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SUBJ: Legislative Update--95th Congress; 2nd Session

This memorandum is to update the status of all the important legislation we have dealt with during this session of Congress. At this point, quite a number of these bills have either been defeated, passed, or are stalled at some stage in the legislative process. However, for many others final action is imminent, with votes expected in either the House or the Senate or with conference committees close to finishing their work. Bills falling within the latter category will be treated with much more detail than will be the former. The approach here is to first segregate legislation into major areas of interest and then to report the status of individual bills.

Immigration

S. 993--The Alien Employment Act of 1978

This bill was introduced on March 14, 1978, by Senator Robert Packwood of Oregon. It proposes a significant restructuring of the H-2 temporary agricultural worker program, permitting any Governor to petition for the admission of non-resident alien laborers for specified agricultural labor. Certification of need will be by a designated state agency, rather than by the Secretary of Labor. Workers would be delivered to employers at a port-of-entry; the employer would then transport them to the job site and, if certified to do so, would transport them to another place of employment. Employers would have responsibility for returning workers to their point of departure from the U.S.

Field hearings were held on this legislation in various cities in Oregon in late March and early April.* Since then it has languished in the Senate Committee on the Judiciary's Subcommittee on Immigration. No further action is possible; there is no companion legislation in the House.

* Hearings occurred under the aegis of the Senate Select Committee on Small Business, of which Senator Packwood is a member.

S. 2997--Educational Assistance for Immigrant Children Act of 1978

This legislation was introduced by Senator Lloyd Bentsen in late April, 1978; a companion measure was introduced in the House by Congressman Bob Krueger, (H. R. 11883). The bill provides a one-time fiscal relief to local educational agencies (LEAs) heavily impacted by the attendance of legal immigrant children born in Mexico.

The bill has been incorporated into S. 3186, the Labor Intensive Public Works Act of 1978. It is expected that about \$30 million in aid (for construction of additional school facilities) will be made available through title I of the Economic Development Act (which S. 3186 amends). The Subcommittee on Regional and Community Development (of the Senate Committee on Environment and Public Works) marked-up this bill in August, however the Senate appropriated no funds for this legislation. The Senate will vote on approving funds for S. 3186 on September 14, 1978, when it takes up a resolution introduced by Senator Muskie; Subcommittee staff believe the measure will pass. If so, the Subcommittee will complete mark-up sometime around the 19th or 20th and report it to the full Committee.

Congressman Krueger's bill has been tacked onto H. R. 12993, which is an amendment offered to H. R. 11610, the massive third round funding legislation for the Local Public Works and Development Act. Although the Carter Administration has gone on record as supporting the Bentsen-Krueger legislation, President Carter in late August announced that he would veto the Local Public Works and Development Act because it exceeded his budget recommendations. Hence, passage of educational assistance relief is in real doubt.

S. 2252--The Alien Adjustment and Employment Act of 1978

This legislation comprises the Carter Administration's undocumented alien package. Since the Senate Judiciary Committee hearings in May, 1978, there has been little action on the bill; it will not pass this session.

H. R. 12443--The Worldwide Ceiling Act of 1978

This bill was introduced by Congressman Joshua Eilburg on May 1, 1978, and passed the House in late July. In addition to abolishing the hemispheric ceilings in favor of a single world total, this legislation creates a Select commission to study and evaluate existing U. S. immigration law, policy and administration. Similar legislation, S. 3340, has been introduced in the Senate by Senator John Tower; this bill has the additional feature of requiring the

Select Commission to study the undocumented alien issue. [Senator Tower's bill has had no hearings and was not even referred to the Judiciary Committee.]

At the request of Senator Kennedy, H. R. 12443 was held at the desk at the Senate in order to assure early action. His staff indicates one major obstacle to passage: Senator James Eastland's insistence that the legislation include a restriction on the U. S. Attorney General's parole authority. Mr. Kennedy is not prepared to accept this and will let the bill die if Mr. Eastland does not drop his proposed amendment. Additionally, Senator Kennedy's staff has been apprised of the uneasiness of the Hispanic community with the new worldwide ceiling's effect on Mexican (and other Western hemisphere) immigrants. The staff has promised that Senator Kennedy's planned reform of the refugee section of the Immigration and Nationality Act will redress any adversity which flows from the worldwide ceiling. As of now, passage of this legislation is uncertain.*

H. R. 7200--Public Assistance Amendments of 1978

This legislation, which undertakes a major reform of the U. S. welfare system, passed the House in mid-June 1977. It was reported out of the Senate Finance Subcommittee on Public Assistance in early November. Several amendments to the Immigration and Nationality Act and the Social Security Act have been proposed in the Senate; the House passed an amendment to the Social Security Act. Each of these amendments' thrust is directed toward reducing or eliminating the access of permanent residents to one or more of the assistance programs based on need. The sponsors of these amendments have justified them by citing the findings of a Government Accounting Office study which purported to find significant and "widespread" abuse of the system by resident aliens, particularly the newly arrived. A Congressional Research Service critique of the GAO study [undertaken largely because of our concern] will shortly be available.

During the second week of September the Subcommittee on Public Assistance heard testimony on a limited version of welfare reform. It was universally opposed. The Administration lent its voice to these efforts and it is commonly thought that it will resist any half measures. The best estimates are that welfare reform will have to wait until the 96th Congress. Hence, the limitations proposed on resident aliens will not pass this session either.

* Kennedy's staff has been able to reach no agreement with Senator Eastland; they have urged the Senator to meet with Mr. Eastland, and this he will soon do. Currently, they are recommending that the worldwide ceiling provision be dropped until next year, when it can become part of refugee reform. Thus, if H. R. 12443 does reach the Senate floor, it will likely be only with the national commission provisions. But even this is now doubtful.

Reorganization

S. 2640--The Civil Service Reform Act of 1978

The Senate passed this legislation on August 24, 1978, and made significant changes to the proposals submitted by the Administration, particularly in the area of adjudication of federal employee discrimination complaints. The House bill, H. R. 11280, passed on September 13, 1978, and followed the Administration's proposals in this area. A conference committee will be necessary to resolve this and other differences. As the major reorganization effort of the Administration, there is no doubt that this bill will pass this session. Whether the House version is the one adopted by the conferees will depend in large measure upon the pressure that can be levelled against the House and Senate conferees and the Administration.

While the House bill vests final administrative decisions with the EEOC, the Senate does not. In brief, what the Senate proposes is as follows. Individual agencies have 60 days to resolve a complaint. * Appeals are to the MSPB, which shall promptly notify the EEOC. The Commission is a full party and may submit its opinions on issues of fact and law, but the appeal will be before an MSPB appeals officer who may make a decision on the record or conduct an evidentiary hearing, as circumstances warrant. Notwithstanding any other provision of law, the employee (or applicant) will have the issue of discrimination and the appealable action (i. e., firing, demotion, denial of promotion, etc.) decided by the MSPB in the appeal decision under the Board's appellate procedures. Any order or decision will be the final administrative decision unless the EEOC decides to reconsider the decision/order.

The Commission may reconsider under two circumstances: first, upon petition from the employee; or, second, "if the Commission finds in writing that the decision and order may have a substantial impact on the general administration by the Commission of its responsibilities for preventing discrimination in Federal employment as a whole."

The Commission may, within 60 days, concur or dissent with the Board's decision/order, based upon a consideration of the "entire record of the proceedings before the Board, and, solely upon the basis of the evidentiary record compiled..." pursuant to the MSPB proceeding. If the Commission dissents and issues another decision/order, it must find that, "in its view, the interpretation by the Board of the meaning of any statute, rule, regulation or policy directive [defining prohibited discrimination] was erroneous, or the application of such law to the evidence in the record was unsupportable as a matter of law."

* Class complaints of discrimination may be processed by an appeals officer pursuant regulations to be prescribed by the Merit Systems Protection Board (MSPB).

The Commission's decision/order is then to be submitted to the MSPB for its reconsideration. If the Board dissents, the matter will be immediately certified to the U. S. Court of Appeals for the District of Columbia for review. The administrative record under review of the court will include the factual record compiled by MSPB and the orders/decisions issued by MSPB and EEOC. Upon review, "the court shall give due deference to the respective expertise of each agency." *

As noted above, the House bill grants EEOC the final administrative authority in federal employee discrimination complaints. It is provided that the Commission may grant to the Board the authority to provide the complainant with a preliminary determination on the discrimination issue. However, this shall "not be construed to authorize the [EEOC] to delegate the function of making a final determination concerning the issue of discrimination." **

The conference committee is going to meet at 10:30 on Monday, September 18. The conferees for the House will be: Nix, Udall, Clay, Shorter, Spellman, Ford, Hanley, Derwinski, Rousellot, and Taylor. In the Senate the conferees are: Ribicoff, Sasser, Chiles, Humphrey, Eagleton, Percy, Mathias, and Stevens.

Education

H. R. 15--The Elementary and Secondary Education Act Amendments of 1978

This bill reauthorizes ESEA for five years. It passed the House on July 13, 1978, while its companion (S. 1753) passed the Senate on August 24, 1978. With respect to title VII (Bilingual Education), the language of the Senate bill is preferred. *** A conference committee will probably meet on September 21, 1978.

S. 2723--The Emergency School Aid Act Amendments of 1978

This legislation was introduced by Senator Peter Domenici on March 10, 1978. The purpose is to continue funding for school districts facing a funding cut-off as a result of the Stokes Memorandum. The Senate incorporated this bill into the ESEA legislation; however, the House bill has no such provisions. Thus, this is one of the issues the conference committee will have to address.

* Upon application by the employee, the EEOC can issue interim relief. However, the Commission may not "stay, or order the employing agency to reverse on an interim basis" the personnel action in question.

** The House has passed one devastating amendment--the Leach amendment, which requires the federal government to meet a ceiling on federal employment (within one year) that is 112,000 positions below current levels.

*** There is one exception: the House provides an additional \$12 million to State Education Agencies for technical assistance [largely training of bilingual personnel] to local educational agencies. This amendment should be supported.

Because so little money is involved (approximately \$1.2 million), the House is expected to adopt Mr. Domenici's provision.

S. 991--The Department of Education Act

The Senate Governmental Affairs Committee reported out this bill in early August; soon afterwards the House Government Operations Committee reported out the companion measure, H. R. 13778. Once the debate over natural gas legislation is completed--expected shortly--the Senate will vote on this legislation; the House will vote sometime in the next two weeks. Amendments are possible in both chambers and a conference committee will have to resolve the differences. Whether the conferees succeed before the end of the session depends upon the nature of the floor amendments. There are several very controversial elements involved (e. g., transfer of the Indian education programs and the child nutrition programs), so it is impossible to predict with certainty whether this session will produce a Department of Education. All the signs, however, point in that direction.

Census and Statistics

H. R. 10386--The Census Act of 1977

This bill was introduced by Congressman William Lehman in late December, 1977. Basically, it is a third attempt this Congress by the Congressman (who is also chair of the House Subcommittee on Census and Population) to achieve some reform of the Census Bureau and its operations, particularly the 1980 Census.*

Because of opposition by the Bureau and the federal statistical community, none of these bills has fared well; indeed, none has even gotten beyond the full committee stage. With respect to H. R. 10386, the Subcommittee agreed to a suggestion by the Bureau to attempt to resolve its concerns administratively rather than through legislation. The principal issues are as follows: the format of the race/ethnicity questions on the 100% questionnaire for the 1980 Census; the establishment within the Department of Commerce of an independent review committee for the Bureau of the Census; and revision of the Bureau's procedures for reconciling conflicts over "determination estimates."

With respect to the race/ethnicity questions, the Subcommittee deferred to the Bureau's plans to make a Spanish origin question a 100% item. It also accepted the Bureau's proposed restructuring of its review procedures for

* The two previous efforts were H. R. 8871 and H. R. 9623.

disputed determination estimates. As for the review committee, the Department of Commerce agreed to create an advisory committee to advise the Secretary on Bureau of Census policies, procedures and quality standards.

Subsequently, the Office of Management and Budget approved the creation of the committee. Its charter--in draft-- was filed on August 15, 1978, under the Federal Advisory Committee Act. However, acceptance of the review committee idea by OMB was not the only impediment to its creation. When the House passed H. R. 12934--the FY '79 appropriations for the Departments of State, Justice and Commerce-- it did so without any limitations on the Commerce Secretary's discretionary funds. Unfortunately, the Senate passed H. R. 12934 with an amendment by Senator John Glenn which prohibited the use of discretionary money for the creation of a Census Advisory Committee.*

The House and Senate conferees met for over a month trying to iron out the differences between their respective bills. The conferees took their final vote on September 14, 1978; they did not approve use of discretionary funds for purposes of the establishment of the advisory committee. Staff of the Subcommittee on Census and Population in the House believe that the language of the Glenn amendment would prohibit the use of departmental money, irrespective of source, for the creation of this committee. They assure me, though, that the matter of the advisory committee will come up again next year in the 96th Congress.

H. R. 11253--The Federal Statistical Activity Control Act of 1978

This legislation was introduced on March 2, 1978, by Congressman Lehman. Among other things, it provides for an "impact statement" to be filed by any agency or department when it undertakes a statistical collection activity. It also mandates a continuous computer updating of all on-going data collection activities of the federal government. The bill is pending before the House, but it is not expected to pass. The principal reason is that when the bill was sent to the Rules Committee, the bill's impact statement sections were eviscerated. Mr. Lehman has since lost interest in passing the bill without these provisions.

Civil Rights

S. 926--The Federal Election Campaign Act Amendments of 1978

* Senator Glenn is chair of the Governmental Affairs Subcommittee on Energy, Nuclear Proliferation and Federal Services. This Subcommittee has oversight over the creation of federal advisory committees; Senator Glenn could not be persuaded that the creation of the Census committee was in the public interest.

This legislation, providing for public financing of Senatorial elections, contained a last minute rider [§305] proposed by Senator Henry Bellmon which had the effect of dismantling the bilingual elections provisions of the Voting Rights Act, (Title III), and overturning remedial provisions of Section 5 for all jurisdictions covered by the 1975 Amendments. *

Fortunately, the House version of this bill, H. R. 11315, was referred to Congressman Frank Thompson's Administration Committee. Mr. Thompson and his staff proved to be very receptive and refused to permit §305 to be included in the House bill. As it turned out, the House voted down this legislation and we never had to face the question of assuring that the Senate conferees would not prevail in seeking adoption of §305.

H. R. 12934--The FY '79 Appropriations for the Departments of State, Justice and Commerce

When this legislation passed the House in mid-June of this year the funds required to implement §207 of the VRA [the voter surveys after each congressional election] were deleted. The House acted on the basis of a Government Accounting Office report which concluded that the surveys were too expensive and of limited utility. While many believed that the GAO report was ill-conceived and misinterpreted congressional intent in approving §207, the Senate Appropriations committee, chaired by Senator Ernest Hollings, could not be dissuaded from following the House's lead.

H. R. 10546--The Voting Rights Act Repealer Act of 1978

This bill was introduced by Congressman Robert McClory and is similar to several other pieces of legislation which periodically are introduced to overturn the 1975 Amendments. To date, none has ever received a hearing; but they all must be monitored.

H. R. 12432--To Extend the U. S. Commission on Civil Rights

This legislation was introduced by Congressman Don Edwards and extends the term of the Commission for five years, authorizes appropriations for it, and makes technical amendments to the Commission's mandate to permit it to study civil rights problems in newly defined areas. It passed the House on September 6, 1978; a companion bill in the Senate (S. 3067) passed on June 27, 1978.

* Senator Bellmon proposed this amendment in 1975 when the Senate voted to extend the VRA to cover language minorities; it failed that time because its disastrous effects were spelled out for the Members by Judiciary Committee staff. This time, however, Senator Bellmon took advantage of poor attendance and an a disingenuous argument [it was offered as a perfecting amendment to reconcile the problems election officials were having in administering the bilingual provision] to secure passage.

There are significant differences between the House and Senate bills in three areas. First, with respect to the length of the extension (the Senate proposes three years and the House five); second, the House has passed language which prohibits the Commission from studying or collecting data about the laws or policies of the federal government with respect to abortion; and finally, the House has "anti-lobbying" language which would prohibit the Commission from doing what it was mandated to do, i. e. , reporting to Congress.

A conference committee will be meeting within the next 10 days. Senate Judiciary Committee staff believe that the Senate conferees will accept the House five year extension and some language on abortion; they intend to insist upon a modification of the "anti-lobbying" provisions, which are very poorly drafted.

The Judiciary

S. 11--The Omnibus Judgeships Act of 1978

The Senate passed this legislation in summer, 1977, and the House passed its version (H. R. 7843) this past February. Since June, 1978, the House and Senate conferees have been unable to agree on the major issue holding up final action on this legislation: the split of the Fifth Circuit. At this juncture the conferees are stalled on the latest Senate proposal (by Senator Dennis DeConcini) which would split the fifth in a rather novel way. As a gesture to the House conferees who continue to insist that no split take place, Mr. DeConcini has proposed that it be divided into an eastern and western branch, which will be autonomous.* Cases and controversies will be heard by a panel of three judges from both eastern and western divisions, with the majority consisting of judges residing in the division in which the case arose. A hearing or rehearing before the court en banc could be ordered by a majority of the circuit judges, with the court en banc consisting of nine judges. They would be selected as follows: the chief judge of each division, the writing judge of a panel decision, a dissenting judge of the panel and the remainder randomly selected.

Senator DeConcini will be meeting on the 20th or 21st of September with the NAACP Legal Defense Fund to try to persuade them of the merits of his plan: thus far, they have been working to keep the House conferees firmly in support of the House version, which does not envision a split of the circuit.

There is a House proposal, advanced by Congresswoman Barbara Jordan, directed at the concern the Senate conferees have stated lies beneath their

* The Eastern division would be comprised of Florida, Georgia, Mississippi, Alabama, and the Panama Canal Zone; the Western of Louisiana and Texas. Of course, this is no different than Senator Eastland's proposal of recent weeks.

desire to split the circuit: the size of the en banc panel. Ms. Jordan has proposed a smaller en banc court, which the DeConcini proposal accepts, but hers does not require it, preferring to let the court experiment with en banc panels of varying sizes. (Her proposal requires at least five justices.)

NAACP Legal Defense believes that the DeConcini proposal gerrymanders the circuit, assuring that no more than one liberal judge from Louisiana or Texas can sit on a civil rights case from Mississippi. That is the result that the DeConcini plan and the Eastland proposal have in common.

It is probable that as this session draws to a close the pressure to reach agreement will greatly increase--the Senators want these appointments.

Other Legislation

S. 2570--The Comprehensive Employment and Training Act Amendments of 1978

The Senate passed its bill on August 25, 1978, making significant reforms to the Public Service Employment programs under titles II and VI. House action on its version is expected within the next week (H. R. 12452). The thrust of both bills is move CETA away from countercyclical employment measures to more emphasis on the structurally unemployed. In both bills, eligibility requirements, wage levels, and length of program participation have felt the weight of the reform movement: they are considerably more stringent than present law. The House's version, it is generally conceded, is the more lenient of the two bills.

Because there has been such a public outcry over the abuses associated with CETA, both houses will probably work hard for action this year. It is impossible at this point to predict how the conferees will come down on the different issues presented.

H. R. 13015--The Communications Act Amendments of 1978

This legislation rewrites the Communications Act of 1934; however, only the House is holding extensive hearings this session and no action is planned until the 96th Congress. Some idea of the profound scope of the changes that are contemplated can be seen in several of the major proposals. First, the Federal Communications Commission is abolished in favor of a new entity which will regulate the telecommunications marketplace only to the extent that market forces are incapable of protecting the public interest. Second, the Corporation for Public Broadcasting is abolished. Third, the license terms for radio and television outlets are substantially liberalized and the new federal entity is prohibited from regulating ascertainment practices of stations. Fourth, a Minority Telecommunications Fund is established to promote minority ownership in the telecommunications. We should get involved in this next year, for there are many things of interest to us.*

* E.g., we may decide to challenge the citizenship requirements for licensees.

PAS (Social Action)

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PAS is a non-profit organization that forms the second part of the present strategy for La Raza Unida. Twenty-five people in February of 1972 initiated incorporation procedures. The present membership of the Board of Directors are from the Cucamonga, Ontario, Upland area, as well as other Barrio persons from San Bernardino and Riverside counties. The Executive Board is composed of nine persons.

Present plans call for a time when CEDA will be able to contribute property to PAS in order that community centers may be established in our Barrios. In its program, PAS will seek to "engender a cultural renaissance", focusing on the culture, language, and life style of La Raza. Cultural programs, use of Raza literature, the Arts, music, media technology, etc., will be encouraged and developed. As a continued strategy of self-contained community, direct services will be provided by Raza for Raza. Cooperatives of various kinds will be started, clinics and medical programs, credit unions, etc., are some of the ideas now being formed and discussed by PAS.

In the meantime, PAS continues to be involved in social issues that affect our people. Public education, at all levels, continues to demand time and planning. Concerns for our ansianos will require additional plans. Poverty, welfare, job development, leisure time, re-discovering our cultural values and applying these values to a technological world, etc., are but a few of the creative and demanding issues PAS will be facing.