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91-74 TRANSFER OF PHS COMMISSIONED OFFICERS TO ENVIRONMENTAL PROTECTION AGENCY

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
PUBLIC HEALTH AND WELFARE  
OF THE  
COMMITTEE ON  
INTERSTATE AND FOREIGN COMMERCE  
HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

SECOND SESSION

ON

H.R. 19009

A BILL TO PROVIDE FOR EMPLOYMENT WITHIN THE ENVIRONMENTAL PROTECTION AGENCY OF COMMISSIONED OFFICERS OF THE PUBLIC HEALTH SERVICE, AND FOR OTHER PURPOSES

SEPTEMBER 18, 1970

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# TRANSFER OF PHS COMMISSIONED OFFICERS TO ENVIRONMENTAL PROTECTION AGENCY

FRIDAY, SEPTEMBER 18, 1970

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON PUBLIC HEALTH AND WELFARE,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
Washington, D.C.

The subcommittee met at the call of the Chair, at 10 a.m., in room 2123, Rayburn House Office Building, Hon. John Jarman (chairman) presiding.

Mr. JARMAN. This morning we are going to take a few minutes to hear testimony on a bill enactment of which the Administration has urgently requested. The title of the bill explains the purposes of the legislation: "A bill to provide for employment within the Environmental Protection Agency of commissioned officers of the Public Health Service, and for other purposes."

(The text of H.R. 19009 and departmental reports thereon follow:)

[H.R. 19009, 91st Congress, 2d Session, introduced by Mr. Staggers (for himself and Mr. Springer) on August 13, 1970]

A BILL To provide for employment within the Environmental Protection Agency of commissioned officers of the Public Health Service, and for other purposes

*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 "Environmental Protection Agency Personnel Act".*

ELECTION OF PUBLIC HEALTH SERVICE COMMISSIONED OFFICERS TO TRANSFER TO THE ENVIRONMENTAL PROTECTION AGENCY

SEC. 2. (a) Subject to such requirements as the Civil Service Commission may prescribe, any commissioned officer of the Public Health Service (other than an officer who retires under section 211 of the Public Health Service Act after his election but prior to his transfer pursuant to this section) who, upon the day before the effective date of Reorganization Plan Numbered 3 of 1970 (hereinafter in this Act referred to as the "plan"), is serving as such officer—

(1) primarily in the performance of functions transferred by such plan to the Environmental Protection Agency or its Administrator (hereinafter in this Act referred to as the "Agency" and the "Administrator", respectively), may, if such officer so elects, acquire competitive status and be transferred to a competitive position in the Agency; or

(2) primarily in the performance of functions determined by the Secretary of Health, Education, and Welfare (hereinafter in this Act referred to as the "Secretary") to be materially related to the functions so transferred, may, if authorized by agreement between the Secretary and the Administrator, and if such officer so elects, acquire such status and be so transferred.

(b) An election pursuant to subsection (a) shall be effective only if made, in accordance with such procedures as may be prescribed by the Civil Service Commission—

(1) before the close of the twenty-fourth month after the effective date of the plan, or

(2) in the case of a commissioned officer who would be liable for training and service under the Military Selective Service Act of 1967 but for the operation of section 6(b)(3) thereof (50 U.S.C. App. 456(b)(3)), before (if it occurs later than the close of such twenty-fourth month) the close of the ninetieth day after the day upon which he has completed his twenty-fourth month of service as such officer.

#### COMPENSATION OF TRANSFERRING OFFICER

SEC. 3. (a) Except as provided in subsection (b), any commissioned officer of the Public Health Service who, pursuant to section 2 of this Act, elects to transfer to a position in the Environmental Protection Agency which is subject to chapter 51 and subchapter III of chapter 53 of title 5, United States Code (hereinafter in this Act referred to as the "transferring officer"), shall receive a pay rate of the General Schedule grade of such position which is not less than the sum of the following amounts computed as of the day preceding the date of such election:

(1) the basic pay, the special pay, the continuation pay, and the subsistence and quarters allowances, to which he is annually entitled as a commissioned officer of the Public Health Service pursuant to title 37, United States Code;

(2) the amount of Federal income tax, as determined by estimate of the Secretary, which the transferring officer, had he remained a commissioned officer, would have been required to pay on his subsistence and quarters allowances for the taxable year then current if they had not been tax free;

(3) an amount equal to the biweekly average cost of the coverages designated "high option, self and family" under the Government-wide Federal employee health benefits program plans, multiplied by twenty-six; and

(4) an amount equal to 7 per centum of the sum of the amounts determined under clauses (1) through (3), inclusive.

(b) A transferring officer shall in no event receive, pursuant to subsection (a), a pay rate in excess of the maximum rate applicable under the General Schedule to the class of position, as established under chapter 51 of title 5, United States Code, to which such officer is transferred pursuant to section 2 of this Act.

#### LEAVE OF TRANSFERRING OFFICER

SEC. 4. (a) A transferring officer shall be credited, on the day of his transfer pursuant to his election under section 2, with one hour of sick leave for each week of active service, as defined by section 211(d) of the Public Health Service Act.

(b) The annual leave to the credit of a transferring officer on the day before the day of his transfer, shall, on such day of transfer, be transferred to his credit in the Environmental Protection Agency on an adjusted basis under regulations prescribed by the Civil Service Commission. The portion of such leave, if any, that is in excess of the sum of (1) two hundred and forty hours, and (2) the number of hours that have accrued to the credit of the transferring officer during the calendar year then current and which remain unused, shall thereafter remain to his credit until used, and shall be reduced in the manner described by subsection (c) of section 6304 of title 5, United States Code.

#### TRAVEL AND TRANSPORTATION EXPENSES INCIDENT TO TRANSFER

SEC. 5. A transferring officer who is required to change his official station as a result of his transfer under this Act shall be paid such travel, transportation, and related expenses and allowances, as would be provided pursuant to subchapter II of chapter 57 of title 5, United States Code, in the case of a civilian employee so transferred in the interest of the Government. Such officer shall not (either at the time of such transfer or upon a subsequent separation from the competitive service) be deemed to have separated from, or changed permanent station within, a uniformed service for purposes of section 404 of title 37, United States Code.

## LIFE INSURANCE OF TRANSFERRING OFFICER

SEC. 6. Each transferring officer who prior to January 1, 1958, was insured pursuant to the Federal Employees' Group Life Insurance Act of 1954, and who subsequently waived such insurance, shall be entitled to become insured under chapter 87 of title 5, United States Code, upon his transfer to the Environmental Protection Agency regardless of age and insurability.

## RETIREMENT CREDITS OF TRANSFERRING OFFICER; DEPOSIT IN CIVIL SERVICE RETIREMENT AND DISABILITY FUND

SEC. 7. (a) (1) Effective as of the date a transferring officer acquires competitive status as an employee of the Agency, there shall be considered as the civilian service of such officer for all purposes of chapter 83, title 5, United States Code, (A) his active service as defined by section 211(d) of the Public Health Service Act, and (B) any period for which he would have been entitled, upon his retirement as a commissioned officer of the Public Health Service, to receive retired pay pursuant to section 211(a)(4)(B) of such Act; however, no transferring officer may become entitled to benefits under both subchapter III of such chapter and title II of the Social Security Act based on service as such a commissioned officer performed after 1956, but the individual (or his survivors) may irrevocably elect to waive benefit credit for the service under one such law to secure credit under the other.

(2) A transferring officer on whose behalf a deposit is required to be made by subsection (b) and who, after transfer to a competitive position in the Agency under section 2, is separated from Federal service or transfers to a position not covered by subchapter III of chapter 83 of title 5, United States Code, shall not be entitled, nor shall his survivors be entitled, to a refund of any amount deposited on his behalf in accordance with this section. In the event he transfers, after transfer under section 2, to a position covered by another Government staff requirement system under which credit is allowable for service with respect to which a deposit is required under subsection (b), no credit shall be allowed under such subchapter III with respect to such service.

(b) (1) The Secretary shall deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund, on behalf of and to the credit of such transferring officer, an amount equal to that which such individual would be required to deposit in such fund to cover the years of service credited to him for purposes of his retirement under subsection (a) (1), had such service been service as an employee as defined in section 8331(1) of title 5, United States Code. The amount so required to be deposited with respect to any transferring officer shall be computed on the basis of the sum of each of the amounts described in section 3(a) which were received by, or accrued to the benefit of, such officer during the years so credited.

(2) The deposits which the Secretary is required to make under this subsection with respect to any transferring officer shall be made within two years after the date of his transfer as provided in section 2, and the amounts due under this subsection shall include interest computed from the period of service credited to the date of payment in accordance with section 8334(e) of title 5, United States Code.

## ASSIGNMENT OF PUBLIC HEALTH SERVICE OFFICERS TO THE ENVIRONMENTAL PROTECTION AGENCY

SEC. 8. (a) A commissioned officer of the Public Health Service who, upon the day before the effective date of the plan, is on active service therewith primarily assigned to the performance of functions described in section 2(a)(1), shall, while he remains in active service, as defined by section 211(d) of the Public Health Service Act, be assigned to the performance of duties with the Agency, except as the Secretary and the Administrator may jointly otherwise provide.

(b) Paragraph (2) of section 6(a) of the Military Selective Service Act of 1967 (50 U.S.C. App. 456(a)(2)) is amended by inserting "the Environmental Protection Agency," after "Department of Justice,".

U.S. CIVIL SERVICE COMMISSION,  
Washington, D.C., September 14, 1970.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives,  
Rayburn House Office Building.*

DEAR MR. CHAIRMAN: This is in response to your request for the Commission's views on H.R. 19009, a bill "To provide for employment within the Environmental Protection Agency of commissioned officers of the Public Health Service, and for other purposes."

About 600 commissioned officers of the Public Health Service are now performing functions which would be transferred from the Department of Health, Education, and Welfare to a new Environmental Protection Agency by the proposed Reorganization Plan No. 3 of 1970. H.R. 19009, submitted as an Administration proposal by HEW, would authorize the transfer or assignment of these commissioned officers to the new agency, and would encourage and facilitate such transfers.

The Commission recommends early enactment of H.R. 19009 in order to expedite effective implementation of Reorganization Plan No. 3 of 1970, submitted to the Congress by the President on July 9, 1970, which establishes the Environmental Protection Agency.

Section 2 of H.R. 19009 would authorize Public Health Service commissioned officers performing functions being transferred under the Reorganization Plan, or materially related to functions being transferred, to elect to acquire a competitive status and be transferred to a competitive position in the Environmental Protection Agency. The election would be effective in accordance with such requirements and procedures as may be prescribed by the Civil Service Commission. The election would have to be made within 24 months after the effective date of the plan. Up to 90 additional days to exercise this election is provided for officers who are completing their military obligation under section 6(b)(3) of the Military Selective Service Act of 1967. Officers would not be entitled to transfer under section 2 of the bill if they retire from the Commissioned Corps. Under section 8 of the bill, commissioned officers engaged in functions being transferred who do not elect to transfer to a competitive position under section 2 would be assigned to the new agency while they remain on active service in the Commissioned Corps.

Sections 3 through 7 authorize special civilian pay and benefits for commissioned officers who elect to transfer under section 2 which are reasonably comparable with the pay and benefits they were receiving as commissioned officers.

Section 3 provides that the salary rate of an officer who transfers to a General Schedule position shall be based on the gross earnings and benefits he is receiving at the time of the transfer. For this purpose consideration will be given to his base pay, special pay, continuation pay, subsistence and quarters allowances, income tax on subsistence and quarters, and cost of health insurance and civil service retirement contributions. Subsection 3(b) provides that the officer's pay may not exceed the highest rate of the General Schedule grade of the position to which he is transferred.

Section 4(a) provides for giving officers transferring under section 2 credit for 1 hour of sick leave for each week of active service as a commissioned officer. This would be equivalent to one-half that which would be earned by a civilian employee with a comparable period of service. This formula is based on a Government-wide sick leave study made by the Commission in 1961 which showed that civilian employees in the same relative position levels as the officers being transferred used an average of about half of the sick leave they accrued during a year. The Commission believes the formula in section 4(a) is equitable.

Section 4(b) of the bill provides for the transfer of annual leave credits on an adjusted basis under regulations of the Commission.

Section 5 permits the new agency to pay travel and transportation expenses incident to an officer's transfer.

Section 6 permits a transferring officer to obtain group life insurance if he had previously waived his right to such insurance.

Under section 7 of the bill, transferring officers would be granted paid-up credit under the retirement provisions of chapter 83 of title 5, United States Code, for all past service creditable toward retirement under the non-contributory retirement system for Public Health Service commissioned officers (including up to 5 years of credit for time spent in medical or dental school). Within 2 years from the date of transfer, the Secretary of Health, Education, and Welfare would be required to pay to the Treasury for deposit into the Civil Service Retirement

Fund the sums transferred officers would otherwise have had to deposit to cover their past service credits. The amounts so deposited could never be refunded to them.

A transferred officer would be barred from receiving both Social Security and Civil Service retirement credit for Commissioned Officer service performed after 1956. However, he or his survivors would be authorized to irrevocably elect to waive credit for the service under one system in order to secure credit under the other.

If a transferred officer subsequently moves to a position covered by another Government staff retirement system affording credit for the service covered by the HEW deposit on his behalf, no credit would be allowed under the Civil Service retirement system with respect to such service.

The Office of Management and Budget advises that there is no objection to the submission of this report, and that enactment of H.R. 19009 would be in accord with the program of the President.

By direction of the Commission.

Sincerely yours,

ROBERT HAMPTON, *Chairman.*

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
*Washington, D.C., September 11, 1970.*

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives,  
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request of August 31, 1970, for a report on H.R. 19009, a bill "To provide for employment within the Environmental Protection Agency of commissioned officers of the Public Health Service, and for other purposes."

The instant bill was transmitted by this Department to the Speaker of the House of Representatives on July 16, 1970, with the recommendation that its enactment would be in accord with the program of the President. A copy of that submission, which explains the purposes and the effect of the bill, is enclosed for your information.

Sincerely,

ELLIOT L. RICHARDSON,  
*Secretary.*

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
*Washington, D.C., July 16, 1970.*

HON. JOHN W. McCORMACK,  
*Speaker of the House of Representatives,  
Washington, D.C.*

DEAR MR. SPEAKER: We enclose for the consideration of the Congress a draft bill "To provide for employment within the Environmental Protection Agency of commissioned officers of the Public Health Service, and for other purposes."

The effort to control man-made environmental pollution engages some 600 commissioned officers of the Public Health Service. When Reorganization Plan No. 3 of 1970 becomes effective, this effort will shift to a newly-created Environmental Protection Agency, which, as described by the President's message of July 9, 1970, on Environmental Protection, will bring together a variety of activities now scattered within the Executive Branch. The draft bill would authorize these commissioned officers to transfer to competitive civilian positions within the new agency, at levels of compensation, and with benefits, comparable in most cases to those that they now enjoy.

The enclosed section-by-section analysis explains the provisions of the bill in detail.

We are advised by the Office of Management and Budget that enactment of the draft bill would be in accord with the program of the President.

Sincerely,

ELLIOT L. RICHARDSON,  
*Secretary.*

SECTIONAL ANALYSIS OF "ENVIRONMENTAL PROTECTION AGENCY PERSONNEL"  
BILL

*Section 1* would style the bill as the "Environmental Protection Agency Personnel Act".

*Section 2* of the bill affords to officers of the Public Health Service commissioned corps whose positions are transferred to the Environmental Protection Agency an opportunity, subject to Civil Service Commission regulations, to transfer to competitive positions in the Agency. (Sec. 2(a)(1)). Commissioned officers whose functions are materially related to those transferred would be permitted to transfer to the Agency if so authorized by an agreement between the Secretary of Health, Education, and Welfare and the Agency's Administrator. (Sec. 2(a)(2)). An officer's election to transfer would have to be made within 24 months after the Reorganization Plan becomes effective. (Sec. 2(b)(1)). Officers who are completing their military obligation by their commissioned service with the Department would be required to make their election by the later of such 24 months or 90 days after they have completed 24 months of commissioned service (*i.e.*, 90 days after they have fulfilled their military obligation). (Sec. 2(b)(2)).

*Section 3* of the bill identifies the elements of a commissioned officer's remuneration that shall determine his salary within the competitive position to which he transfers. These elements are his basic pay, special pay, continuation pay, and subsistence and quarters allowances (Sec. 3(a)(1)), an amount equal to the Federal income tax which would be payable by the officer on his subsistence and quarters allowances if they were not tax free (Sec. 3(a)(2)), an annualized amount determined by averaging the cost of the coverages designated as "high option, self and family" under the Government Wide Federal Employee Health Benefits Program Plans (Sec. 3(a)(3)), and an amount equal to 7% of these elements (intended to reflect the deduction for Federal Employees' Retirement Act contribution not taken from the pay of commissioned officers) (Sec. 3(a)(5)).

In occasional cases, an officer may transfer to a classified position whose grade of difficulty and responsibility of work (as established by 5 U.S.C. 5104), although equivalent to the position he held as a commissioned officer, may be compensated, under the General Schedule, at a maximum level below the sum of the elements of compensation previously described. In such cases the transferring officer's compensation would be limited to the top of the grade to which he has transferred. (Sec. 3(b)).

*Section 4* of the bill would credit transferring officers with one hour of sick leave for each week of active commissioned service. (Sec. 4(a)). Officers would carry over their unused annual leave. An officer who, at the time of his transfer, carries over a leave balance in excess of the balance permitted to be retained by other civilian employees would, thereafter, be deemed to take leave in a manner that would exhaust his most recently acquired leave before there would be a charge against the excess leave carried over. (Sec. 4(b)).

*Section 5* of the bill would make clear that a transferring officer who, by virtue of his transfer, is required to relocate, is entitled to travel and transportation expenses, and related allowances, as though he had transferred from one Federal civilian position to another. These payments would be in lieu of payments for his transportation to his home or the place from which he was ordered to active duty, which would otherwise be provided to an officer upon his separation from the service under 37 U.S.C. 404.

*Section 6* of the bill would permit transferring officers to reinstate FEGLI coverage previously waived.

*Section 7* of the bill would grant to a transferring officer civil service retirement and disability credit for the service for which he had previously been credited for purposes of retirement as a commissioned officer. A transferring officer could elect, however, to take credit for such service (after 1956) under title II of the Social Security Act. Benefits for such service under both title II and the civil service retirement system would be barred. (Sec. 7(a)(1)).

The Secretary would be required to deposit to the credit of the Civil Service Retirement and Disability Fund, an amount equal to that which the transferring officer would be required to deposit in the fund to cover the years of service credited to him for retirement, had such service been as a civilian employee. (Sec. 7(b)(1)).

*Section 8* of the bill would require the Secretary to detail to the Agency officers who, on the day before the effective date of the Reorganization Plan, were assigned primarily to the performance of functions transferred by the plan, and who do not elect to transfer to competitive positions. In order not to foreclose the possibility,

thereafter, of a reassignment of certain of these officers to duties outside of the Agency, the Secretary and the Administrator would be given authority jointly to terminate such detail in the case of individual officers.

The section would also permit the detail to the Agency of officers who are serving their military obligation within the commissioned corps.

A BILL To provide for employment within the Environmental Protection Agency of commissioned officers of the Public Health Service, and for other purposes

*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 "Environmental Protection Agency Personnel Act."*

ELECTION OF PUBLIC HEALTH SERVICE COMMISSIONED OFFICERS TO TRANSFER TO  
THE ENVIRONMENTAL PROTECTION AGENCY

SEC. 2. (a) Subject to such requirements as the Civil Service Commission may prescribe, any commissioned officer of the Public Health Service (other than an officer who retires under section 211 of the Public Health Service Act after his election but prior to his transfer pursuant to this section) who, upon the day before the effective date of Reorganization Plan No. 3 of 1970 (hereinafter in this Act referred to as the "Plan"), is serving as such officer—

(1) primarily in the performance of functions transferred by such Plan to the Environmental Protection Agency or its Administrator (hereinafter in this Act referred to as the "Agency" and the "Administrator", respectively), may, if such officer so elects, acquire competitive status and be transferred to a competitive position in the Agency; or

(2) primarily in the performance of functions determined by the Secretary of Health, Education, and Welfare (hereinafter in this Act referred to as the "Secretary") to be materially related to the functions so transferred, may, if authorized by agreement between the Secretary and the Administrator, and if such officer so elects, acquire such status and be so transferred.

(b) An election pursuant to subsection (a) shall be effective only if made, in accordance with such procedures as may be prescribed by the Civil Service Commission—

(1) before the close of the twenty-fourth month after the effective date of the Plan, or

(2) in the case of a commissioned officer who would be liable for training and service under the Military Selective Service Act of 1967 but for the operation of section 6(b)(3) thereof (50 U.S.C. App. 456(b)(3)), before (if it occurs later than the close of such twenty-fourth month) the close of the ninetieth day after the day upon which he has completed his twenty-fourth month of service as such officer.

COMPENSATION OF TRANSFERRING OFFICER

SEC. 3. (a) Except as provided in subsection (b), any commissioned officer of the Public Health Service who, pursuant to section 2 of this Act, elects to transfer to a position in the Environmental Protection Agency which is subject to chapter 51 and subchapter III of chapter 53 of title 5, United States Code (hereinafter in this Act referred to as the "transferring officer"), shall receive a pay rate of the General Schedule grade of such position which is not less than the sum of the following amounts computed as of the day preceding the date of such election:

(1) the basic pay, the special pay, the continuation pay, and the subsistence and quarters allowances, to which he is annually entitled as a commissioned officer of the Public Health Service pursuant to title 37, United States Code;

(2) the amount of Federal income tax, as determined by estimate of the Secretary, which the transferring officer, had he remained a commissioned officer, would have been required to pay on his subsistence and quarters allowances for the taxable year then current if they had not been tax free;

(3) an amount equal to the bi-weekly average cost of the coverages designated "high option, self and family" under the Government Wide Federal Employee Health Benefits Program Plans, multiplied by 26; and

(4) an amount equal to 7 per centum of the sum of the amounts determined under clauses (1) through (3), inclusive.

(b) A transferring officer shall in no event receive, pursuant to subsection (a), a pay rate in excess of the maximum rate applicable under the General Schedule to the class of position, as established under chapter 51 of title 5, United States Code, to which such officer is transferred pursuant to section 2 of this Act.

#### LEAVE OF TRANSFERRING OFFICER

SEC. 4. (a) A transferring officer shall be credited, on the day of his transfer pursuant to his election under section 2, with one hour of sick leave for each week of active service, as defined by section 211(d) of the Public Health Service Act.

(b) The annual leave to the credit of a transferring officer on the day before the day of his transfer, shall, on such day of transfer, be transferred to his credit in the Environmental Protection Agency on an adjusted basis under regulations prescribed by the Civil Service Commission. The portion of such leave, if any, that is in excess of the sum of (1) 240 hours and (2) the number of hours that have accrued to the credit of the transferring officer during the calendar year then current and which remain unused, shall thereafter remain to his credit until used, and shall be reduced in the manner described by subsection (c) of section 6304 of title 5, United States Code.

#### TRAVEL AND TRANSPORTATION EXPENSES INCIDENT TO TRANSFER

SEC. 5. A transferring officer who is required to change his official station as a result of his transfer under this Act shall be paid such travel, transportation, and related expenses and allowances, as would be provided pursuant to subchapter II of chapter 57 of title 5, United States Code, in the case of a civilian employee so transferred in the interest of the Government. Such officer shall not (either at the time of such transfer or upon a subsequent separation from the competitive service) be deemed to have separated from, or changed permanent station within, a uniformed service for purposes of section 404 of title 37, United States Code.

#### LIFE INSURANCE OF TRANSFERRING OFFICER

SEC. 6. Each transferring officer who prior to January 1, 1958, was insured pursuant to the Federal Employees' Group Life Insurance Act of 1954, and who subsequently waived such insurance, shall be entitled to become insured under chapter 87 of title 5, United States Code, upon his transfer to the Environmental Protection Agency regardless of age and insurability.

#### RETIREMENT CREDITS OF TRANSFERRING OFFICER; DEPOSIT IN CIVIL SERVICE RETIREMENT AND DISABILITY FUND

SEC. 7. (a)(1) Effective as of the date a transferring officer acquires competitive status as an employee of the Agency, there shall be considered as the civilian service of such officer for all purposes of chapter 83, title 5, United States Code, (A) his active service as defined by section 211(d) of the Public Health Service Act, and (B) any period for which he would have been entitled, upon his retirement as a commissioned officer of the Public Health Service, to receive retired pay pursuant to section 211(a)(4)(B) of such Act; however, no transferring officer may become entitled to benefits under both subchapter III of such chapter and title II of the Social Security Act based on service as such a commissioned officer performed after 1956, but the individual (or his survivors) may irrevocably elect to waive benefit credit for the service under one such law to secure credit under the other.

(2) A transferring officer on whose behalf a deposit is required to be made by subsection (b) and who, after transfer to a competitive position in the Agency under section 2, is separated from Federal service or transfers to a position not covered by subchapter III of chapter 83 of title 5, United States Code, shall not be entitled, nor shall his survivors be entitled, to a refund of any amount deposited on his behalf in accordance with this section. In the event he transfers, after transfer under section 2, to a position covered by another Government staff requirement system under which credit is allowable for service with respect to which a deposit is required under subsection (b), no credit shall be allowed under such subchapter III with respect to such service.

(b)(1) The Secretary shall deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund, on behalf of and to the credit of such transferring officer, an amount equal to that which such individual would be required to deposit in such fund to cover the years of service credited to him for purposes of his retirement under subsection (a)(1), had such

service been service as an employee as defined in section 8331(1) of title 5, United States Code. The amount so required to be deposited with respect to any transferring officer shall be computed on the basis of the sum of each of the amounts described in section 3(a) which were received by, or accrued to the benefit of, such officer during the years so credited.

(2) The deposits which the Secretary is required to make under this subsection with respect to any transferring officer shall be made within two years after the date of his transfer as provided in section 2, and the amounts due under this subsection shall include interest computed from the period of service credited to the date of payment in accordance with section 8334(e) of title 5, United States Code.

ASSIGNMENT OF PUBLIC HEALTH SERVICE OFFICERS TO THE ENVIRONMENTAL PROTECTION AGENCY

Sec. 8. (a) A commissioned officer of the Public Health Service who, upon the day before the effective date of the Plan, is on active service therewith primarily assigned to the performance of functions described in section 2(a)(1), shall, while he remains in active service, as defined by section 211(d) of the Public Health Service Act, be assigned to the performance of duties with the Agency, except as the Secretary and the Administrator may jointly otherwise provide.

(b) Paragraph (2) of section 6(a) of the Military Selective Service Act of 1967 (50 U.S.C. App. 456(a)(2)) is amended by inserting "the Environmental Protection Agency," after "Department of Justice,".

EXECUTIVE OFFICE OF THE PRESIDENT,  
OFFICE OF MANAGEMENT AND BUDGET,  
Washington, D.C., September 15, 1970.

HON. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives,  
Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of August 31, 1970, for the views of the Office of Management and Budget on H.R. 19009, a bill "To provide for employment within the Environmental Protection Agency of commissioned officers of the Public Health Service, and for other purposes."

Reorganization Plan No. 3 of 1970, providing for an Environmental Protection Agency, was submitted by the President with a message on July 9, 1970. As the President indicated, when the Plan becomes effective, a variety of existing pollution control programs now scattered through several departments and agencies will be consolidated under the proposed new Environmental Protection Agency. Functions to be transferred from the Department of Health, Education, and Welfare are those of the National Air Pollution Control Administration, elements of the Environmental Control Administration, and the pesticide program of the Food and Drug Administration.

H.R. 19009 contains the Administration's personnel proposals to implement, in part, the organizational changes contained in Reorganization Plan No. 3 of 1970, and was submitted to the Congress on July 16, 1970. An estimated 600 commissioned officers of the Public Health Service are currently engaged in the pollution control activities that would be assigned to the new Environmental Protection Agency. H.R. 19009 is designed to authorize and encourage those commissioned officers to transfer to positions with the new agency and acquire competitive civil service status. The bill would also ensure that General Schedule pay and other benefits of officers who transfer will be generally comparable to those they now enjoy under the military compensation system of the Public Health Service.

You also asked for the views of the Environmental Protection Agency on H.R. 19009. The period of congressional review of Reorganization Plan No. 3 of 1970 will end early in October and if the Plan is allowed to take effect, the Environmental Protection Agency will be established sixty days later which would be early in December.

Until an Administrator of the Environmental Protection Agency is appointed, the Office of Management and Budget is working with the departments and agencies on initial organizational and procedural problems relating to the new Agency. Accordingly, we would appreciate your considering this a reply to your request to the Environmental Protection Agency.

The Office of Management and Budget endorses the provisions of H.R. 19009, and its enactment would be in accord with the program of the President.

Sincerely,

WILFRED H. ROMMEL,  
Assistant Director for Legislative Reference.

Mr. JARMAN. Dr. Paul Q. Peterson, Deputy Surgeon General, Public Health Service, is here this morning to present the statement of the Department of Health, Education, and Welfare.

Welcome, Dr. Peterson. Come forward please, and proceed as you wish.

**STATEMENT OF DR. PAUL Q. PETERSON, DEPUTY SURGEON GENERAL, PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; ACCOMPANIED BY STUART CLARKE, DEPUTY ASSISTANT SECRETARY, PERSONNEL AND TRAINING**

Dr. PETERSON. Thank you, Mr. Chairman.

I am Dr. Paul Q. Peterson, Deputy Surgeon General, Public Health Service.

Mr. JARMAN. Doctor, I think we have the statement that you have. The committee will be glad to receive it for the record. We would appreciate your simply hitting the highlights on the subject.

Dr. PETERSON. Thank you. I shall.

I have with me, Mr. Stuart Clarke, who is the Deputy Assistant Secretary of the Department for Personnel and Training.

The Surgeon General had expected to be with you this morning but was called away at the last moment. He asked if I would present his material.

In the interest of conserving time we will be happy to furnish this for the record and will be happy to make our staff available to you to complete the record on any questions that the committee might have.

Mr. JARMAN. I think that would be helpful.

(Dr. Peterson's prepared statement follows:)

**STATEMENT OF DR. PAUL Q. PETERSON, DEPUTY SURGEON GENERAL, PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

I appreciate the opportunity to testify in support of H.R. 19009 to provide for employment of commissioned officers of the Public Health Service with the Environmental Protection Agency to be established by Reorganization Plan #3 of 1970.

Upon the creation of the new agency there will be transferred to it from the Public Health Service programs in air pollution, solid waste disposal, water hygiene, radiological health and pesticides control. This transfer includes the dedicated experienced personnel who have been serving these programs within the Public Health Service, and who will be critical to the success of the new agency, particularly in its early period of organization and development.

Our present estimate is that approximately 2400 employees of the identified programs will be affected. Present legislation, regulations and procedures protect the positions and entitlements of those employees who are under the Civil Service System. There are, however, approximately 570 officers of the Commissioned Corps of the Public Health Service assigned to functions identified for transfer. They represent a major portion of the professional manpower involved in the shift of these programs. Because the Reorganization Plan was not intended to shift to the Environmental Protection Agency the responsibility for administration of a commissioned corps, it is essential that appropriate legislation be enacted to authorize these officers to accept civilian competitive positions with the new organization. H.R. 19009 is such legislation. It provides that commissioned officers serving in functions transferred and, if approved by EPA & DHEW, officers in related functions, may transfer to competitive positions in the EPA. An officer electing to convert to Civil Service status would, by the terms of this Act, do so under special provisions designed to recognize his benefits in the Commissioned Corps and his investment in that system. Commissioned officers total

salary is composed of numerous elements. These include base pay and allowances, special pays and a number of "in kind" entitlements such as medical care, non-contributory retirement and an income tax exemption on allowances. H.R. 19009 provides that an officer accepting competitive appointment will receive a salary not less than the sum of the value of these elements. This is, however, limited to the top step of the Civil Service grade to which he transfers. Since commissioned officers do not accrue sick leave within the commissioned system, provision for crediting sick leave has been made. This would provide for one hour per week amounting to 6½ days of sick leave for each year of Service. This formula has been determined through the use of a study of sick leave experience by the Civil Service Commission.

It can be anticipated that, in a few instances, relocation will be necessary at the time of transfer to a competitive position and we have, therefore, clarified that entitlements for travel and transportation would be as a transferring civilian employee. This section of the bill will also preclude eligibility for travel entitlements from the Corps system as a part of his separation. The Commissioned Corps of the Public Health Service operates its own retirement program. Since this is a non-contributory program, conversion of its credits to credits in the civil service retirement system would require the Government to deposit in the Civil Service Retirement Fund an amount equal to that which would have been so deposited by the officer during the years to be credited, had the officer served in a civilian capacity. The bill requires that this be done.

The service for which a transferring officer would be given credit, under the bill, toward his retirement under the civil service retirement system would include his period of active duty as a member of a uniformed service and certain periods for medical and dental education, medical internship and inactive Reserve credit prior to June 1958, for which he received credit under retirement program of the Commissioned Corps. We do not believe that the officer should be required to forfeit these credits upon his transfer to a competitive position with the EPA.

The bill would require the Secretary to detail to the Agency officers who, on the day before the effective date of the Reorganization Plan, were assigned primarily to the performance of functions transferred by the plan, and who do not elect to transfer to competitive positions. In order not to foreclose the possibility, thereafter, of a reassignment of certain of these officers to duties outside of the Agency, the Secretary and the Administrator would be given authority jointly to terminate such detail in the case of individual officers.

There are significant health aspects to environmental problems and thus a close relationship exists between EPA activities and interests and responsibilities of the PHS. A continuing interchange of personnel through detail can be a professional development mechanism of value to both Public Health Service and Environmental Protection Agency. We are, therefore, interested in pursuing such a continuing relationship with Environmental Protection Agency through continued use of the detail authority.

Moreover, officers of the Public Health Service satisfy their Selective Service obligation through two years of active duty with us and therefore may not be expected to avail themselves of the opportunity of converting to civilian status. However, the 1967 Draft Act permits the military service obligation to be discharged only by officers assigned to direct programs of the Public Health Service, the Environmental Sciences Services Administration, and the Bureau of Prisons. There are approximately 140 such officers serving in functions scheduled for transfer to Environmental Protection Agency. The bill would permit these officers to continue to satisfy their military obligation while detailed, as commissioned PHS officers, to serve with the Environmental Protection Agency.

Some commissioned officers are serving in positions which are equivalent to grades 16, 17 and 18 in the General Schedule. We have provided the committee with an amendment which would authorize the Civil Service Commission to establish 25 new supergrade positions.

A maximum of ten of these are expected to be required for these officers. We expect that the remainder will be used for other senior staff needed by the new organization to perform its functions.

In summary, the bill is designed to treat the special circumstances that exist for commissioned officers of the Public Health Service, in a manner that facilitates their conversion to competitive status while providing them with the option of remaining commissioned officers assigned to the Environmental Protection Agency. In this way continuity of the transferred activities is best assured. This legislation meets both the needs of the affected employees and the needs of the

proposed agency. The loss of any significant number of employees would severely hamper the continuation and progress of the important environmental programs. We recommend your favorable consideration of H.R. 19009 and urge that it be enacted to coincide closely with the establishment of the Environmental Protection Agency.

Mr. Chairman, I will be glad to answer any questions you or the committee members may have.

Mr. ROGERS. May I ask a question, Mr. Chairman?

Mr. JARMAN. Yes.

Mr. ROGERS. From what I understand, this is giving authority to the Department to shift some of your officers over to the other new agency to carry on the work.

Dr. PETERSON. That is correct. It addresses the question that you raised just a few minutes ago, Mr. Rogers.

It is our expectation to transfer all of the people who are now working in programs which will be assigned to the new agency. Among them will be some 570 to 600 commissioned officers who will need to have special legislative protection in either their transfer from commissioned officer status to civil service or for authority so that we may continue to assign them on detail to the agency to maintain the health relations that we feel are important to the new agency.

Mr. ROGERS. Thank you.

That gives us an understanding, Mr. Chairman, of what they want. We may want to contact the staff if we have any questions.

Mr. JARMAN. Thank you very much.

Dr. PETERSON. Thank you, Mr. Chairman.

Mr. JARMAN. There being no further witnesses, the hearing is concluded.

(Whereupon, at 10:30 a.m., the hearing was concluded.)

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