savings in time, personnel, and storage space. The conferees want to ensure that the new information technology is managed so as to ensure full documentation of our Government's organization, functions, policies, decisions, procedures, and operations, as well as the informational value of data in them.

Those records management functions retained within General Services Administration's Office of Information Resources Management include correspondence control, forms and reports formats, filing systems, micrographics, copying, and office automation (including word processing).

The close relationship of these functions to those of documenting the Federal Government's policies and transactions mandates that this office cooperate with the Archivist in a joint documentation effort. The conferees intend to monitor closely these activities to ensure that the complete life cycle of records is protected for future generations.

PRESIDENTIAL RECORDINGS AND MATERIALS PRESERVATION ACT AMENDMENTS

Current Law

Section 104(b) of the Presidential Recording and Materials Preservation Act contains a one-House veto over regulations to provide public access to certain Presidential recordings and materials. Those regulations were to be proposed to the Congress within 90 days after enactment of the Act (December 19, 1974).

In *Allen v. Carmen*, 578 F.Supp. 951 (DCDC 1983), the U.S. District Court for the District of Columbia ruled that the regulations issued by the General Services Administrator under section 104 were invalid, because they had been revised three times as a consequence of Congress' exercise of the one-House veto. The court found the veto provision unconstitutional, citing *Immigration and Naturalization Service v. Chadha*, 103 S.Ct. 2764 (1983). The court also ruled that the one-House veto provision was severable from the Act and that the rulemaking authority provided to the Administrator under section 104(a) is "an independent, fully operative, valid provision."

Senate Bill

The Senate bill strikes the one-House veto provision from the Presidential Recordings and Materials Preservation Act.

House Amendment

The House amendment substitutes for the one-House veto provision a provision requiring that rules proposed under section 104 be reported to Congress and lay over for 60 legislative days before taking effect.

Conference Agreement

Because of Congress' continuing interest in overseeing the preservation and the provision of public access to the papers of the Presidency of Richard Nixon, the conferees have agreed that rules proposed by the Archivist under section 104 of the Act be reported to the Congress and that they not take effect until the expiration of 60 calendar days of continuous session of the Congress. This provision is identical to a provision in the Presidential Libraries Act (44 U.S.C. 2108) which requires the Administrator to transmit plans for a proposed Presidential archival depository to Congress, and not to take action to implement those plans until the expiration of 60 calendar days of continuous session of the Congress. The conferees believe that this provision strikes a balance between the limits imposed by the courts and Congress' need for mechanisms to facilitate its oversight of the exercise of particular authorities granted to agencies in the Executive Branch.

NATIONAL ARCHIVES TRUST FUND BOARD EMPLOYEES

Current Law

The National Archives Trust Fund Board is currently exempted from the civil service laws (44 U.S.C. 2302).

Senate Bill

The Senate bill makes no change in current law.

House Amendment

The House amendment requires compliance with the competitive service laws in hiring employees.

Conference Agreement

The conference agreement requires compliance with the civil service laws.

The conferees believe employees of the Trust Fund should be subject to the requirements and benefits of civil service. No convincing case has been made for exempting the Board from this standard government-wide employment law.

SECURITY OF RECORDS

Current Law

Current law (44 U.S.C. 2905, 3106) requires the Administrator of General Services to notify a Federal agency head—and vice versa—of any actual impending or threatened removal, defacing, alteration, or destruction of records in that agency's custody. These provisions further require the agency head, with the assistance of the Administrator, to initiate action, through the Attorney General, for the recovery of records and for other redress provided by law.

Senate Bill

The Senate bill retains current law and substitutes the Archivist for the Administrator.

House Amendment

The House amendment retains current law and substitutes the Archivist for the Administrator. It further requires the Archivist to initiate action, through the Attorney General, if, after a reasonable time, the agency head fails to initiate such action. The House bill would also require the Archivist to report to Congress upon the failure of an agency head or refusal of the Attorney General to commence an action.

Conference Agreement

The conference agreement retains current law and substitutes the Archivist for the Administrator. It also provides that, if the agency head does not seek to initiate action within a reasonable time after notification of any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and the Archivist shall notify the Congress when such a request has been made.

The conferees are mindful of protracted private litigation over the removal by a former agency head of what he considered personal papers and others considered Federal records. While the Supreme Court ultimately denied standing to the private litigant, it noted that the existing process, whereby the agency head sought to recover the documents to make such a determination, was not employed.

The conferees note the anomalous situation created by current law whereby an agency head has a duty to initiate action to recover records which he himself has removed. The conferees, therefore, have clarified these provisions to authorize the Archivist independently to seek the initiation of action by the Attorney General for the recovery of such records. Because of the frequency of incidents of removal or destruction of records in recent years, the conferees agree that the Congress should be notified of those incidents in which the agency head has not sought to initiate action and the Archivist has requested the Attorney General to do so.

INSPECTION AND DETERMINATION OF RECORDS

Current Law

Section 3301 of title 44, U.S. Code, provides a definition of "records" as that term is used in chapter 33, the disposal of records, and in chapter 29, regarding records management (see section 2901(1)).

Under chapter 29, the Administrator of General Services is required to provide guidance and assistance to Federal agencies with respect to records creation, records maintenance and use, and records disposition. The Administrator is also required to establish standards for the selective retention of records of continuing value, and to assist Federal agencies in applying the standards to records in their custody. In carrying out these duties in chapter 29, the Administrator is authorized to inspect the records or

records management practices and programs of any Federal agency solely for the purpose of rendering recommendations for the improvement of records management practices and programs. Records, the use of which is restricted by law or for reasons of national security or the public interest, shall be inspected, in accordance with regulations promulgated by the Administrator, subject to the approval of the head of the agency concerned or of the President. In conducting such inspections, the Administrator shall comply with all other Federal laws and be subject to the sanctions provided therein.

Under chapter 33, the head of each agency is required to submit to the Administrator of General Services lists of records and schedules for disposal of records which do not appear to have sufficient value to warrant their further preservation by the Government. If the Administrator concurs in that determination, he may authorize the disposal of those records.

Senate Bill

The Senate bill substitutes "Archivist" for "Administrator," but makes no other substantive change in current law.

House Amendment

The House amendment, like the Senate bill, substitutes "Archivist" for "Administrator." It also amends section 3301, first, to grant the Archivist the authority to determine whether any particular books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business, fall within that definition of records in section 3301; and section, to grant the Archivist authority to inspect such records for purposes of making such a determination. Such inspection would be subject to restrictions contained in other Federal laws like those applicable to records management inspections under chapter 29 and makes the Archivist subject to the sanctions contained in those laws.

Conference Agreement

The House recedes.

The conference agreement substitutes "Archivist" for "Administrator," but makes no further change in current law. However, the conferees reiterate their concern for the security of records having sufficient administrative, legal, research, or other value to warrant their further preservation. Because of past instances in which the head of an agency has removed agency records which may have permanent value, the conferees reject the contention that an agency head is the most qualified to make such a determination. An independent, more objective, evaluation is desirable to determine whether the record in question falls within the definition in section 3301. The conferees expect the Office of Management and Budget to develop and submit legislative proposals on this matter to be considered in the 99th Congress.

The conferees note that under current law the Archivist has substantial records inspection and determination responsibilities. The conferees fully expect all agencies of the Government to cooperate with the Archivist in his discharge of those responsibilities.

PUBLIC NOTICE OF RECORDS DISPOSAL

Current Law

Sections 3303 and 3303a of title 44, U.S. Code, require agency heads to submit to the Archivist, lists of agency records proposed by the agency for disposal, and require the Archivist to examine those lists to deter-

mine whether any of the records listed therein warrant continued preservation by the Government. If the Archivist finds that they do not, he may authorize the agency head to dispose of those records. No public notice is currently required.

Senate Bill

The Senate bill makes no change in current law.

House Amendment

The House amendment provides that, prior to the Archivist authorizing disposal of records, a notice of the proposed disposal shall be printed in the Federal Register for public comment thereon.

Conference Agreement

The Senate recedes.

The conferees believe that such public notification of a proposed records disposal will enable other agencies of government, as well as Archives user groups and the general public, which may be affected by the proposed disposal, to comment to the Archivist on potential impacts of such disposal. Such public notice should enhance the quality of decision-making on records disposals.

The Conferees do not intend, however, for such public notice to be a paperwork burden for any of the affected parties or to unreasonably delay the disposal of such records.

CONFIDENTIALITY OF TAX RETURNS AND RETURN INFORMATION

Current Law

Section 2906 of title 44, U.S. Code, dealing with the records management responsibilities of the Archivist, requires the approval of the agency head concerned or of the President for inspection of records restricted by law, reasons of national security, or the public interest. In inspecting such restricted records, the statute further requires the Archivist to comply with all other Federal laws and makes the subject to the sanctions contained in those laws.

Section 6103 of the Internal Revenue Code (title 26, U.S. Code) specifies which persons and agencies may have access to individually identifiable tax returns or return information. Neither the Archivist nor the Archives is among persons and agencies.

Section 2103(2) of title 44 authorizes the Archivist to direct and effect the transfer to the Archives of records that are at least 30 years old and are determined to have sufficient historical or other value to warrant preservation.

Senate Bill

The Senate bill contains a provision stating that notwithstanding any provision of this Act, no return or return information as defined in section 6103 of title 26 of the U.S. Code may be disclosed, except as authorized by title 26.

House Amendment

The House amendment continues current law.

Conference Agreement

The Senate recedes.

The conference agreement preserves current law.

The concern for the confidentiality of income tax returns and return information is a legitimate issue which deserves consideration as a separate matter.

The conferees are sensitive to the need to protect the confidentiality of tax returns and return information while protecting the permanent historic record of our government's actions and the public's right to know about those actions at an appropriate future time. They note that this matter has been satisfactorily addressed in procedures

GM&A AND IG SUPPORT TO NARS—Continued

	FTE			Dollars			
	Region	C.O.	Total	Personnel	SLUC	Comm Dist.	200's Total
Total GM&A	46.64	\$2.45	99.60	3,261.00	210.30	196.93	\$36.62 4,823.05
Inspector General	0.00	7.93	7.93	306.20	15.66	5.62	31.63 353.11
ARA's from OIRM	8.00	0.00	8.00	375.00	0.00	0.00	0.00 375.00
Grand total	54.64	60.38	115.53	3,935.20	225.96	202.45	\$68.26 5,551.16

JACK BROOKS,
DON FUQUA,
GLENN ENGLISH,
FRANK HORTON,
Managers on the Part of the House.
W.V. ROTH, Jr.,
CHARLES McC. MATHIAS,
Jr.,
TOM EAGLETON,
Managers on the Part of the Senate.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. CAMPBELL (at the request of Mr. MICHEL), from 6:30 p.m. for the balance of the day, on account of illness in the family.

Mrs. COLLINS (at the request of Mr. WRIGHT), for today, on account of medical reasons.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. WEBER) to revise and extend their remarks and include extraneous material:)

Mr. CONABLE, for 15 minutes, today.

Mr. REGULA, for 60 minutes, October 4.

Mr. WALKER, for 60 minutes, today.

Mr. WEBER, for 60 minutes, today.

Mr. DICKINSON, for 60 minutes, October 3.

(The following Members (at the request of Mr. LUNDINE) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. PANETTA, for 5 minutes, today.

Mr. LEVIN of Michigan, for 5 minutes, today.

Mr. GONZALEZ, for 60 minutes, today.

Mr. LEVIN of Michigan, for 5 minutes, on October 2.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. WEISS in opposition to House Concurrent Resolution 280, preceding the vote thereon today.

Mr. WEISS, prior to the vote on H.R. 5538 in the House today.

(The following Members (at the request of Mr. WEBER) and to include extraneous matter:)

Mr. HUNTER.

Mr. EMERSON.

Mr. BROOMFIELD in two instances.

Mr. LAGOMARSINO in two instances.

Mr. YOUNG of Florida.

Mr. WEBER in two instances.

Mr. MORRISON of Washington.

Mr. LEWIS of Florida.

Mr. HYDE.

Mr. ROBINSON.

Mr. BURTON of Indiana.

Mr. MCKINNEY.

Mr. RINALDO in two instances.

Mr. PHILIP M. CRANE in two instances.

Mr. GILMAN.

(The following Members (at the request of Mr. LUNDINE) and to include extraneous matter:)

Mr. DOWNEY of New York.

Mr. YATRON.

Ms. OAKAR in three instances.

Mr. HARRISON.

Mr. VANDERGRIFF.

Mr. McCLOSKEY.

Mr. WIRTH.

Mr. TALLON.

Mr. GARCIA.

Mr. FRANK.

Mr. RODINO in two instances.

Mr. SMITH of Florida.

Mr. LEVINE of California.

Mr. FEIGHAN in two instances.

Mr. BIAGGI.

Mr. DYMALLY.

Mr. MARKEY.

Mr. TAUZIN.

Mr. MORRISON of Connecticut in two instances.

Mr. STUDDS.

Mr. MACKAY.

Mr. ANDERSON in 10 instances.

Mr. GONZALEZ in 10 instances.

Mrs. LLOYD in five instances.

Mr. HAMILTON in 10 instances.

Mr. BROWN of California in 10 instances.

Mr. ANNUNZIO in six instances.

Mr. JONES of Tennessee in 10 instances.

Mr. BONER of Tennessee in five instances.

Mr. OTTINGER.

Mr. SABO.

Mr. MINETA in two instances.

Mr. MONTGOMERY.

Mr. KASTENMEIER.

Mr. RAHALL.

Mr. HUGHES.

Mr. LEHMAN of California.

Mr. LANTOS in two instances.

Mr. MATSUI in three instances.

Mr. MAVROULES.

Mr. FOGLIETTA.

Mr. ADDABBO.

SENATE BILLS, JOINT RESOLUTION AND CONCURRENT RESOLUTION REFERRED

Bills, a joint resolution and a concurrent resolution of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 1151. An act to compensate heirs of deceased Indians for improper payments from trust estates to States or political subdivisions thereof as reimbursements for old age assistance received by decedents during their lifetime; to the Committee on Interior and Insular Affairs.

S. 1647. An act to authorize the use of funds from rental of floating drydock and other marine equipment to support the National Maritime Museum in San Francisco, CA; to the Committee on Interior and Insular Affairs.

S. 2583. An act to authorize U.S. participation in the Office International de la Vigne et du Vin (the International Office of the Vine and Wine); to the Committee on Foreign Affairs.

S. 2721. An act to confirm a conveyance of certain real property by the Southern Pacific Transportation Co. to Ernest Pritchett and his wife, Dianna Pritchett; to the Committee on Interior and Insular Affairs.

S. 2764. An act to authorize U.S. participation in the International Jute Organization; to the Committee on Foreign Affairs.

S.J. Res. 277. Joint resolution to authorize the Armored Force Monument Committee, the United States Armor Association, the World Wars Tank Corps Association, the Veterans of the Battle of the Bulge, and the 1st, 4th, 8th, 9th, 11th, 14th, and 16th Armored Division Associations jointly to erect a memorial to the "American Armored Force" on U.S. Government property in Arlington, VA, and for other purposes; to the Committee on House Administration.

S. Con. Res. 120. Concurrent resolution expressing the sense of the Congress that the legislatures of the States should develop and enact legislation designed to provide child victims of sexual assault with protection and assistance during administrative and judicial proceedings; to the Committee on the Judiciary.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills and a joint resolution of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 960. An act to confer citizenship posthumously on Cpl. Wladyslaw Stanislawski;

H.R. 1904. An act to extend and improve the provisions of the Child Abuse Prevention and Treatment Act and the Child