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HEARING

BEFORE THE

SUBCOMMITTEE ON
EMPLOYEE ETHICS AND UTILIZATION

OF THE

COMMITTEE ON
POST OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 4263

A BILL TO ESTABLISH A DEPARTMENT OF ENERGY IN THE
EXECUTIVE BRANCH BY THE REORGANIZATION OF
ENERGY FUNCTIONS WITHIN THE FEDERAL GOVERNMENT
IN ORDER TO SECURE EFFECTIVE MANAGEMENT TO AS-
SURE A COORDINATED NATIONAL ENERGY POLICY, AND
FOR OTHER PURPOSES

APRIL 19, 1977

Serial No. 95-6

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(II)



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FEDERAL PERSONNEL FOR THE PROPOSED DEPARTMENT OF ENERGY

TUESDAY, APRIL 19, 1977

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON EMPLOYEE ETHICS AND UTILIZATION,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 304-A, Cannon House Office Building, Hon. Patricia Schroeder (chairwoman of the subcommittee) presiding.

Mrs. SCHROEDER. The subcommittee is called to order.

Today, the subcommittee is going to review and we hope find answers to some of the problems of governmental reorganization contained in H.R. 4263, a bill to create a new Department of Energy.

I want at this time to place in the record two letters which have been exchanged between Jack Brooks, chairman of the House Government Operations Committee and myself regarding this subcommittee's concern over the bill. We plan within this week to send Chairman Brooks our recommendations for changes in the bill as it affects Federal employees. We hope that the committee will use these amendments in marking up the bill so that we will be saved a lot of time later.

[The letters follow:]

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON EMPLOYEES ETHICS AND UTILIZATION,
Washington, D.C., April 1, 1977.

HON. JACK BROOKS,
Chairman, Committee on Government Operations, Rayburn House Office Building,
Washington, D.C.

DEAR JACK: My Subcommittee has a great many concerns with those sections of H.R. 4263 which deal with civil service laws and the treatment of employees within the proposed new Department of Energy.

Some of these concerns have been voiced to your committee by Congressman Udall. Many of the other questions are included in the enclosed draft staff analysis of the bill.

My subcommittee soon hopes to have developed a list of recommended changes with regard to sections of the bill deserving them. We will submit them to you before your markup of the bill so that they may be taken into consideration and we hope, accepted by your committee. We believe that too much of the subject matter of this bill has direct impact upon our jurisdiction for it not to receive this attention.

With kind regards,
Sincerely,

PATRICIA SCHROEDER, *Chairwoman.*

U.S. HOUSE OF REPRESENTATIVES,
LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., April 7, 1977.

Hon. PATRICIA SCHROEDER,
Chairwoman, Subcommittee on Employee Ethics and Utilization, Committee on Post Office and Civil Service, U.S. House of Representatives, House Office Building Annex 1, Washington, D.C.

DEAR PATRICIA: I have your letter voicing your concern on the provisions of H.R. 4263, the Department of Energy Organization Act, dealing with civil service laws and the treatment of employees. We shall be pleased to have the comments of your subcommittee on the bill and I shall present them to our subcommittee when you forward them to me. We expect to complete our hearings during the week of April 18 and hope that you can get your comments to us as soon as possible.

Thanks also for enclosing a copy of an analysis made by your staff.

Sincerely yours,

JACK BROOKS, *Chairman*

Mrs. SCHROEDER. I also want to note that although they will not be testifying, the National Treasury Employees Union, which represents Federal Energy Administration employees, is submitting written testimony to us on this bill, which should become a part of the record as well.

Our witnesses this morning are Robert Allnutt of the Energy Research and Development Administration and Raymond Jacobson of the Civil Service Commission. Our first witness is Mr. Allnutt, who is the Acting Assistant Administrator for Administration.

We are delighted to have you with us this morning.

Mr. ALLNUTT. Thank you.

STATEMENT OF ROBERT F. ALLNUTT, ACTING ASSISTANT ADMINISTRATOR FOR ADMINISTRATION, ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION, ACCOMPANIED BY LLOYD GRABLE, DIRECTOR OF PERSONNEL AND JOHN CHO, ASSISTANT GENERAL COUNSEL FOR LEGISLATION

Mr. ALLNUTT. If you would like, Madam Chairwoman, I will try to summarize my statement—I know that the committee is on a short deadline—if you want to proceed that way.

Mrs. SCHROEDER. We'd be delighted.

Mr. ALLNUTT. The Administration does place very high priority on creating a Department of Energy to give the Government a coherent structure for implementing the policy and program that you'll all be focusing on over the next few months, as it comes forward to the Congress this week.

Since the Department of Energy will be the first new department in a decade, it is important that the Congress consider the legislation very carefully, and make sure that it will provide the continuing authority that a permanent department should have, and that it will have adequate safeguards on that authority.

We appreciate very much this subcommittee's role in taking the matter up in this manner, to review the legislation concurrently with the Government Operations Committee and provide your advice to them.

I know you're on a short deadline. We'll try to respond to everything you want us to here today, and if there's anything we can't respond to we'll certainly try to be a little quicker than agencies usually are in getting answers for the record back to you this afternoon or tomorrow.

I will start summarizing on page 2, starting first with section 607. The statement is a little hard to summarize, because it is like a tour with "gun and camera" through the legislation, picking out special provisions that relate, as a number of them do, to personnel administration. So, I'll have to summarize each one rather than summarize in total.

First, let me start with section 607. The Secretary is to employ all persons in the Department in accordance with the civil service laws, with the exception of 600 of the scientific, engineering, professional, and administrative personnel who may be compensated up to the GS-18 rate and separate from the civil service system.

As you know, the entire ERDA employee workforce is currently exempted from civil service. The bill would bring an end to that exemption and bring those ERDA employees into the civil service system with the exception of 600, some of whom would be from ERDA and some from the other constituent parts of DOE.

These 600 would be exempted in order to give the flexibility at the key management levels for maintaining a hard-hitting team to drive what are really going to be complex and varied programs. Given the critical national importance of energy, DOE needs to be able to do that, in the view of the Administration.

And, the statement points out, this exemption is patterned after those that have been used successfully at NASA and the Atomic Energy Commission and ERDA.

Section 608 authorizes positions for 14 additional officers at level 4 and 5 of the executive schedule, and the additional 150 positions in GS-16, 17, and 18.

The Department's supervisory positions—executive level positions—are, obviously, vital positions in the direct operations of the Department. The proposed legislation would provide a total of 32. You have to kind of pick through the bill to get all of those, but there are 32, which should be compared to 42 presently authorized for the constituent agencies that are coming into the Department of Energy.

Eighteen of the thirty-two positions are assigned specifically by the legislation, leaving flexibility in the Secretary to determine the utilization of the other fourteen. In my view it is an important kind of flexibility to have—for any department to have—over time, as priorities change and programs change, to have the ability to deal with these positions in that way.

The 150 supergrade positions, coupled with the exemption authority of section 607, I think, should be adequate to get the Department started, and does allow for some growth.

As my statement points out, depending on how you count, there are about 700 positions currently authorized to the agencies coming into the Department; so this leaves, roughly, 50 additional positions, which we believe is adequate, particularly in view of the fact that over the first couple of years it's anticipated there will be some savings of supergrade positions because of the consolidation.

Section 611 authorizes the Secretary to utilize the services of volunteers. I know that this provision has caused some concern. I think the best way to view that authority is as a standby authority for use in emergencies or limited circumstances. There is no plan to go into some massive nationwide volunteer program.

Section 612 authorizes the detail of armed services uniformed personnel to the Department of Energy. This authority provides the Department with the opportunity of providing on detail these skilled military personnel who have experience. A number of agencies and departments have that authority, including ERDA.

At ERDA most of the military officers who are detailed are presently working on the nuclear weapons part of the ERDA program. As you know, the Department of Energy will continue responsibility for the nuclear weapons testing and production for the Department of Defense.

But, in addition, I think it's important to have the authority to use military personnel in those cases in the energy fields where they can particularly be of assistance to the Department of Energy.

In my view there is also considerable advantage back to the Department of Defense, for those officers who, having learned, for example, about military construction in their military jobs, to learn energy conservation while in the Department of Energy, and then to take that knowledge back to the Department of Defense to be a user for the Government of that energy knowledge.

The Secretary is provided authority under section 614 to enter into and perform contracts, leases, grants, and so forth. Turning over to page 6 now, that authority is subject to, really, a host of other Federal statutes and executive branch requirements, including the Federal Property and Administrative Services Act and other statutes that exist, limiting contractual authority with the various executive branch regulations, directives, and so forth.

Section 614 does not authorize securing personal services in a way that would be contrary to the civil service laws. And it is not the intent of section 614 to provide authority to secure the services of the personnel on a contractual basis at the expense of adversely affecting normal Federal employment.

Section 706 deals with the authority of OMB to make miscellaneous transfers and other transfers of authorities, records, personnel, and so forth.

The question has been raised about the role of the Civil Service Commission in those kinds of transfers where personnel are concerned; and, clearly, where there was that kind of concern, there would be consulting with the Civil Service Commission.

Section 401 establishes a Board of Hearings and Appeals within the Department; 401(c) speaks to the authority of each member of that Board to appoint his own staff, to be the selection official for the staff, rather than have the Secretary of the Department or the Chairman of the Board appoint personal staff.

This authorization does not create a separate personnel system. It is subject to the provisions of section 607, putting everyone under civil service.

Section 622 authorizes the establishment of a working capital fund. In the event such a fund is created, and in the event personnel pay into that fund, they would have to be personnel hired under the system of section 607, the civil service system. This is, again, not a separate public employee system under the bill.

The subcommittee has raised the question of the amendment of the Presidential order of succession, provision in title 3. And the subcommittee is right. The bill is wrong in the sense that the Secretary of Energy should be put in that order. He or she would fill in last in that order. We would support an amendment of the bill for that purpose.

This completes my statement. I've kind of hustled through a lot of somewhat unrelated provisions.

There is an attachment to the statement that deals in somewhat more detail with the provisions of substance the staff raised, and we'd be glad to discuss that or answer any questions you might have.

[The prepared statement and attachment follow:]

PREPARED STATEMENT OF ROBERT F. ALLNUTT, ACTING ASSISTANT ADMINISTRATOR
FOR ADMINISTRATION, ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Madam Chairwoman and members of the subcommittee, I am pleased to have this opportunity, on behalf of Dr. Schlesinger, to discuss with the committee the personnel related provisions of H.R. 4263 and H.R. 4806, bills to create the Department of Energy.

As President Carter said in proposing this legislation, a basic purpose is to clear away existing inefficiency, fragmentation and somewhat poor coordination of government activities dealing with the energy problem, and to replace these conditions with a vigorous and well-coordinated national energy program and organization. The legislation is designed to provide a rational organizational framework within which energy programs can be carried out, and with respect to personnel matters, it is specifically drafted to enable the Secretary to utilize the Department's human resources with maximum effectiveness, flexibility, and with full regard to the importance of maintaining a competent, fairly treated, and dedicated staff.

I will highlight some of the specific provisions in the legislation which relate to the utilization of personnel in the Department, and which I understand are of special interest to the subcommittee. I am also submitting supplemental material in response to the subcommittee staff's request for detailed clarification of the intent of several provisions. You may wish to include this material in the hearing record.

First, let me turn to section 607, which provides the basic employment authority for the Department. The Secretary is to employ all persons in the Department in accordance with the Civil Service laws, with the exception of 600 of the scientific, engineering, professional, and administrative personnel who may be employed without regard to such laws at salaries up to the rate for grade 18 of the General Schedule. As you know, the entire ERDA employee workforce is exempt from the Civil Service System. Section 607 would bring an end to this exemption, and place all but 600 DOE employees within the Civil Service System. These 600 employees would be exempted in order to ensure that DOE could shape, deploy and maintain an effective, hard-hitting management team to drive its varied, complex programs. Given the critical national importance of energy, DOE needs to be able to continue for its existing key managerial workforce the flexibility and quick response in recruiting, assigning and using top quality men and women to manage energy programs, many of which have a high technological content. This exemption is patterned after the successful experience of NASA, AEC and ERDA utilizing such authority to employ non-political, key scientific and professional managers. The exemption will be used for covering the current managerial and professional key personnel and for continuing to obtain the best talent that is available nationally, and will also allow the Department to staff short-term projects with known beginning and ending dates that entail new technologies which need to be exploited quickly

when their promise is assured. It should be noted that the exemption will be used for employing persons at varying salary levels. The Department will be better able to fulfill urgent needs for technological and managerial expertise with this exemption authority, and we view it as highly important.

Section 608 authorizes positions for not more than 14 additional officers at level IV and V of the executive salary schedule of title 5 of the United States Code, and establishes up to 150 additional positions to be placed in GS-16, 17, and 18.

The Department's executive level positions—levels I-V—are vital positions needed to direct operations, programs, and policy-formulation in DOE. The proposed legislation provides for a total of 32 such positions. This should be compared with the 42 in ERDA, FEA, FPC, and the other components of DOE. Eighteen of these thirty-two positions are assigned to specific functions by the legislation itself, leaving fourteen available to the Secretary for his determination as to the most appropriate utilization. The Secretary should be afforded discretion in the allocation of these vital resources, especially in view of the evolving nature of the energy problem and the long-term nature of a Department. Successful use of such authority has precedent in the operations of ERDA, FEA, and other agencies.

The authorization of 150 supergrade positions, coupled with the exemption authority of section 607 appears adequate at this time to accommodate the Department's supergrade or supergrade equivalent employees. There are approximately 700 employees in the range of GS-16 through 18 presently assigned to the agencies being consolidated to form the Department. Although the authorization of 750 employees would allow in the future only a limited increase, it would be anticipated that some existing supergrades could be redeployed to meet expected program growth in such areas as conservation, environment, energy data, leasing, and other changing needs.

Under 611 the Secretary is authorized to utilize the services of volunteers to further the mission of the Department. This authority perhaps can be best understood as a standby authority for use in emergencies or in very specialized circumstances where a particular program or project can be determined to be best carried out by such individuals such as a local community effort. For the protection of the public, volunteers that are utilized would be considered Federal employees for purposes of tort claims and for conflict-of-interest restrictions, volunteers would also be required to file statements regarding their financial interests.

Section 612 authorizes the Secretary to arrange for Armed Forces personnel to be detailed to the Department to perform functions of the Department. While assigned to the Department, the military personnel would be under the control of the Secretary of Energy. However, the military individual's rank or grade or other military benefits would be unaffected by his or her assignment to the Department of Energy.

In short, this authority provides the Department with the opportunity to obtain, on detail, highly skilled military personnel with unique experience. The AEC long had such authority and had good experience under it. Essentially similar authority is found in section 106(c) of the Energy Reorganization Act of 1974, the act that created ERDA. Under the existing authority, most Armed Forces personnel assigned to ERDA are used in areas of defense-related research, development and production. The Department will assume ERDA's responsibilities for nuclear weapons development and other defense activities. Further, with the energy problems becoming increasingly critical, it is highly desirable for the Secretary to be able to utilize the special skills of Armed Services personnel in connection with any of the Department's functions as he may find desirable or necessary. This provides direct assistance to DOE. Additionally, when such personnel return to DOD they provide a direct means of transferring energy-related technology to the beneficial use of the Armed Forces, for example in energy conservation.

The Secretary is provided authority under section 614 to enter into and perform such contracts, leases, grants, cooperative agreements and similar transactions with public agencies and private organizations and persons as he deems necessary or appropriate to carry out his functions.

While section 107(a) of the Energy Reorganization Act of 1974 contains generally equivalent authority in connection with the conduct of research and development activities, section 614 of the proposed legislation would assure that

as a minimum the Secretary will have the contractual and other authority of that section to carry out the Department's functions, including those transferred to the Department from agencies other than ERDA. The broader coverage of section 614 provides consistent contractual authority for all Department of Energy activities. The basic authority of section 614 is subject to a host of Federal statutes and executive branch requirements, including the Federal Property and Administrative Services Act, various labor and small business laws, and executive directives.

Thus, section 614 does not authorize securing personal services which would be contrary to the civil service laws. In other words, it is not the intent of section 614 to provide authority to secure the services of personnel on a contractual basis at the expense of adversely impacting normal Federal employment.

Section 706 directs the Director of the Office of Management and Budget to make the necessary determinations involved in the transferring of functions under this act and to consult with the secretary in the process. It is my understanding that this provision is necessary for administrative matters and to enable the OMB to direct certain transfer activities, including the transfer of personnel. Consultation with the Civil Service Commission, as necessary, on any personnel matters would certainly be appropriate.

Section 401 establishes within the Department a Board of Hearings and Appeals which has several functions, including serving as an independent review authority. Section 401(c) authorizes each member of the Board to select and supervise personnel for his personal staff. It is the intent of section 401(c) to help assure the independence of operation of the Board members by making it explicit that Board members themselves are the selecting officials for their respective staffs. This authorization to select does not create a personnel system separate from that of the Department. The personnel system under which employees of the Board would be employed would be the same as that for the rest of the Department.

Section 622 authorizes the establishment of a working capital fund without fiscal year limitation for the necessary expenses involved in the operation of common administrative services. The purpose of a working capital fund is to permit economies to be achieved by mass purchasing and centralization of common administrative services. The use of working capital funds is common among the large Government agencies. The provisions of civil service rules and regulations would be controlling if personnel were paid out of this fund. Thus the fund does not create another category of Federal employees in the Department.

A question has been raised by this subcommittee with respect to the need for including a provision in the legislation amending 3 U.S.C. 19(d), providing for the Secretary of Energy's place in the order of Presidential succession. To treat the Secretary of Energy similarly to other Cabinet heads, Congress may wish to include the Secretary of Energy in the line of Presidential succession by amending 3 U.S.C. 19(d).

Madam Chairwoman, this concludes my prepared statement, I would only make the final observation that the personnel provisions for this legislation have been drafted with the goal of carefully balancing the needs of the Department for effective personnel support with the needs of applicants and employees for fair and equitable treatment and job satisfaction. The success of the Department will in large measure depend on the individual and collective contributions of each of its employees, and will depend on how effectively the Secretary is able to utilize the vital personnel resources available to him. We hope that the personnel authorities as they have been presented to you will make the extremely difficult task of the Secretary and of all Department employees more readily achievable.

I would be glad to answer any questions you may have.

ATTACHMENT

SECTION 602

Question. Since the committee is working on a financial disclosure bill, as is the President, should this section be eliminated, pending these other developments, so as not to be inconsistent?

Answer. To instill public confidence in the decisions of the Department of Energy, it is important for the public to have some sort of mechanism of assuring that Department employees do not have conflicting financial interests when making decisions or participating in the decisionmaking process. Accordingly, it was determined necessary for the bill to include a provision for financial disclosure. However, ad hoc legislative treatment of this subject does have the disadvantages of possible inconsistencies and singling out one group of employees over others for special treatment. The judgment which Congress should make is whether it is better to go forward with the inclusion of the financial disclosure provision in this bill, which would be subject to being overridden by any future general legislation—either at the recommendation of the President or at the initiative of the Congress—or eliminate the provision from this bill and await general legislation. In our view a financial disclosure provision is of such critical importance that the provision should remain in the bill pending more general action by the Congress.

SECTIONS 603 AND 607

Question. If read together, is there confusion with regard to the extent to which Civil Service regulations apply to Departmental personnel?

Answer. Section 603 grants to the Secretary of Energy the authority to prescribe necessary policies, standards, criteria, procedures, rules and regulations. Section 607 permits the Secretary to appoint and fix the salary for the Department's employees in accordance with the Civil Service laws. However, the Secretary under this section may appoint up to 600 scientific, engineering, professional and administrative personnel without regard to such laws, although the salaries may not exceed the rate prescribed for grade 18 of the General Schedule.

We interpret the general authority of the Secretary to prescribe rules and regulations under section 603 to be subject in the personnel area to the requirement specified in section 607 requiring adherence to the Civil Service laws. Since the Civil Service laws place jurisdiction in the Civil Service Commission to administer those laws, the Civil Service regulations would apply to Departmental personnel. An exception would be with respect to the 600 exempt employees provided for in the bill.

SECTIONS 604-606

Question. Are these sections needed in view of the President's new reorganization authority? Is there a problem regarding the treatment of Civil Service employees under these sections?

Answer. Section 604 provides the Secretary with general delegational authority. In addition, it authorizes inter-departmental delegations of authority by the Secretary. Section 605 authorizes the Secretary to establish, change, or discontinue any state, regional or other field office. Section 606 grants similar authority to the Secretary with respect to organizational units or components within the Department.

Section 604 would make clear the Secretary's authority to delegate to others the carrying out of any function (other than those specifically reserved to him by law). Many actions of the Department affecting the public would of necessity be made by other officials. A clear line of authority from the Secretary to the employee, starting with the Secretary's power to delegate that authority, is essential for legal efficacy.

Sections 605 and 606 deal with internal Department organization and reorganization. On the other hand, the new reorganization legislation deals mainly with interagency type of transfer. Moreover, the reorganization legislation has a 3-year life span. Thus, there is a need for separate permanent authority in the Secretary to organize the Department in the most efficient and effective way as changes develop in the energy situation. This is a normal managerial power necessary to problem solving. This authority, of course, does not extend to offices and units specifically established by law.

Turning to the second part of the question, employees affected by any reorganization would have the normal rights accorded to employees under the Civil Service system. Generally speaking, these rights would include salary retention rights, where appropriate, bumping rights, etc.

SECTION 613

Question. Does this section conflict with the Intergovernmental Personnel Act? Shouldn't the IPA apply?

Answer. This Section authorizes the Secretary of Energy to utilize the services and facilities of any person or organization, including any Federal, state or local government. It also authorizes the Secretary to provide services and facilities to any person or organization. The Intergovernmental Personnel Act (5 U.S.C. 3371, et seq.), however, is limited in its application to states and local governments and to universities and applies only to the use of personnel.

Authority somewhat similar to Section 613 is found in the Atomic Energy Act (section 161f). Section 106(f) of the Energy Reorganization Act authorizes ERDA to utilize employees of other agencies and departments of the Federal Government. Section 613 of the bill would assure the continued availability of the authority to use the services, facilities and personnel of other organizations where circumstances warrant.

SECTION 702

Question. Is there a problem with providing only one year in this section? Isn't there two years of protection already in the Code?

Answer. Section 702 provides generally that employees transferred into the Department of Energy will not be separated or reduced in grade or compensation for one year.

Under general Civil Service laws, employees are generally given protection from loss of pay when reduced in grade for a period of two years (5 U.S.C. 5337). To qualify for the protection, however, the employee must meet several requirements including service in the grade from which reduced for a period of at least two years and continuation in the same agency without break in service.

Section 702 is thus broader and affords greater protection during the first year after enactment since it prevents separations or reductions in grade. A similar provision was successfully used in the Energy Reorganization Act of 1974. The Savings provisions of 5 U.S.C. 5337 would, of course, be applicable after the initial one year period.

SECTION 703

Question. Why should executives be treated differently with regard to save pay provisions? Doesn't this conflict with provisions in other statutes?

Answer. Under the bill, an Executive Schedule employee does not have any job retention rights. Accordingly, the executive is without protection unless he is reappointed to another position having comparable duties to the previous position. In that case, under Section 703, he cannot suffer a loss in salary for the duration of his services in the new position. Since the Executive's new duties must be comparable to the old to be entitled to the pay saving provision of Section 703, the pay saving provision seems equitable. This is not a novel provision but is similar to the provision in the act which established the Department of Transportation. 49 U.S.C. 1657 (i).

We are not aware of any conflict that this provision creates with other statutes.

Mrs. SCHROEDER. Thank you, very much. We appreciate that, and I am sitting here on a stack of questions "yea" tall, so I'm not quite sure how to proceed at this point. But let me first see if some of the other members have some questions, and see what we do with all the ones that are left over.

Congressman Lehman?

Mr. LEHMAN. Just briefly, I am also the chairman of the Subcommittee on Census and Population of which Mrs. Schroeder was the previous chairperson. We have general oversight of governmental data collection—and people are data.

I just wonder—in terms of numbers with the new Department of Energy—what kind of data will you be able to provide us in actual numbers of transfers, and also any connecting information as to other information you have oversight of in regard to the collection of general information on the energy situation, both in supply and demand, resources, and so forth.

What I'm probably trying to lead up to is in terms of types of hearings, we could hold in regard to the collection of Government statistics and data that are similar to today's in regard to the transfer of people and the reorganization of the energy field?

Mr. ALLNUTT. Let me respond to the first part.

Mr. LEHMAN. It's a broad question.

Mr. ALLNUTT. We do have data, not necessarily the most accurate in the world, on the transfer of people and functions into the Department, which we have provided.

To the broader question you asked, I would say that I agree with you completely. Once the Department is set up, it does have as an important constituent, the data administration, which is designed to provide the kind of objective and believable data that will have the confidence of the public. As the President mentioned last evening, and as many people on the Hill have, we don't know whose data to believe.

There's an awful lot of data to be gathered and analyzed, not unlike the task of the Bureau of Labor Statistics in the Department of Labor. We'd very much like to have that data for the Administration and for others.

Mr. LEHMAN. But so far the different departments of the Government that have dealt with the energy problem have certainly come up with conflicting information in regard to reserves, consumption, and everything else in the energy field.

As a member, also, of the Budget Committee, the more I explore the way the data is collected on which we base our Federal budget activities, the less credibility I feel that we can give this information.

I think that we need to have any really believable data at this time. Any really believable statistics we're going to have to have in the energy field in order to form this new energy policy that the President is working on at this time. Because whatever you do, you're going to have to begin with information that is hard information that the people also can believe in, because if they don't believe it, they're not going to offer the kind of cooperation and support necessary to make any kind of energy policy work.

Mr. ALLNUTT. You're right.

Mr. LEHMAN. That's my propaganda for today.

Mr. ALLNUTT. That's well stated. I accept it as your propaganda and adopt it. That is a basic purpose—one basic purpose—of the legislation, to create a separate, independent data administration within the Department, a credible source for the Department and for everyone else.

Mr. LEHMAN. But the first concern is the positioning of people in these departments. And I know how, when, with the first Federal Energy Administration first got started, it was begun as a very emergency, time-limited organization that borrowed a few people from a few departments to just take care of the immediate situation. And, the first thing you know, it had grown out of proportion before anybody knew it.

I'll work with the chairperson so we won't have any overlap.

Mrs. SCHROEDER. Thank you very much.

Congressman Gilman?

Mr. GILMAN. Thank you, Madam Chairman.

Mr. Allnutt, I note that you talk about decreasing the number of top-level positions from, I guess, a number of some 40 or 50 down to 32 in the consolidation process, which I think is certainly credible.

But I note when you get to the middle-executive position you increase from 700 to 750. What about the lower level, also? Is there an increase there? What are the total employees?

Mr. ALLNUTT. The total number of Federal employees involved is in the neighborhood of 20,000, just short of 20,000.

Mr. GILMAN. That's existing in the Energy agency. And what do you propose?

Mr. ALLNUTT. The bill does not authorize more or less; it simply transfers these people into the Department. Dr. Schlesinger has testified before other committees that there's no intention to increase this in a significant way.

The first order of business will be to sort through what the Department has. Obviously, there can be some economies in the total employment, particularly in the support areas of the Department. You have now a number of separate agencies. Each has to have its own support elements, and, over time, there can be economies.

You realize though that positions will be freed up to be used in other ways.

Mr. GILMAN. Well, you're not suggesting any limitation being imposed in this legislation?

Mr. ALLNUTT. No; there's no limitation.

Mr. GILMAN. Why did you do that at the top level, and not at the lower level?

Mr. ALLNUTT. By law you have to provide for the executive level and supergrade resources of the agency. The ceiling for the agency in total employment is dealt with in the annual authorization and appropriation process, and is not required in the legislation. So that is not dealt with.

In other words, there would be no executive level force—level 4 or level 5, 1, 2, or 3—unless the bill sets a quota. The bill does not need to set forth other than general hiring authority to provide for the agency total work force.

Mr. GRABLE. That's something, in other words, the Congress will review each year as appropriations come up for the Department of Energy. And it is a process that all—

Mr. GILMAN. When you make your appropriation request, I would assume that you would have to make a demand on the total number of employees for the entire agency.

Mr. GRABLE. That's right.

Mr. GILMAN. What is your proposal?

Mr. ALLNUTT. There is no appropriation request for the Department right now, as opposed to the appropriation request for the individual agencies, ERDA, FEA, and so forth, that are coming into the DOE.

Mr. GILMAN. I'm talking about the new DOE. What would be your proposal for total number of employees?

Mr. ALLNUTT. The proposal for 1978 would be the total of those people transferred in. The background information with the President's message gave a total of 19,767. Now that is the number moved from the various agencies.

Mr. GILMAN. You don't propose to increase that number, at least in your first year of operation?

Mr. ALLNUTT. That is right.

Mr. GILMAN. There are some savings in personnel, I would hope.

Mr. ALLNUTT. That's right, or at least savings in the sense of people being able to be diverted to other work, where there's overlap, from the things they're now doing.

Mr. GRABLE. We really see an upsurge of work in areas like the data administration, conservation, environment and so forth, in which we'll have to redeploy the resources we've acquired to these other increased workloads.

So, we're hoping that within that total we'll have available some that can be redeployed to meet the rise in workload.

Mr. LEHMAN. Would the gentleman yield?

Mr. GILMAN. I would be pleased to.

Mr. LEHMAN. Regarding the 20,000 people being transferred into this new department, could you get me information on how many of those people will actually be doing any kind of data collection and any kind of information gathering that would be of help to you?

Mr. ALLNUTT. Yes.

Mr. GRABLE. We'll do our best. It'll be a little bit rough in the short run here.

Mr. GILMAN. I know that you're suggesting a special financial disclosure section. Why do you feel that the Energy Department needs a special one, in light of the existing Executive Order 11222?

Mr. ALLNUTT. The determination in drafting this legislation, for consideration of Congress, was that Congress and the people would want to be assured that, particularly, those people in the Department who have a regulatory function or a policymaking function were covered by a specific statutory provision. And that's the reason for the provision in the bill.

If Congress, which as you know, is working on governmentwide conflict provisions, came along later with those provisions and wanted to cancel the one that's in this bill in favor of general governmentwide provisions on that subject, I'm sure that would be fine.

Our feeling was that Congress wouldn't want to move this bill through with no coverage, looking toward coverage later.

Mr. GILMAN. You don't intend to substitute this for the Executive order that's now in existence?

Mr. ALLNUTT. No; this would be in addition to the current Executive order.

Mr. GILMAN. Does this overlap the Executive order in any way?

Mr. ALLNUTT. It does not overlap it so much as it provides a more strict reporting requirement to people who are engaged in the regulatory aspects of the agency.

Mr. GILMAN. Then is this superseding the Executive order?

Mr. ALLNUTT. No; the requirements of the Executive order would also apply.

Mr. GILMAN. Does it conform with it?

Mr. ALLNUTT. No; it is a more strict reporting requirement on people involved in regulatory policymaking.

Mr. CHO. One key difference, I might add, is that this bill provides for public disclosure while under the Executive order disclosure is made only within the Administration.

Mr. GILMAN. In section 611 you apply that section to volunteers, but you don't apply it to uniformed military detailed to the energy section. Can you tell us why?

Mr. ALLNUTT. Let me tell you, if I may, how it works in ERDA today. When a military officer is detailed for a year or whatever period to ERDA, he does, then, comply with the ERDA conflict of interest regulations for that period.

And that would be the plan for handling military officers who were detailed to DOE.

The thought, however, was not to get specifically into that matter in the legislation, because military officers under one provision of law or regulation which can change over time have their own standards they are living with. And if you by law impose a different one, you might get into a position you couldn't live with.

The plan would be to have them conform, assuming that was not inconsistent with what they were obligated to do in the Department of Defense.

Mr. CHO. Can I supplement that?

Insofar as military personnel are concerned, they are Government employees and are already subject to the Federal criminal conflict of interest statute. The conflicts statute would not apply to volunteers who are not employees of the Government. The conflict statutes would apply to them by the bill.

Insofar as the reporting requirement is concerned, presently under the Executive order, the agencies can take care of the military personnel who are assigned to their agencies. In fact, ERDA already covers them.

Mr. GILMAN. Thank you.

The ERDA agency presently permits its employees to have up to a \$5,000 investment in projects of the company that they might be with.

Do you intend to continue to permit that sort of an investment?

Mr. ALLNUTT. I'm going to ask John Cho, who understands our conflict provisions better than I do, to elaborate a little bit.

But, basically, the difference is this: ERDA's conflict regulations require reporting of all financial interests, whether above or below \$5,000. The significance of the \$5,000 level is that it is a level at which sanctions become applicable. Below \$5,000, in an administrative way, if, for example, someone who works for me has \$1,000 worth of stock in a company, I can determine when I have that report from him that he should not deal with that company.

But that would be the administrative determination, as opposed to an invocation of the criminal statutes. So, for example, contracting officers with any interest are typically ruled out of dealing with those with whom they have an interest. The criminal statute applies at and above \$5,000.

John can probably say that better than I can.

Mr. CHO. I think you've done very well.

Mr. GILMAN. I assume, then, you are going to continue that type of regulation?

Mr. ALLNUTT. Yes.

Mr. GILMAN. Then why, if you're going that far, aren't you going to include a revolving door prohibition; or do you not?

FEA has been noted for employing some people and some attorneys from some of the industry——

Mr. ALLNUTT. Let me ask John to respond to that. But do you mean in the ERDA regulations, or in the bill, I'm not sure which——

Mr. GILMAN. I'm talking about the provisions in the bill now.

Mr. ALLNUTT. John, do you want to respond to that?

Mr. CHO. I think the President is considering that problem, Mr. Gilman. In fact, perhaps, it's better left to general regulation of the entire executive branch rather than to ad hoc treatment.

Mr. GILMAN. Well, if I can understand that. If you're refining disclosure, and you feel you could go further on financial disclosure, then why don't you go a little further with this sort of a prohibition?

Mr. CHO. Well, I'm not sure we're going further in the financial disclosure area, unless you say we're applying it to volunteers.

Mr. GILMAN. Well, you're imposing your own financial disclosure section. In light of the fact that there's an Executive order, you feel that you should go a bit further than the Executive order, based upon Mr. Allnutt's statement.

Why not impose some sort of a restriction on the revolving door type of method for prohibiting the exchange?

Mr. CHO. Well, all I can say, Mr. Gilman, is that the President is considering that problem. I think he's issued a draft Executive order.

Mr. GILMAN. But your agency is not making a recommendation?

Mr. CHO. No.

Mr. GILMAN. Have you had any thoughts about that?

Mr. ALLNUTT. No; I think that's correct.

There is in my mind a difference, if by revolving door you mean postgovernment employment. There is more of a reason for uniform Federal pattern there in view of the movement of people between agencies. You can temporarily have yourself barred from something you'll get unbarred from if you go back to another agency. So there is more reason for uniformity here, than the disclosure provisions. That's all.

Mr. GILMAN. Are the disclosure provisions of your agency more stringent than the Executive order disclosure provisions?

Mr. CHO. The Executive order just lays down general guidelines, and each agency is left to implement that. And——

Mr. GILMAN. Well, in your implementation, have you imposed more strict regulations than the general order?

Mr. CHO. Well, I think we're consistent with the Executive order. We are strict in the sense that we require complete disclosure, not only financial interests in the energy field, but all outside financial interest.

Mr. GILMAN. In that sense, then, you've gone a little further than the Executive order.

Mr. CHO. Yes.

Mr. GILMAN. Thank you.

Thank you, Madam Chairman.

Mrs. SCHROEDER. Thank you, Congressman Gilman.

Some of my concerns come out of sections 607 and 608(b), excepting the GS-18—608(b)—and 150 from the GS-16, 17, 18, and I've got several different questions.

Apparently you believe an executive department requires this pool of excepted positions, but in looking at ERDA and NASA, and other agencies, it appears that the excepted positions have been for people who are on specific mission, normally quite scientific.

I'm wondering why you think that the professional and administrative jobs should be excepted jobs when they're not in that scientific area. It seems to me kind of a dangerous precedent.

Mr. ALLNUTT. Let me say a word about that, and Lloyd Grable may want to elaborate.

One approach could be, if the only desire was to look at people in scientific technological jobs, to carve out the exemptions just for them. The National Science Foundation legislation does have that kind of provision.

To me, from terms of considering management of the Department, that can be a very awkward kind of thing to do, and it has caused problems at the NSF. However, of more importance to me, is the fact that when you get into complex kinds of activities the Department of Energy will be involved in, scientists and engineers are very important people, but managers are also.

So, it would be putting undue emphasis on technological content simply to consider those provisions. NASA, which has the exemptions, for example, does not simply apply them to scientists and engineers, but to the entire management structure of that agency—the entire supergrade structure.

ERDA, of course, is a little harder to talk about, because the whole agency has been exempt, not just people in certain categories. But the NASA model, which this bill essentially follows, is that the total management of the agency be exempt, not just the scientists and engineers. I, personally, feel that that's better.

Mrs. SCHROEDER. Why didn't you ask the Civil Service Commission to except the positions, or the President, also, has the authority to do that.

Mr. GRABLE. The Commission's rules and regulations, as I understand them, are quite specific about exceptions. In other words, case type exception basis—they don't really relate to the exception of a managerial group.

Mrs. SCHROEDER. I think that's the point I'm getting to. In other words, I feel it's a very dangerous precedent, because I don't know any agency of government that's going to say they're really dealing with things that aren't complex, and, therefore, they can't have their people under civil service.

I think almost every agency is dealing with a very complex area, and the exceptions which have, traditionally, been very scientific or very technical things; and so when you come in and want a whole executive administrative level accepted, why—

Mr. GRABLE. For the management of large, technical, complex organizations, like the DOE, it also suggests that the success of those agencies in accomplishing their missions—the success of those agencies has been ascribed, in part, to the fact that they did have that sort of exception in managing their affairs.

Mrs. SCHROEDER. The converse of that is you're really saying those agencies are better run than the civil service, and we should exempt everyone.

Mr. GRABLE. I really didn't, of course, know that about the others. All I'm saying is that the management pattern—matter of fact, the exception, in a way—is a kind of model for what the Commission itself and other study groups have said ought to be the treatment for the Federal executive service.

While not exactly the same thing, but the fact of a greater degree of flexibility concerning the managerial positions—the top of the Government structure—has had 20 or 25 years study by various study groups. And the Rockefeller Commission, I think, provides in its recommendations some, if not all, of the kinds of approaches this kind of exemption would give to the Department of Energy.

Mrs. SCHROEDER. Well, we've never had Congress look at that approach. It's been around, and we haven't gone down that path, and we see a dangerous thing of starting to exempt it through legislation.

Let me ask, what if this committee were to do something such as allowing the excepting authority to lie with the Secretary for a very specific length of time, like 240 days or something, and then have it revert to the Civil Service Commission?

Mr. GRABLE. I can respond. A limitation of that sort would not really meet what we believe it should meet in terms of managing for any particular period of time. The provision itself is for the beginning and continuing management of the department, not for any short-range portion. This is considered to be a long-range matter.

Mr. ALLNUTT. We wouldn't want your committee to get the impression that we're talking about this as a way just to get through the transition to DOF. I think there are other provisions in the bill, including the salary savings provision, that take care of that. I'm really talking about the long-term continuing need for the Department.

Mrs. SCHROEDER. What if we transferred the same authority for supergrades to the Department of Energy as is currently with the agencies—being transferred to it which would mean we give an authorization for 661? Could you deal with that?

Mr. ALLNUTT. Obviously, the department will deal with whatever its ceilings are. What that would allow is no room for growth, the kind that we think will be necessary to implement the programs that the President has recommended.

Mrs. SCHROEDER. Except that you can always come back and ask for additional.

Mr. ALLNUTT. That's correct.

Mr. GRABLE. We could, but I think the track record for getting additional executive positions is very poor.

Mrs. SCHROEDER. Let me ask for one minor thing. It appears that the functions of one of the executive level positions in the Department of the Interior has been abolished, and yet you don't abolish that executive level position in the Department of the Interior. Was that an oversight?

Mr. ALLNUTT. I'm not familiar with that.

Mr. GRABLE. All executive schedule positions of constituent agencies are abolished by this bill.

Mrs. SCHROEDER. So that probably was an oversight, then.

Let me ask about the volunteers. Who is going to supervise the volunteers? What numbers are you projecting you will have? Who do you think these people are going to be?

Mr. ALLNUTT. There really isn't any plan for on the day the Department starts to go out for volunteers in a certain field, in a certain area, or anything of that sort. It's more like a kind of continuing authority we feel the Department should have.

As you know, the bill also provides continuing authority for buying property. It's not that we have some specific real property we want to buy.

Although there's been talk of various volunteer activities, I can tell you that there isn't a national volunteer plan.

Mrs. SCHROEDER. So you're not going to have an energy corps like the Peace Corps?

Mr. ALLNUTT. No; there's no plan for that. I can't tell you there's a plan to go ask for one volunteer. There really is not a planned volunteer activity. It's though it could be a useful thing to have, that agencies do need the authority to accept that kind of help in a given situation. We can imagine situations in which it might be useful, not to have to, at the time we have both the need and the existence of volunteers, to then come seek legislation which would take months or years.

Mrs. SCHROEDER. So you have no projection as to numbers, or whether military people would supervise them or civilians would supervise them, or whether you'd send them overseas?

Mr. ALLNUTT. I, personally, can't imagine a situation in which they would be sent overseas, but I don't know who they are or why they would be taken as volunteers.

It really is a continuing authority to use volunteers if the need arises and there are volunteers who want to volunteer for whatever there is.

Mrs. SCHROEDER. What if the petroleum industry or coal industry or somebody decided to use the volunteers?

Mr. ALLNUTT. Well, if there was a circumstance where—take the oil industry, people who were employed by the oil industry with their salary still paid at home—if there were some legitimate reason for accepting that help, this would give authority to do that.

Those volunteers would be subjected, however, to the conflicts provision that we were discussing earlier. It wouldn't be kind of a license to steal, or to come in and look through the files and go home. It would have to be a very controlled situation, and would be subject to the conflict regulations of the agency.

Mrs. SCHROEDER. But that revolving door thing, that concerns me, too, as to where the volunteers could then go for later jobs.

Mr. ALLNUTT. Obviously, the concept of a volunteer would be a temporary measure, and they would, presumably, whoever it was, would go back to whatever he or she had been doing.

Mrs. SCHROEDER. Can they be reimbursed under section 611(b), if you read the act to allow that which permits incidental expenses?

Mr. ALLNUTT. They can be reimbursed for expenses. I think the concept of the volunteer would mean that they were not being paid a salary.

Mrs. SCHROEDER. So, you really don't know how much these volunteers might cost since you have no projection of where they might be stationed.

Mr. ALLNUTT. That's right. If there was a use of volunteers, it would be subject to the authorization of sums for that purpose and the appropriation of funds through the annual process.

Mrs. SCHROEDER. Let me ask, in sections 615 and 617, it says that the Secretary of Energy will be allowed to build, lease, buy, and maintain employee quarters, mess halls, and things like that.

Do you intend those sections to give more benefits to your employees than those available to other employees. I mean, would volunteers be allowed to use those facilities and so forth?

Mr. ALLNUTT. The answer to the first part of the question is no, there's no intent to give benefits that wouldn't be the normal kind of thing to be expected. If there's to be a facility somewhere—and if there's not, for example, a place to eat—typically we provide a cafeteria for that purpose. I'll have to look at the section to see if you could use it for volunteer housing, I think the answer is no.

Mrs. SCHROEDER. I don't think it specifically excludes it.

Mr. GRABLE. It would have to be, I think, a circumstance where the individual, either employees, volunteers, or military, were in a situation where there's nothing else for them to sustain them other than what the Government's authorized to be built there.

Mrs. SCHROEDER. Well, my concern is, as I read title 5 of the United States Code, it says that they do permit certain benefits from all areas. I wonder why that isn't adequate. What are sections 615 and 617 giving you that you don't already have?

Mr. GRABLE. We have to build the test site or the building. That's what 615 is all about—building laboratories.

Mrs. SCHROEDER. I think you're already allowed to do that if you're in a remote area.

Mr. CHO. You're talking about title 5 of the existing Code? I haven't looked at all of title 5 for quite a while, but I believe it's fairly limited.

I think there are some circumstances where you need the kind of facilities for the health and welfare of employees that we're talking about in 617 of the bill that are not provided in title 5.

Mrs. SCHROEDER. You might look at that, because I really see it as being redundant.

Mr. ALLNUTT. Could I just respond to the last part of your question?

Mrs. SCHROEDER. Sure.

Mr. ALLNUTT. As I read section 617, it says the facilities we are talking about are for employees, which volunteers are not, except for those limited things like workmen's compensation spelled out in section 611.

Mr. GILMAN. Mr. Allnutt, under the administrative provision, section 613 of the bill, permits the Secretary of Energy to give services and personnel, public and private organizations and agencies in the United States and internationally.

Why wouldn't the intergovernmental personnel fill these needs? I assume it's not your intent to override that act.

Mr. ALLNUTT. No; that's not the intent. I think part of the problem we get in a section like 613 is the kind of thing you frequently get in statutes where you have a whole lot of words modifying a whole lot of other words.

The Intergovernmental Personnel Act is adequate authority for exchange between units where there is a determination for mutual benefit, say to the State and Federal agency that are sending employees one way or the other for some length of time.

But there's no intent to override that act or express any displeasure with it. The provision, in dealing with services, equipment, personnel, and so forth, and in all the places they might be, has some redundancy with that act.

Mr. GILMAN. Is there some special need that this new agency will have that IPA couldn't fulfill?

Mr. ALLNUTT. Not that I'm aware of in the sense that the IPA looks to exchange or to a person moving from one government to another where there's mutual benefit; there may be cases where there was not mutual benefit and you need a different authority from the IPA, as I understand IPA.

There's also other purposes in section 613. For example, use of equipment, that IPA, obviously, doesn't deal with, so you need a provision for matters other than personnel. It's not simply the personnel provision that controls.

Mr. CHO. IPA is limited to State and local governments and higher educational institutions, and does not deal with any other organizations from which the new department might need services, equipment, or facilities.

Mr. GILMAN. What's the purpose of borrowing foreign nationals, personnel of other nations?

Mr. ALLNUTT. Again, this is not unlike the volunteer question. It's thought that if and when the situation arises where, for some reason, a foreign national would be usefully borrowed for some purpose, the authority would be here to do it.

Similarly, section 613(b) allows things to go the other way. It will allow the Department of Energy to lend or detail someone to work for, say, the International Energy Agency on the question of nuclear safeguards for a period of time. It would be mutually agreed to by all concerned.

So, what you are looking for is a situation where there's some special expertise, one place or the other, that could be useful to the other party.

Mr. GILMAN. Would it be the intention of this agency to do that without obtaining a clearance, say, from the State Department, or is there some provision in there that would require the agreement of the State Department regarding utilization of nationals?

Mr. ALLNUTT. We at ERDA have active exchange programs now, including training for a variety of purposes, and we work closely with the State Department. There is no intention here to "back door" foreign policy.

The State Department doesn't get involved with each transaction, each individual person coming to this country, through the visa process, or leaving. But it's more of a general coordination than a case-by-case control, much as we work with State the on application of foreign policy, in a particular case.

Mr. GILMAN. Would it be your intention to take volunteers or uniformed military personnel and take them overseas?

Mr. ALLNUTT. I'd hate to say that would never happen. But, unlike the provision we're talking about here, where we might well want a DOE employee to go abroad for some purpose; in case of volunteers or military officers there's certainly no general intention to use them in that way. That's not the kind of thing we have in mind.

I'd hate to say we'd never do that, but I certainly don't have any intention or and knowledge of any plan to collect up a bunch of volunteers and send them abroad. I can't imagine what we'd be doing it for. ERDA has a total of five civil servants, stationed abroad.

Mr. GILMAN. What are they doing?

Mr. ALLNUTT. They're in offices in Europe and Japan where they work with the International Energy Agency, for example, or work with activities, for example, in Brussels or with NATO, depending on what's happening in the country they're in. So, it's a kind of contact between ERDA and the activities in that country.

I just don't think we need to send a bunch of people abroad.

Mr. GILMAN. Are they working on research, or are they in a reporting capacity?

Mr. ALLNUTT. They're typically in the mode of information exchange.

Mr. GRABLE. A research liason, because of the nature of the International Energy Agency.

Mr. ALLNUTT. Mainly in the nuclear end of the business.

Mr. GILMAN. I would assume that it's your intention to utilize IPA wherever possible, and utilize your new positions here only where IPA does not apply. Is that your intent?

Mr. ALLNUTT. Yes.

Mr. GILMAN. Thank you.

Thank you, Madam Chairman.

Mrs. SCHROEDER. Thank you, Congressman Gilman.

I have some more questions about the uniformed service personnel. Do you have any idea how many we are using, or what they will be doing specifically? Why you have a need for uniformed personnel?

Mr. ALLNUTT. We have 35 now in ERDA, to give you the order of magnitude we're talking about, most of whom are involved in the nuclear weapons end of ERDA's activities.

And I would assume that in the Department of Energy the needs would be generally similar. The ERDA level has been constant relative to what it was 2 years ago in terms of the Atomic Energy Commission. Long before my time, I believe it's been as high as 40, but it's 25 or 28 now. I think that sort of level would probably—depending on the level of nuclear weapons business—be a relatively continuing need. The others are much more case-by-case kind of determination that a certain person is particularly well qualified to do a job.

Or, as I was trying to say in the prepared statement, I believe there are opportunities for defense people to learn something at the Department of Energy, and take that back to the Defense Department to the benefit of everyone, particularly in the area of energy conservation.

Mr. GRABLE. One of the aims of the Department is to make maximum utilization of what already exists in the Federal Government,

and not duplicate. It often happens that either a civilian employee or a military member has something we need in the energy business. Many of these are short-term assignments.

Mr. ALLNUTT. We also have 20 civilian Federal employees of other agencies currently on detail to ERDA.

Mr. GRABLE. People of HUD, DOD or DOT, so we have a fair amount of movement continuously among the Federal Government in the energy field.

Mrs. SCHROEDER. Will these people be outside the manpower limits?

Mr. ALLNUTT. The provision, as the bill reads, would exclude them from the ceilings.

Mrs. SCHROEDER. And you assume they would be active, and not retired.

Mr. GRABLE. These are active duty people.

Mrs. SCHROEDER. I'm a little concerned about section 702 and section 703.

Section 702 says a full-time employee shall not be "separated or reduced in grade or compensation for 1 year after the date of enactment" of the act transferring function, whereas 703 says that any executive level employee who is with FEA, ERDA, FEC, or the Department of the Interior, shall never be reduced in rank. Why are executive level employees being treated differently from civil service employees?

Mr. ALLNUTT. They're being treated differently in two ways, as I understand those provisions.

First of all, the people who are nonexecutive level, the day the Department comes into being, are all transferred, and then have the 1-year protection.

People who are in the executive level, unless they are picked up by the Department, lose their jobs the day the Department comes into being.

And there is, on the other hand, protection for as long as they are in that particular job or a comparable position. They would stay at that level, which currently, of course, in the case of level 5, means GS-18 pay. Level 4's—there are very few around anymore—would have a somewhat higher rate. For 3's and 2's, there won't be a comparable position.

So, I guess we're really talking about level 4's and 5's and thus talking about a few people.

Mrs. SCHROEDER. Do you really feel that giving them lifetime jobs, where they will take them, is justified?

Mr. ALLNUTT. It's not a lifetime job. It's saying that as long as they continue to perform the same or a closely similar job, they keep that salary. If they're hired for a different job in the Department of Energy or if they change jobs once in the Department of Energy, they would not.

Of course, if they're not hired at all the section doesn't apply. It's just if they stay; say, if you're making x at an executive level, and you're transferred to do that same job or something closely similar to it, you keep that salary.

Mrs. SCHROEDER. We don't allow anyone else to ever have that kind of privilege.

Mr. ALLNUT. This bill would not give anyone else the lifetime salary in the same position. However, it does have other protections in the sense of 2-year salary retention beyond the 1 year in case of reduction of force and other protections in the civil service nonexecutive levels.

Mr. CHO. Madam Chairperson, there is precedent for this particular provision, I might add. The Department of Transportation Act contains that identical provision.

Mrs. SCHROEDER. I think I just have some question as to why we should give that favored treatment.

Section 302(b) allows the Secretary of Energy to retransfer certain projects back to the Secretary of the Interior. Do you have any idea how many employees would be affected by the transfer and retransfer?

Mr. ALLNUT. Can I respond once more to your last point?

I'm not sure that I agree with you that it's a special privilege. If a civil servant—not at the executive level—say from the Federal Power Commission, transfers into the Department of Energy and continues to do the same job, he or she would, unless the job were misclassified or something, keep that salary or whatever happens later in terms of raises as long as he or she is performing that job. I think that's all the provision says about executive level.

So, I'm not sure there's really a difference. If the executive level person changes jobs, then he or she would go to the salaried rate of the new job. If a civil servant changes jobs, he would go to that new salary. So, I don't really think there's a difference, in that sense, one way or the other,

Now, you were asking about the——

Mrs. SCHROEDER. Section 302(b).

Mr. ALLNUTT. My understanding is that that's the provision for people——

Mrs. SCHROEDER. It allows the Secretary of Energy to have things transferred to him, but it also gives him the authority to retransfer them back out.

Mr. ALLNUTT. All right, it's my understanding that there are about 10 people whom this might affect. The intention is to reach agreement before the Department comes into effect—what it would do—so that there would not be transfer or retransfer.

I was not party to this particular part of the act, but I read it to mean that no agreement was reached by the time the bill was written on what was the most effective way and the fair way for those employees, and that will be worked out before we transfer people one way then another.

Mrs. SCHROEDER. Thank you very much.

Counsel, do you have any questions?

Mr. KNULL. I've got one on section 28 of the FEA act.

Section 704 of the bill says that FEA employees shall have up to 120 days after the effective date unless the President declares otherwise, to decide whether to go back to their old agencies. Why did you pick that 120- or 240-day period?

Mr. ALLNUTT. The basic point there is that there are people in the FEA who went into it with the guarantee of the ability to go back from whence they came, back to the time FEA was set up.

There's no particular magic to 120 days. I think the thought is that sooner or later people should decide, not have the permanent right to go back. So, it would give them a period of reasonable notice that if

they intended to go back to IRS or the other agency they came from, they should do that, which would be 120 days after the effective date of the act, which, in total, means notice of about half a year from the passage of the act.

Mr. KNULL. Wouldn't more appropriate date be December 31 of this year when FEA would expire by its own terms?

Mr. ALLNUTT. We may have a law before that time.

Mr. KNULL. But wouldn't that be a good date just to place in this bill so that whether or not the bill is enacted by then, employees would have notice.

Mr. GRABLE. It would be rough to have a date like that if we didn't have a bill, because that would leave everybody not knowing where they're going to go. That's why tying it into the future of the Department just seemed appropriate.

Mr. KNULL. But there would be no FEA after December 31, 1977.

Mr. ALLNUTT. Except if, by some reason, this bill doesn't pass I assume the Administration would want to extend the FEA.

Mr. GRABLE. We would probably be here trying to get an extension of that date.

Mr. KNULL. There has been a suggestion made that it would be better just to remove the reemployment at the date of enactment.

Mr. ALLNUTT. This was simply intent to give a longer period for people to make that decision.

Mr. KNULL. There's been some complaint that rather than really helping employees, the reemployment right is used by managerial people to move people out, saying, "Look, you've got this right to a job elsewhere. Get out of here or we'll make it hard for you."

Mr. ALLNUTT. I guess the other side of that coin is this. I'm not one of the people who has that right, but if I were, I think I would, unless I knew now what I would want to go back, in which case I would go back to where I came from, I would rather have a little time in the new department to see what things are really going to be like—where there would be a lot of shuffling around of offices, and so forth—and give me some time to make a decision rather than forcing it the day before I could begin to find out what the Department is going to be like.

Mr. KNULL. Since section 28 only permits employees to return to the agencies of their former grade levels, can you give me an idea of how many FEA employees have moved up a grade in the last 3 years?

Mr. ALLNUTT. We'd have to get that information.

Mr. KNULL. If there was transfer back they would effectively be downgraded in the process.

Mr. ALLNUTT. If they elected to go back.

Mr. KNULL. That's all I have.

Mrs. SCHROEDER. I thank you very much for your patience and time.

Mr. ALLNUTT. Thank you very much.

Mrs. SCHROEDER. We appreciate your cooperation on this tight deadline.

Mr. ALLNUTT. We very much appreciate your doing what we think is a very important function. It's important that the provisions be looked at carefully, and I'm glad that you're willing to do it on such short notice and report on short notice. We'll try to cooperate with the staff to get answers up here quickly.

[The following response was furnished.]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION,
Washington, D.C., April 20, 1977.

HON. PATRICIA S. SCHROEDER,

Chairwoman, Post Office and Civil Service Subcommittee on Employee Ethics and Utilization, House of Representatives.

DEAR MRS. SCHROEDER: In response to the questions raised at the hearings on April 19, 1977 on H.R. 4263 and H.R. 4806 to create the Department of Energy, we are pleased to provide the following information.

We were requested to provide the number of employees in the Department of Energy who would be engaged in data collection and analysis. As we indicated, it would be most difficult to be very precise at this time. The figures we have are very tentative in nature and do not reflect a detailed review of the duties of personnel performing this type of work. Our best current estimate is that the constituent agencies which will come into the Department have somewhere between 650 and 750 employees performing energy data work. We do not know at this time how many will be required by the Department, but this is an area of indicated growth to improve our energy data and information capabilities.

Regarding section 704, we were unable to examine all the records of individuals with return rights to other agencies. However, a sample check and our judgment leads to a conclusion that of the approximately 2200 employees affected more than three-quarters would have return rights to a lower grade.

We were asked whether section 617 of the bill relating to DOE employees stationed at remote locations duplicated existing authority in title V of the United States Code. Our response was essentially that Section 617 was not duplicative of the provisions in title V. At your suggestion we agreed to review the existing authority of title V of the United States Code to confirm our answer on this important question. The Department of Transportation also has similar authority (See 49 U.S.C. 1657 (L)).

Section 617 authorizes the Secretary to provide its employees and their dependents generally with medical services and supplies; food and other subsistence supplies; messing facilities; recreational and training equipment; living facilities; and transportation for school age dependents. This authority is available, however, only at remote locations and as necessary and when the services and facilities are not otherwise available.

Other than 5 U.S.C. 5911(b), there is no provision in title V of the United States Code which would be available to the Department of Energy on the matters covered by section 617 of the bill. 5 U.S.C. 5911(b) authorizes the heads of agencies to provide employees stationed in the United States with quarters and facilities when they are not available or when job conditions warrant the action. There are other provisions which deal with foreign duty stations or with allowances for living costs for employees stationed outside the continental United States or in Alaska. However, these have no application to work locations within the United States.

Without section 617 in the bill, the Department will not be able with clear Department-wide authority to provide medical, recreational, and other such services and facilities to its employees who may be stationed in remote locations where such facilities and services are not available. As the Department of Energy becomes more deeply involved in various types of coal, oil shale and other energy research, development and demonstration, the need for such authority will be significant. Large-scale development and demonstration of commercial feasibility of energy production of such resources is likely to take place in remote areas where housing, medical, educational and recreational facilities will be inadequate or even nonexistent. To enable the Department of Energy to attract the necessary personnel for duty in such areas, provision will have to be made for their housing, health and welfare. Section 617 of the bill will assure that the Department will have sufficient authority to meet these needs. In this regard, this authority will not be unique to the new Department. There is such a provision in the Energy Reorganization Act. The Department of Transportation also has similar authority (see 49 U.S.C. 1657 (L)).

We would like to clarify one other matter regarding the appointment and status of employees changing from the ERDA excepted service to the competitive service. Rather than the views expressed in the statement of the Executive Director of the Civil Service Commission, we consider the appropriate interpretation is as we pointed out to Chairman Brooks in a letter of April 8, 1977, to the Committee on Government Operations:

"Section 701.—This provision would effect the transfer of ERDA and other agency staffs to the Secretary of Energy. The full effect of this provision, however, is unclear, particularly as to ERDA since ERDA employees are not under the Competitive Civil Service System. We interpret this provision to mean that all ERDA employees (other than Executive employees) achieve competitive civil service status, or status under an excepted schedule administered by the Civil Service Commission, as a matter of law when the bill becomes effective. To make this clear, we suggest inclusion of language such as the following in the report of the bill. This suggested language is intended to recognize the employees of ERDA have been employed under a public merit system that is essentially equivalent to the civil service system administered by the Civil Service Commission.

"The Committee intends that effective with transfer under Section 701(a) employees in ERDA's excepted service on other than temporary appointments shall come into the career civil service system with the rights associated therewith; however, the Secretary is authorized to place employees transferred to the Department from any agency, administration, commission, or department in excepted appointments under the authority of Section 607 or the authorities administered by the Civil Service Commission."

In our view the existing interchange agreement between ERDA and the CSC is not governing for the purposes of conversion under the provisions of the bill.

We stand ready to provide any other information which would assist the Subcommittee in your consideration of this legislation.

Sincerely,

LLOYD W. GRABLE,
Director, Division of Personnel.

Mrs. SCHROEDER. The next witness is Mr. Raymond Jacobson, Executive Director of the Civil Service Commission.

We welcome you, and if you will summarize your statement, the entire statement will be made a part of the record after your comments.

STATEMENT OF RAYMOND JACOBSON, EXECUTIVE DIRECTOR, CIVIL SERVICE COMMISSION

Mr. JACOBSON. The statement we have is a relatively brief one. I think it touches on most of the subjects on which questions have been raised in the discussions with the ERDA representatives.

Basically, the Commission has supported the bill the Administration has submitted to the Congress which includes bringing 8,500 employees who have been in the excepted personnel system of the Energy Research and Development Administration into the general, competitive civil service.

We know this will be a matter of concern to employees and their representatives, and we plan to be working closely with those agencies in the creation of a new department, so that that transition is as smooth as possible.

The general requirement of putting the new department under the provisions of title 5 of the United States Code we find a very good one, and we think this would be in the overall interest of the Government. There is an exception of some 600 scientific and professional positions which permits, in section 607, the Secretary of the new Department to make appointments and fix their compensation up to GS-18.

This is an exception which normally the Civil Service Commission would consider unnecessary, and only appropriate in unusual circumstances. The Administration's determination, however, has been that the urgency and critical importance of the energy problem makes this exception necessary.

My understanding is that these jobs will be filled by recruitment of high quality people without regard to political considerations, and the Commissioners have, therefore, interposed no objection to this provision.

The 150 additional GS-16's, 17's and 18's would be filled in accordance with the usual supergrade procedures under title 5, and the Civil Service Commission will have full responsibility for those jobs and people.

The transfer features to the new Department provide, we think, adequate protections to the employees involved, and, of course, the bulk of the new Department's employees are already in the competitive civil service. The ones coming in, essentially those from ERDA, into the civil service system, will get some additional protections, which are provided for in the legislation, and that we think, generally, are quite properly handled.

I think the use of the authority given to the Secretary in section 609, to use experts and consultants, and to use members of the Armed Forces in section 612, are generally consistent with existing law and governmentwide policy.

Section 613, on which there has been some discussion, we think is an appropriate section, and we understand that the personnel portions of 613, in relation to interchange between the Department of Energy and State and local governments, will be made under the Intergovernmental Government Personnel Act provisions.

The authority in 611 provides for the use of volunteers without regard to the Civil Service laws. It's been customary in the past that such provisions carry a prohibition against using volunteers to displace Federal employees. That's obviously the intent, but it's not specifically so stated.

I think the reemployment rights termination under section 704, which was just covered in the previous testimony, is a needed provision because at the time the reemployment rights were granted, those rights were needed because the Federal Energy Administration was assumed then to be a temporary agency.

That, obviously, is not true, and we feel that it would be appropriate to deal with this, because we have about 2,500 FEA employees who have statutory rights to return to their former positions. This has required the agencies from which they transferred to obligate those positions and to either hold them open or to fill them on a temporary basis. We don't think this ought to be allowed to continue very much longer.

So, we're hoping that section 704 will operate in the interest both of the employees and in the interest of the other agencies of Government, some of whom supply very significant numbers of people.

Defense Contract Audit Agency, mentioned in the testimony, has almost 100 auditors who have been transferred to FEA. We think this continuing obligation to hold those jobs open really should not be allowed to continue much past the creation of the new Department.

The 120-day period is one that we suggested as a reasonable period, which really could be 8 months after enactment of the law, and would give adequate time for people to make up their minds.

That, I think, is a general summary. I'll be glad to answer any questions.

[Complete statement follows:]

PREPARED STATEMENT OF RAYMOND JACOBSON, EXECUTIVE DIRECTOR OF THE CIVIL SERVICE COMMISSION

Madam Chairwoman and members of the committee, I am pleased to be here today to discuss the personnel aspects of H.R. 4263, a proposal to create a new cabinet Department of Energy. With your permission, I would like to have a copy of this statement placed in the record.

This proposal has been called "a major step" in the Administration's program for a comprehensive reorganization of the Executive Branch. And indeed it is. This would be the first cabinet Department established since the Department of Transportation became operational in 1967. Although the Civil Service Commission has not submitted formal comments to either of the congressional committees considering this legislation, we have followed its development closely.

This legislation would combine many of the energy-related programs now operated by more than 20 executive departments and agencies. The Federal Energy Administration, the Energy Research and Development Administration, the Federal Power Commission, and certain programs and functions of the Interior Department, the Department of Housing and Urban Development, the Department of Commerce, the Securities and Exchange Commission, the Interstate Commerce Commission, and the Department of Defense would be among those transferred to a new Department of Energy.

The Civil Service Commission supports this effort and stands ready to provide the advice and assistance needed to get the new Department underway.

The proposed reorganization has major implications from a personnel standpoint. An estimated 20,000 employees now serving in different agencies would be brought into the new Department under a single integrated personnel system. While the bulk of these employees are now part of the general competitive civil service, about 8,500 are under a separate excepted personnel system in the Energy Research and Development Administration (ERDA). The realignment of functions and reassignment of personnel resulting from the reorganization will no doubt be a major concern of employees, their representatives, and the Civil Service Commission in the months ahead.

With regard to the specific personnel provisions of H.R. 4263, Madam Chairwoman, we are indeed pleased that the legislation establishes the competitive civil service as the framework for the new Department's personnel system. From our standpoint this is a key element in the transition to a new Department of Energy. We believe that only through a unified civil service system can effective and efficient personnel administration in the new Department be assured.

This legislation takes the right approach, that is by generally placing hiring and other personnel functions under the competitive provisions of title 5, United States Code. This will insure greater accountability and improved personnel controls. The use of governmentwide systems and procedures, rather than separate ones, should also bring greater cost effectiveness.

I should point out that H.R. 4263 does provide for one exception from overall competitive service coverage. Section 604 permits the Secretary of the new Department to appoint up to 600 scientific, engineering, professional, and administrative personnel without regard to the civil service laws and fix their compensation at pay rates up to GS-18.

Normally we consider statutory exceptions unnecessary and undesirable because considerations other than merit could enter into the hiring process. Only in unusual circumstances should exceptions be considered.

The Administration has determined, however, that the urgency and critical importance of the energy problem make this exception necessary. Aside from some confidential and policy determining positions, these jobs will be primarily scientific or technical in nature, and would be filled by recruitment of high quality talent, without regard to political considerations.

One hundred fifty additional positions at GS-16, 17, or 18 are established by section 608(b) of the legislation, subject to the requirements of chapter 51 of title 5, United States Code. These positions will be filled in accordance with the usual supergrade procedures.

I am sure that a major concern of this committee is what will happen to the employees transferred to the new Department.

This legislation, in combination with current civil service law and policy, appears to provide extensive protections to the employees involved. Section 702 provides that transferred full-time and part-time personnel occupying permanent positions could not be separated or reduced in grade or compensation for at least 1 year after the date of the bill's enactment. The bulk of the new Depart-

ment's employees are, of course, already in the competitive service, and would continue to receive the benefits and protections provided by our system.

Those employees coming into the competitive civil service from ERDA would also be afforded substantial protections. I would like to explain this in detail.

EMPLOYEE PAY

There would be no change in the pay received by ERDA employees transferred to a consolidated, competitive service Energy Department. Following the transfer, wages of blue collar employees would continue to be based on local prevailing rates under the applicable local wage system schedules. Any white collar employees who, under proper general schedule position classifications, later end up in grades lower than their present grades would be entitled to permanent saved pay, as long as they remain in their present positions, and would also benefit from future general schedule pay comparability adjustments.

APPOINTMENT AND STATUS

Under an interchange agreement in effect since 1957, employees holding non-temporary appointments with ERDA will be able to transfer to regular civil service career or career-conditional appointments without having to compete for their positions. Employees holding temporary or other nonpermanent appointments with ERDA could retain their employment status with the new Energy Department for up to 3 years.

RETENTION AND APPEALS

With their transfer to the competitive civil service, current ERDA employees will be afforded somewhat broader retention rights than they presently hold. Under the competitive civil service system, employees will also be given the right to appeal adverse actions taken against them to the Civil Service Commission.

EMPLOYEE FRINGE BENEFITS

Employee transferring to the new Energy Department would face no changes in fringe benefit coverage. ERDA employees already participate in the leave, life and health insurance and retirement programs administered by the Civil Service Commission.

This legislation also contains a number of other personnel provisions which are generally consistent with existing law, governmentwide policy, and the authority of the Administrators of ERDA and the Federal Energy Administration.

In this category are sections giving the Secretary authority for the use of experts and consultants (section 609) and members of the Armed Forces (section 612).

Section 613 authorizes the Secretary to use the personnel of State and local governments and also provide Department of Energy personnel to such entities as is deemed necessary. Although H.R. 4263 does not specify that such assignments be made under the personnel interchange provisions of the Intergovernmental Personnel Act, we would hope that the legislative history would so indicate.

The Secretary is given authority in section 611 to use volunteers without limitation. It is customary that such provisions carry a prohibition against using volunteers to displace Federal employees.

Finally section 704 requires that employees transferred to the new Department holding reemployment rights under section 28 of the Federal Energy Administration Act of 1974, or any other provision, must exercise such rights within 120 days from the effective date of the energy reorganization act.

This will resolve what is becoming a significant problem in certain Federal agencies. As many as 2,500 of the Federal Energy Administration's current employees have transferred there from other Federal agencies and hold statutory rights to return to their former positions. This has required their previous employers to obligate their positions, pending return, and either hold them open or fill them on a temporary basis.

Some agencies have experienced substantial staff losses to the Federal Energy Administration, for example, almost 100 auditors have transferred from the Defense Contract Audit Agency. Section 704 will give such employees holding reemployment rights a 120-day period in which to decide whether to return to their previous agency or transfer to the Department of Energy.

I will be pleased to answer any questions you may have.

Mrs. SCHROEDER. Thank you.

I suppose I'd like to start with section 607, which creates the 600 excepted positions of grade 18, and 608(b), which creates 150 supergrades. And I'd like to know how many supergrades that FEC, FEA, ERDA, which have been involved in the functions that are being transferred, are currently out of your supergrade pool.

Mr. JACOBSON. Let me see if I have that with me. Your question was regarding the Federal Energy Administration?

Mrs. SCHROEDER. Well, FEA, FPC, and ERDA, and the Department of the Interior.

Mr. JACOBSON. Yes; in FEA we have 105 supergrades; in Federal Power we have 53; and, in Interior, we have 11.

Mrs. SCHROEDER. That are outside?

Mr. JACOBSON. Pardon me, I'm going to ask your indulgence to let me check on any of those that are out of the pool and how many of those are specifically earmarked for those agencies in their legislation.

Mr. Davis of our Bureau of Executive Personnel can help you.

Mr. DAVIS. The Federal Energy Administration has no supergrades out of the pool. Federal Power Commission has 50 authorized from the pool. Forty-five of those are filled. And Department of the Interior has six authorized from the pool. Five of those have been filled.

Mr. JACOBSON. Essentially all of the jobs except the Federal Energy Administration jobs are out of the regular pool of supergrades.

Mrs. SCHROEDER. How about ERDA?

Mr. JACOBSON. ERDA has no jobs out of the pool since they are excepted generally.

Mrs. SCHROEDER. Well, if the Energy Department receives the authority that they want, wouldn't all of these positions soon be free to go back into the pool?

Mr. JACOBSON. The size of the pool, of course, is determined by statute. And the size of the pool remained unchanged. So; yes, I think the answer is correct.

Mrs. SCHROEDER. So, you're giving a large number of extra supergrades in the pool to the Government by the enactment of this bill.

Mr. JACOBSON. Well, the 105 FEA jobs, which are not in the pool, of course, don't go back.

Mrs. SCHROEDER. That's right, but I'm saying the ones that are.

Mr. JACOBSON. The others; yes.

Mrs. SCHROEDER. You would be giving more supergrades.

Mr. JACOBSON. Yes.

Mrs. SCHROEDER. Do you know other departments that have specific supergrade authorities, or excepted authorities like the Energy Department is asking?

Mr. JACOBSON. Well, as for excepted authority such as this bill would provide for the Energy Department for 600 positions, NASA has a very similar authority—the number, I believe, is 425. It is an authority which is quite similar in terms of its coverage and in terms of the authority of the administrator both to employ and to pay people without regard to the civil service law.

So, NASA is the principal exception that comes to mind. I think in the Department of Defense and in the Department of Health, Education, and Welfare there's a somewhat similar exception known as Public Law 313. But, basically, these are for scientific and technical positions.

I don't have a number in my head, but we can provide a number for the record in which the authority to employ and to determine pay is vested in the head of the department and not in the Civil Service Commission.

But it's not quite as extensive as the Department of Energy proposed authority and the NASA existing authority, and it is limited to scientific and technical jobs.

Mrs. SCHROEDER. But are administrative employees excepted, generally?

Mr. JACOBSON. Administrative professional jobs? No; they are unusual.

Mrs. SCHROEDER. So, this would be an unusual request.

Mr. JACOBSON. The term professional, of course, frequently is used to include scientists and engineers, considered professional people; so I would say that the administrative managerial jobs are not commonly excepted.

Mrs. SCHROEDER. What about the provisions to allow uniformed service personnel to work there? Have you had any problems? Has civil service ever had any problems having the mix?

Mr. JACOBSON. Well, of course, the major place we have a mix is the Department of Defense itself. It does create some problems.

My understanding—and I'm not closely familiar with the way in which ERDA has used military personnel—is that they have not typically used them in continuing operational and supervisory or managerial capacities in which they are directing the work of the regular work force. They've been used in project teams or in coordination or liaison capacities; and, in that sense, It would not except, and have not heard of, specific problems.

Mrs. SCHROEDER. What about the volunteers in section 611—allowing volunteers? One of the questions I have is whether the volunteers would be permitted "time credit" toward possible civil service retirement pensions.

Mr. JACOBSON. As this bill is worded, that clearly would not be permitted, and we would oppose, of course, any such provisions. I do not believe it's even being considered.

Mrs. SCHROEDER. Well, I'm not sure that it's that clear. Because the way I read the bill, and the way I read the law, "Federal service" for retirement only involves serving under an authority of the Federal law. And so 611 would be an authority under the Federal law, I think.

Mr. JACOBSON. Well, it's my understanding that the way 611 is worded, these volunteers are not Federal employees, and there's a specific provision, 611(c), that they shall not be subject to the provisions regarding Federal employment, including those related to hours of work, rates of compensation, employee benefits.

So, I think specifically they will not be Federal employees—except for the tort claims, and the provisions of the subchapter I of 81 of title 5, which is for injury compensation.

Mrs. SCHROEDER. So, you think this will be different from the National Guard technician problems.

Mr. JACOBSON. Yes; very much so.

Mrs. SCHROEDER. Sections 615 and 617 allow the Secretary of Energy to bind, lease, build, retain quarters, mess halls, and the like. Right now title 5 gives and allows certain benefits in remote areas.

In your opinion would employees of the Department of Energy be entitled to more benefits than those of other departments and agencies because of sections 615 and 617?

Mr. JACOBSON. Authority such as the 615 general authority, and I have to get specific citations, are quite common in departments and agencies that have isolated, highly specialized, establishments.

So, I do think it's quite common to have these. The Defense Department certainly has this kind of provision. And the provision in 617 for employees and their dependents at remote locations is also common to departments that have that situation.

Now, the remote locations legislation, in title 5, deals, on the other hand, with paying people an allowance who have to travel rather long distances because of the remoteness of the worksite.

In effect, providing for, let's say, housing, food, medical services, and other matters, makes it possible for people to live at those remote locations rather than to travel to and from them.

Therefore, I think it's kind of a tradeoff, and not really, a special benefit.

Mrs. SCHROEDER. Section 613 allows the Secretary of Energy to give, loan, borrow services and personnel from public and private organizations and agencies in the United States and international. Do you see any problem with the civil service laws with regard to this section? I think you testified that you didn't, but I just want to make sure.

Mr. JACOBSON. I did mention in my opening statement that 613, I think, is appropriate. We do not see any conflict with the Intergovernmental Personnel Act. It overlaps a little bit, in that the Intergovernmental Personnel Act deals with the movement of people back and forth, but this adds to that, services and facilities which of course, IPA does not have anything to do with.

But, other than that particular overlap provision, I don't particularly see any problem.

There is one other additional use of people that is not in the present laws, and that is the inclusion of private, nonprofit agencies and organizations. This is not permitted under the Intergovernmental Personnel Act.

In that sense it's an additional authority for the Secretary which is not available to other departments unless they have something in their enabling legislation at this time. I believe Agriculture may have something like this.

So, we have not felt, in our review of the legislation, that this represented a significant concern; but I must say that I do not feel very knowledgeable about what the plans might be for the use of this.

Mrs. SCHROEDER. Counsel, do you have any questions?

Mr. KNULL. Yes.

What if the subcommittee would give supergrade authority to the Civil Service Commission, so as needed positions could be excepted by the Civil Service Commission. Could the Civil Service Commission handle exceptions as expeditiously as Energy might need, and, at the same time, guarantee that we have the control of the top-level employees that we attempt to have in other departments?

Mr. JACOBSON. Certainly the Commission would want to, and has been reasonably successful in providing service to other agencies. If

that were the will of Congress, we would, obviously, do that, and I think we could do an effective job with it.

Placing of that authority with the Commission would, of course, require us and the Department to cooperate very closely in terms of the Department's needs. We, obviously, would pledge our cooperation.

Mr. KNULL. But, say in maybe 3 or 4 years, when things had settled down—or we hope they would have settled down—we wouldn't have, in the meantime, created a special authority that would be on the book and very hard to get at. The Civil Service Commission would then have the authority to pull out some of these excepted positions, or move some of the supergrades around, as the case might require.

Mr. JACOBSON. Obviously, the creation of permanent numbers in authorizing legislation like this, runs a danger of becoming outdated over a period of time. I assume the Administration would be watching that and coming to the Congress with a need for a change over a period of time.

So, a certain amount of inflexibility arises out of putting that kind of numbers in. On the other hand, the tradeoff is the very flexibility that the Department gains by being able to move on its own initiative by having the authority provided for that.

What you have to look at is the fact the Energy Research and Development Administration has had this authority for their entire staff of some 8,500, and this would narrow down to some 600.

So, we say that it's moving in the direction of bringing the structure, generally, into the system. Because of the urgency of the situation. The Commission did not feel it appropriate to object to this request for the exception.

Mr. KNULL. Didn't the AEC act, which was created in the Civil Service Commission, fight the exception of the agency?

Mr. JACOBSON. When the AEC was originally created, which was in 1946, as I recall there was no blanket exception. It was in the authority given to the heads of the Commission—the Atomic Energy Commission—to make, on its own motion, a decision to except. And that decision was made some months or a year or so after the original creation of the Commission.

Frankly, I didn't do enough research to be able to tell you whether we went on record with objection at that time or not.

Mr. KNULL. I think you did.

Mr. JACOBSON. I wouldn't be surprised.

Mr. KNULL. I am not sure about when the ERDA act was created, whether you went on record, but I think you maybe went on then, too—to the exception of the agency.

Mr. JACOBSON. No; we did not. That's recent enough for me to remember.

Mr. KNULL. Section 706 authorizes the Director of the Office of Management and Budget to consult with the Energy Secretary regarding transfers and functions, including personnel connected functions.

Don't you think the Civil Service Commission has better authority and expertise over employee transfers than OMB?

Mr. JACOBSON. Well, let me make a point that this has to do with a decision as to the transfer of functions, and, then, incidental to that, personnel, assets, liabilities, and so on that flow from that.

This has typically and traditionally been the responsibility of the Office of Management and Budget, and we are always consulted by them in terms of the personnel implications.

But, basically, the decision as to the transfer, of the activities, we do not think a Civil Service Commission function. What the relationships of certain activities of, say, the Department of the Interior to be transferred, is an appropriate function for OMB, and not the Civil Service Commission.

Mr. KNULL. Even, say, setting up personnel officers for the new Department?

Mr. JACOBSON. This would not include, for example, that kind of determination, as I understand it. The new department would determine whether it needed additional headquarters personnel officers and how many other personnel offices they would need.

They would not be dealing with OMB on that, and they might be asking us for advice or they might not, but that would be, certainly, within the discretion of the head of every department and agency. I don't think that's what's intended by this in any way.

Mr. KNULL. When the FEA was created they contracted out management service to a group, the Korn-Ferry Corp. I think the chairwoman has had some correspondence with the Civil Service Commission about this contract.

And I'm wondering—you might not be exactly the right person to ask—whether you will offer your management abilities to the Energy Department to set it up, rather than have it go out in contract with consultants. You may have been aware of this.

Mr. JACOBSON. Well, yes, we will, and we have already been discussing with the task force people involved what services we can provide. We have some tentative understandings on that. I would go agree that that would be a very desirable thing to have.

Mr. KNULL. Just one more question, it deals with section 401(c), which permits Board members to select and supervise personnel on their personal staff.

According to Mr. Allnutt's written testimony, he said that that's not meant to override Civil Service Commission authority. And, I believe, he said the staffing for each Board member would be through the personnel office of the Department.

Now, the personnel office of the Department would be under the control of the Secretary of the Department, so, in a round about way, I think the intentions of having an independent staff for each Board member are thwarted.

Would you, possibly, consider placing that authority somewhere else, say, the Civil Service Commission, for the Board members staff so that they do have an independent staff under them?

Mr. JACOBSON. I'm not quite sure what you'd expect us to place with the Commission. As I read the language, it clearly says that the selection and supervision of people on the personal staff of each Board member is clearly the responsibility of that member of the Board.

It seems to me that guarantees the independence of those decisions. It would seem, frankly, unwise to have the personnel processing and the assurance of adherence to Civil Service laws and regulations OK'd any place but in the personnel office of the Department.

I really feel that that is an inherent management requirement. I do not think it interferes with the right of the member of the Board to select people and to supervise them. It's simply to insure that there is conformance, not only with the general personnel laws, but also with any personnel regulations of the Secretary.

Mr. KNULL. You don't see that section as overriding your authority?

Mr. JACOBSON. Oh, no. We have the jobs filled under title 5 and classified under title 5. In all other respects they are subject to the normal civil service rules and regulations and to our evaluations, and to appeal to us, and so on. All of those normal rights are there, and I see nothing in this section that would take them out of that, because they are employees of the Department. And, in another section of the bill, it says that all employees of the Department will be under title 5 except the 600 that we've been talking about.

Mr. KNULL. That's all.

Mrs. SCHROEDER. Thank you very much.

The hearing is adjourned.

[Whereupon, at 11:20 a.m., the hearing was adjourned.]

[The following statements were received for the record:]

STATEMENT OF VINCENT L. CONNERY, NATIONAL PRESIDENT, NATIONAL
TREASURY EMPLOYEES UNION

I am Vincent L. Connery, president of the National Treasury Employees Union. Our union is the exclusive representative of nearly 95,000 employees in the Treasury Department and the Federal Energy Administration, including the Internal Revenue Service, Customs Service, the Bureau of Alcohol, Tobacco and Firearms and the Bureau of Public Debt.

On behalf of the employees we represent in the Federal Energy Administration, we appreciate the opportunity to comment on the President's proposal to consolidate the FEA and other energy agencies into a new Federal Energy Department.

While we do not wish to minimize the significant, fundamental purpose of the bill—the creation of a cabinet level agency to deal with our nation's energy problems—we would like to direct our remarks to those sections which will significantly impact upon the employees who will be affected by the consolidation.

Within this area, we believe that H.R. 4263 contains numerous deficiencies. It fails to give adequate consideration and protection to the needs of the employees whose jobs and careers will be directly affected by the reorganization.

For example, section 704 of the bill grants to employees from the consolidated agencies reemployment rights for 120 days from the effective date of the act. In our opinion, this is an unrealistically short period of time.

As a new agency, the Energy Department will be going through a shakedown period. In the beginning, the new Department will take under its umbrella all those who were employed in the various agencies being consolidated. However, there can be no doubt that within a reasonable period of time after reorganization it will become apparent that not everyone is needed. Thus, the question is really what constitutes a reasonable period of time in which to extend to employees reemployment rights.

Title 5 of the Code of Federal Regulations, section 352.206 provides that reemployment rights in executive agencies normally expire at the end of a 2-year period unless exercised before that time. We believe that this same 2-year period is appropriate for the new Energy Department. It would give the consolidated agency adequate startup time and afford an employee sufficient opportunity to determine if he or she wishes a career in the Energy Department.

Additionally, our experience in representing FEA employees has uncovered what we believe to be abuses in the exercise of reemployment rights. FEA management has utilized this right to circumvent reduction in force and adverse action protections.

For example, NTEU has filed suit on behalf of an FEA employee whose reemployment rights were involuntarily exercised by FEA after the employee was notified that his position was being eliminated. On the surface, it might seem that the agency was being benevolent in exercising his reemployment rights rather than going through a RIF. However, this ignores the fact that title 5 of the CFR part 351 sets forth procedural protections for employees who are the subjects of a RIF. The agency must set up retention registers based, in part, on length of service.

Under this procedure, because of his length of service, this employee may have been entitled to remain with FEA by bumping other employees with less service. But he was denied this option simply through an arbitrary determination that he should be sent back to his previous agency.

Another example involves an employee whose reemployment rights were exercised because of the agency's determination that her performance and attitude were lacking. It was decided by FEA management that instead of proposing an adverse action she would simply be returned to her former agency. By so doing, FEA deprived the employee of the procedural protections to which she was clearly entitled.

An adverse action can only be taken against an employee when it promotes the efficiency of the service and the employee must be afforded notice and a hearing. This employee would have preferred to remain with FEA and defend her position. However, FEA successfully avoided proving the merits of their case by shunting her back to her original agency.

Reemployment rights were intended as a protection against interruptions in the careers of Federal employees and, moreover, as an inducement for employees to take a chance and accept a position in a new agency. FEA has turned this shield into a sword to be used against its employees and to circumvent their procedural protections. The result has been widespread distrust and low morale among the employees.

In order to prevent such abuses from occurring in the new Department, it is imperative that this legislation clearly specify that reemployment rights may only be exercised by the employee if he or she chooses to return to the parent agency.

Another provision of the bill which is inadequate in its protection is section 702. It provides that transferred, permanent personnel could not be separated or reduced in grade or compensation for 1 year after the date of enactment. For the same reason that we propose a 2-year period for reemployment rights we believe that employees should be protected against separation for this same period of time. One year is not sufficient for the agency to make a determination on separation. Furthermore, an employee who has taken a chance on a new agency and has helped to charter the course of that agency is deserving of a greater degree of protection.

In terms of reductions in grade and pay, the Administration has repeatedly made assurances to the Federal workforce that it would make every attempt to prevent massive downgrading. This can be accomplished by incorporating into this bill the concept of "saved grade."

There have been a number of such bills already introduced into this Congress. They provide that an employee whose position is reclassified downward without cause, will permanently retain grade and salary as long as he or she is the incumbent.

Incorporating this concept into this legislation, rather than waiting until separate legislation is enacted, will help to provide the assurances necessary to rally the employees of the affected agencies to support the reorganization and to maintain the high morale vital for an effective Energy Department.

Moreover, equity demands that these employees retain grade and pay indefinitely. They accepted their positions in the parent agencies with the expectation of furthering their career objectives and financial well being. Thus, they should not now be asked to shoulder the cost of reorganization by loss of income and possible promotional opportunity after 2 years; instead they should be assured their current grade and salary as long as they hold their position.

Furthermore, the 2-year limitation could result in the exodus of many experienced employees within the Department. Rather than suffer a loss in income it is very probable that they will seek employment elsewhere.

Title VI, section 607 of the bill authorizes the Secretary to appoint up to 600 "scientific, engineering, professional and administrative" personnel without regard to civil service laws or regulations and without approval of the Civil Service Commission. Although certain agencies have the authority to hire scientific and professional employees without competition, no agency has the authority to fill 600 such positions, and no agency can do so without prior Civil Service Commission approval.

Title 5 of the United States Code, section 3104 lists the agencies with this authority. the Department of Interior, with a total employee population of 77,649, can hire only 8 such employees; the Department of Agriculture may hire 20, out of its 111,247 employees; the Department of Commerce, 30 out of 38,352 employees; and the Department of Health, Education, and Welfare which has 156,527 employees, may hire only 13 such employees.

In addition, only three other agencies, the U.S. Arms Control and Disarmament Agency, the Library of Congress, and the National Aeronautics and Space Administration, may employ such personnel—14, 8 and 12 respectively. Furthermore, although these positions are filled without competitive examinations, they are in the competitive service and section 3325, 5 United States Codes requires that these positions be approved by the Civil Service Commission.

We firmly believe that all employees of the Federal Government—regardless of their function—should be entitled to the rights, privileges and protections of the competitive service. We view section 607 as nothing more than an unwarranted assault on the merit system.

This provision of the bill is particularly onerous to those career civil servants who have worked diligently to secure professional advancement. For example, under section 607, the Secretary would have a license to circumvent these employees by hiring persons from outside the civil service, thus denying career employees promotional opportunities and other job rights. Needless to say, such practices would ultimately result in low employee morale and decreased efficiency.

We believe that if the Secretary demonstrates a need for specially qualified personnel in scientific or professional positions who cannot be found in the competitive service, the proper vehicle would be to amend 5 U.S.C. 3104 to allow the Secretary limited authority in this regard. It certainly would not be appropriate or wise to provide him the vast unilateral hiring authority contained in section 607.

Other features of the bill relating to the Secretary's employment authority are contained in sections 611 and 612 of title VI. These sections empower the Secretary to recruit volunteers and to deploy military personnel to carry out the work of the Department. We are, again, concerned about the effect of these sections on career employees.

For example, the legislation proposes that detailed military personnel would be considered civilian employees for purposes of the Department, yet these individuals would not be counted against civilian manpower ceilings. If, for instance, a reduction-in-force order were circulated, it is conceivable that military personnel could be deployed in large numbers to fill vacancies which were denied to employees in the competitive service. Much the same situation could occur with the use of volunteers.

We believe that the bill should (1) specify the functions for which detailed military personnel may be deployed; (2) place a ceiling on the numbers that can be assigned at any one time and; (3) specify the maximum length of assignment. In addition, there should be an express prohibition in both sections 611 and 612 against the use of either volunteers or military personnel to displace career employees. Although the Civil Service Commission has assured this subcommittee that this was not the intent of the legislation, we believe that such a prohibiting clause should be clearly and succinctly stated in the bill itself.

In conclusion, we would like to direct our remarks to the section of H.R. 4263 concerning financial disclosure.

Section 602 of title VI directs that "Each officer or employee of the Department who has any known financial interests * * *" in any of the areas to be regulated or monitored by the Department, "shall, beginning on February 1, 1978, annually file with the Secretary a written statement disclosing all such interests held by such officer or employee during the preceding calendar year. Such statement shall be subject to examination, and available for copying upon request."

Although NTEU recognizes the importance of preventing conflict of interest situations, we have consistently maintained that public disclosure of financial interests is not a panacea to correct this problem. We firmly believe that no ca-

reer civil servant, in any position, should be forced to make a public disclosure of his or her financial status. Such a requirement constitutes an unwarranted invasion of the Federal employees right to privacy. However, for the purposes of this section, we can support a limited financial disclosure provision, if such statements remain confidential.

We appreciate the opportunity to present our views on H.R. 4263. We will be glad to respond to any questions or comments the subcommittee may have.

NATIONAL FEDERATION OF FEDERAL EMPLOYEES,
Washington, D.C., April 18, 1977.

HON. PATRICIA SCHROEDER,
House of Representatives,
Washington, D.C.

DEAR MS. SCHROEDER: As president of the largest independent union of Federal career workers, I would like to comment on two aspects of major legislation now pending before a subcommittee of the House Government Operations Committee: "The Department of Energy Organization Act."

The National Federation of Federal Employees supports President Carter in his efforts to develop an energy program for this country. Our members, like patriotic Americans everywhere, are willing to make some sacrifices. NFFE believes that in this era of scarce fuels and skyrocketing prices, there is a genuine need for a cabinet-level department to implement policies in this vital area.

There are two features of the Administration's proposal which trouble us. The legislation authorizes the new Secretary to appoint up to 600 scientific, engineering, professional, and administrative personnel without regard to civil service laws.

This sets a dangerous precedent. The original civil service law, the Pendleton act, was enacted in 1883. Its purpose was to provide for fair, efficient, non-partisan administration of Government. Since then many other civil service laws have passed, all with this same basic intent. All taxpayers deserve competent and compassionate service from the Government without regard to their ideologies. While NFFE frequently criticizes different aspects of the civil service system, we believe the interests of the Nation are best served by having the great majority of Federal employees covered by such regulations.

Every executive agency has a number of appointed policymakers, so-called schedule C employees. Although there are now more such workers than needed, we see the rationale for having such employees in the very highest ranks of Government, and for having them appointed rather than qualifying under the civil service. However, scientists and engineers would not necessarily be policymakers. On the contrary, it appears that they would be primarily providing objective expertise and technical skill rather than political counsel. Therefore, we see no need for such persons to be schedule C workers, let alone exempt from all civil service laws. These employees should enjoy civil service protection and be subjected to its restraints. Certainly no Secretary of Energy could object to professional staff qualifying under high civil service standards. In an area as controversial and important as energy policy, scientists must not labor under the fear of dismissal for proposing unpopular solutions to difficult problems. Their research must be unfettered by partisan considerations. Civil service laws must help accomplish this in the rough-and-tumble world of Presidential politics.

The energy department proposals would also authorize the Secretary of Energy to recruit and utilize volunteers to help with the mission of the agency. This also appears to be a dangerous precedent. Although there will be many citizens anxious to participate in the Nation's energy program, we are concerned about how much quality control the Government can exercise over the work of volunteers. How accountable will such unpaid personnel be? We believe the risk is too great. Dedicated, competent career Federal employees have proven their ability to get the job done under the toughest of working conditions. As one of the most productive segments of the Nation's workforce, they should staff the new department.

In summary, we suggest that Congress not disregard the fine record of Government civil service employees in creating this new department.

Sincerely,

JAMES M. PEIRCE, *President.*



