

located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

COMPREHENSIVE REGULATORY REFORM ACT

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (S. 343) to reform the regulatory process, and for other purposes.

The Senate continued with the consideration of the bill.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. I thank the Chair.

Mr. President, I ask unanimous consent that Senator KERRY be permitted to make some remarks without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank the Senator from Ohio. I just wanted to rise for a few moments to say some words about the regulatory reform bill, and where we find ourselves now. Then I will make further comments at a later time. I thank the distinguished manager for the Democrats.

Mr. President, I think it is fair to say that if you ask most people in the United States Senate, "Do you favor regulatory reform?" people are going to say, "Yes; I am in favor of regulatory reform." We all understand that in the course of the last few years, regrettably, there have been some excesses that every single American has come to understand. And unfortunately, because of the negativity and conflict orientation of the press nowadays, the negative aspects of what has happened in environmentalism sometimes supersedes people's perceptions on the positive side.

The truth is, in America, there have been remarkable gains over the course of the last 25 years in the particulates that we breathe, and in the level of our health as a consequence of better air. Today, cities can literally be viewed from airplanes, and from outside the city where, this one not be the case, a decade ago if you were in Denver or Los Angeles given the air pollution levels and smog. There are still problems, but the level is so markedly reduced from what it was that we tend to forget the benefits.

If you look all across this country, there are rivers where salmon have returned and rivers that you can swim in and fish in. This was not the situation a number of years ago. There has been just an incredible increase in the quality of life for all Americans and the opportunities that are available as a consequence of positive choices we have made for the environment.

On the other side of the ledger, there have been some terrible disasters in terms of our efforts to do better. The Superfund Program is a classic exam-

ple of one of those efforts that has not done as well as intended. However, the Superfund Program is not really a reflection of what we need to do in regulatory reform. Yet it somehow finds its way into the bill that is currently on the floor.

Likewise, with the Toxics Release Inventory, over the years since 1986, we have reduced over 40 percent the level of toxic releases into the atmosphere. And, there again, has been an enormous gain in terms of people's knowledge of what is happening in their community. That is all—just knowledge. That knowledge has empowered communities to make better choices and, in fact, many industries have voluntarily made choices based on the fact that they knew a particular community knew what was being released into the air. People have benefited. We have had an enormous reduction in the level of toxic releases. All by virtue of a community right-to-know program that is simply informative. All it does is let people know. It does not require a company to do anything. It does not take any chemical off the market. It does not prohibit it from being sold. It does not levy any fines. There is no administrative process except reporting information to the public.

Yet, in this bill, there is a wholesale discarding of that particular process. It does not belong here. It should not be here.

Similarly, the Delaney clause, which prevents people from being exposed to carcinogens in food additives. This is a critical program. Most people agree that there have been some problems in its administration, and we need to fix it. I agree, we ought to fix it. The Labor and Human Resources Committee and others have been working diligently on a fix. They are in the process of working within the committee with jurisdiction to rework the program. Then along comes this approach of just grabbing out of thin air and plunking into this bill what is not a fix, but an absolute eradication of the Delaney protections. That does not make sense. I do not think Americans have come in and said, "Hey, expose me to a whole new set of carcinogens, and it really does not matter what is in my food." But that is the effect of what is in this legislation.

Those were the "special fixes," the provisions that do not relate to regulatory reform and that should not be in the legislation before us.

In addition, Mr. President, I have some concerns with a number of provisions in the bill that actually address regulatory issues. For starters, this bill lowers the threshold for the definition of a "major" role in the rule-making process. When the EPA or another agency decides that something is a major rule which then affords it a certain set of administrative procedures, the threshold today for a major rule is \$100 million of annual economic impact. First, you have to make a determination that the rule will have an

effect of \$100 million of consequence, and then it is treated as a major rule.

In the bill that is on the floor, the sponsors lower that threshold to just \$50 million. The \$100 million threshold was set in 1975 by President Ford.

That 1975 value is worth just \$35 million. It is not very hard to get to a \$35 million current value in terms of rule-making impact. If you lower that by half, to an \$18 million impact, any lawyer worth his salt can come in and achieve that; particularly since the definition in this bill allows you to take indirect costs into account, you can very rapidly get to a \$50 million consequence.

What is the impact of that? Here is a bill that talks about being regulatory reform yet will open up a whole expanse of new rules subject to major rulemaking procedures which makes it then subject to court review.

Currently, EPA spends \$120 million per year to conduct risk assessment and cost-benefit analysis for major rules at the \$100 million level. EPA estimates that it will need an increase of 191 percent to 458 percent to keep up with the increased workload. Nowadays the EPA handles approximately 10 rules per year that qualify as major rules. Under the \$50 million threshold, we are going to go to 75 major rules per year just for rule at the \$50 million threshold. In addition, in this bill before us, S. 343, the Superfund is lowered even further to a threshold of just \$10 million which will cause a minimum of an additional 650 rules that need this new complex administrative procedure. Every one of us knows that no one is going to come down here and say "add personnel to EPA, appoint more judges, give us the people to achieve this and make this work."

So what you have here is not just an effort to have a legitimate reform of a system that I acknowledge needs reform. What you have is a totally calculated capacity to create gridlock within the system so the rules cannot be made and many of the rules on the books get eliminated.

Now, there are a host of other problems with S. 343. There is a problem with the effective date. The effective date of this bill is upon enactment. The implication of this term will require going back to scratch and being over to develop any rules that are in the entire Federal Government system on that date, whatever that day may be. The impact may well be enormous from meat inspection regulations to drinking water protections and other things that would literally stop in midstream as a consequence.

I do not think that is the intention of the authors. However, that will be the effect. These are the types of problems of which colleagues must be aware. This legislation currently leaves open to question a number of concerns such as this.

Another very significant area is judicial review and the petition process developed in this bill. The bill before us

has at least seven different tiers to its petition process. Unless it has been changed to reflect negotiations we have been having in the last few days, that opens up a Pandora's box of judicial review. You are going to have the capacity to go on for year after year after year with lawyers expending huge sums of money; this process will transform the whole regulatory process into the hands of somebody who has money rather than an evenhanded administrative process that seeks to balance the needs of the country.

Mr. President, I want to emphasize I want to have a legislative reform bill. I think we must. I also want to emphasize that it is appropriate to have cost-benefit analysis and risk assessment. We should be making some determination of the benefits and the costs but we should not do it in a way that is so rigid that we literally deny ourselves the ability to include certain benefits to the country; even if an option is not the least cost alternative it may be something we want to do and we should not take away the discretion or the capacity of somebody to make that decision on the appropriate standards.

Let me give an example from the air quality standards in the Clean Air Act. For 25 years it has been understood that the Federal Government would base its national ambient air quality standards not on a cost-benefit test, but on health protection standards—and I might add that even after 25 years of hard work over 100 million Americans still live in areas where these standards are not met. If this bill becomes law, I believe that it will be virtually impossible for EPA to base its standards on health protection, and it will begin an endless court process that will serve to set back.

Under this bill, for example, if there is an existing statute that has a standard to achieve, for health reasons and other reasons, so many parts per million in air emissions and it is determined that number is a minimum standard, a floor level of protection, but that the agency has the discretion to go to a higher level in the statute because we want to get to at least a minimum standard knowing there is a minimum health benefit for getting to that minimum standard; and this minimum standards costs \$10 million to achieve and it is the least cost alternative. Now, for \$11 million, you may be able to get exponentially further in terms of public benefits, but it is not the least cost, the agency will not be able to go to the higher standard of benefit even if you want to spend the additional resources to get the vastly greater level of benefits.

Under this bill, you will not be able to go to the higher standard of benefit because it is not the least cost alternative—even though that higher standard of benefit may give you other benefits of hospitalization reduction, long-term care reduction, quality of health, a whole number of important benefits, just because it is not the least cost for

the purposes of the underlying statute's minimum gain you cannot do it.

Now, Mr. President, in keeping with what I said to the Senator from Ohio, I am not going to go on, and I am not going to go through a complete analysis of the bill at this time. But I think it is absolutely essential that we approach this bill with a sober intention to legislate, not just to walk in lock-step to make happen what has come here in a very hasty process.

The Environment Committee was bypassed. The chairman of the Environment Committee, a Republican, has signed on to an alternative version of this bill with Senator GLENN, and he will talk about that. The Judiciary Committee never got a chance to consider but a handful of amendments before the bill was forced out on a procedural maneuver. Senators wanted to, but they were never heard or given a chance to consider a vast number of amendments in committee.

On the other hand, the Governmental Affairs Committee sent a bill out by a vote of 15 to nothing, yet that bill has been ignored. And it is essentially that bill with a couple of minor changes that the Senator from Ohio and the Senator from Rhode Island will introduce, and I am glad to be a cosponsor of that, Mr. President.

This bill has far-reaching implications for the health and safety and well-being of the United States of America. This bill should not become a grab bag, a greed effort by a lot of people who never wanted the EPA, who never wanted the Clean Air Act, never wanted the Clean Water Act, never wanted the Safe Drinking Water Act, never wanted the national parks program, never wanted any of these efforts in the first place. And we should not allow them under the guise of regulatory reform to undo 25 years of progress and effort, notwithstanding I emphasize a genuine need to have regulatory reform and to change the way we have been doing business in this city.

So I am prepared to embrace a very legitimate effort to get there. I joined with a number of my colleagues to meet with the Senator from Louisiana, Senator JOHNSTON, Senator HATCH, and others and we thought we were making some progress. I think we did make some progress. It is my hope that over the course of the next week we can continue that effort and hopefully work out the kinks in this bill in order to come up with a very significant vote in the Senate for regulatory reform.

I wish to thank my colleague, Senator GLENN, very much for his gracious forbearance here, and I particularly thank him for his leadership on this effort. He is the person who has been working for years to come up with a reasonable alternative on this, and I am glad to be working with him on it.

Mr. GLENN. I thank my colleague from Massachusetts for his comments. I have noted his efforts for this legislation. He has worked tirelessly for the

last couple of weeks almost in trying to work something out on this, and we are glad to have him with us on this. In fact, we hope to have the whole Senate working with us.

Mr. ROTH. Some of my colleagues have questioned why I support the Dole-Johnston compromise when the bill I originally wrote received unanimous support in the Committee on Governmental Affairs. The bill I introduced in January, S. 291, the Regulatory Reform Act of 1995, was—in my opinion—a good proposal for regulatory reform. I am pleased that it received unanimous support from all 15 members of the Governmental Affairs Committee. But S. 291 was itself a compromise. It was, in my view, a good bill, but not a perfect bill.

The Dole-Johnston substitute improves upon S. 291 in some key respects, especially the use of a stronger cost-benefit test. I believe, to the extent practical, the benefits of a regulation should justify its costs. The pending amendment is the product of the three committees that proposed regulatory reform legislation, and many other Senators. It likewise may not be perfect from everyone's point of view, but it is a strong effort to make Government more efficient and effective.

When you review the key provisions of S. 291, you can see they are reflected in the Dole-Johnston amendment. These provisions include:

Cost-benefit analysis: The benefits of a regulation must justify its costs, unless prohibited by the underlying law authorizing the rule.

Market-based mechanisms and performance standards: Flexible, goal-oriented approach are favored over rigid command-and-control regulation.

Review of existing rules: Old rules on the books must be reviewed to reform or eliminate outdated or irrational regulations.

Risk assessment: Agencies must use sound science to measure and quantify risks to the environment, health, or safety.

Comparative risk analysis: Agencies must set priorities to achieve the greatest overall risk reduction at the least cost.

Reform of the Regulatory Flexibility Act: The Regulatory Flexibility Act is strengthened to make agencies more sensitive to the impact of regulations on small businesses and small governments.

Congressional review of rules: Rules will not become effective until they are reviewed by Congress. Congress can veto irrational or ineffective regulations.

Regulatory accounting: The Government must compile the total costs and benefits of major rules.

Most important, the Dole-Johnston amendment, like S. 291, has limited judicial review so agency rules will not be invalidated for minor procedural missteps. But the Dole-Johnston amendment also improves upon S. 291 by having a more focused cost-benefit

test. Regulators must directly set regulatory standards so that the benefits of a rule justify its costs, unless prohibited by the law authorizing the rule. Of course, neither S. 291 or the Dole-Johnston amendment contains a supermandate that overrides the substantive goals of any regulatory program.

The three provisions that lie at the heart of any good regulatory reform proposal are: First, decisional criteria, such as the cost-benefit test; second, judicial review; and third, review of existing rules. The Dole-Johnston amendment is better on the first provision and equal on the second, as I have previously suggested. On the third provision, review of existing rules, it is also better since the provision in S. 291 has significant administrative difficulties.

S. 291 said that every major rule on the books had to be reviewed by the appropriate agency within 10 years, plus a possible 5-year extension, or terminate. The basic problem with that approach is what constitutes "a rule." Most rules are amendments to existing programs which upon becoming effective merge into the text of the program. What you have on the books are programs which have been molded by a whole series of prior rules. So how can one mandate that the rules must be reviewed? On which page of the Code of Federal Regulations does a rule begin and end? What grouping of concepts constitutes a rule? A major rule? When 10 years has elapsed, what exactly has terminated?

S. 291 meant well, but it was silent on such questions. The Dole-Johnston amendment, in contrast, provides a clearer alternative: the agency establishes a schedule of the rules to be reviewed. This list is published for all to see. Only rules on that list are subject to termination under the legislation.

In turn for its workability, however, a vulnerability arises. Suppose the agency list is underinclusive, then what? The Dole-Johnston amendment allows petitioners to request inclusion and, if denied, sue the agency. However, the burden that a petitioner must meet in court is purposefully high, lest any agency be overwhelmed by such petitions.

The Dole-Johnston provision is a balanced, workable, and fair resolution of the thorny issue of how agencies are to review existing rules. It is the product of fruitful negotiations with Senators KERRY, LEVIN, BIDEN, JOHNSTON, HATCH, NICKLES, MURKOWSKI, BOND, and myself.

In short, the Dole-Johnston amendment is the newer, better product—representing the cumulative wisdom of months of negotiations on different options in three committees. When we voted to report S. 291 from the Committee on Governmental Affairs last March, that version may well have been the best text available. But it no longer is.

From the day I introduced S. 291 it has been my objective to produce the best possible bill—one that achieves

real reform, that passes both Houses, and that is signed into law. From that day I have found myself as the Senator in the middle, serving as a bridge between various opposing viewpoints. I believe that I have been able to achieve significant progress by bringing opposing sides closer together. The policy gap on this legislation has closed and is closing.

Today Senator DOLE will lay down the Dole-Johnston amendment that represents the current state of progress. Some on the other side of the aisle have introduced a slightly modified version of S. 291. I am somewhat alarmed that this is being done after substantial progress has been made in talks with Senators representing all colors of the political spectrum. I hope that their action does not indicate that their position is hardening on this legislation.

S. 291 was a good bill. But the Dole-Johnston amendment is an improvement, thanks in part to suggestions made by those who seek to rally around a modification of S. 291.

Mr. GLENN. Mr. President, Senator DOLE has made his proposals here. I know he wants to make some remarks in a moment.

Without losing my right to the floor, I ask unanimous consent to yield the floor to Senator DOLE, and then Senator KASSEBAUM has remarks on a different subject.

The PRESIDING OFFICER (Mr. BENNETT). Without objection, it is so ordered.

SENATE SCHEDULE

Mr. DOLE. Mr. President, I thank the Senator from Ohio. I wish to give my colleagues, after several inquiries, the schedule for the balance of the day and the balance of the week.

We still have the rescissions package which is in the process of passing the House. I have indicated that if we could get a unanimous-consent agreement to take care of that by a voice vote and also have two amendments pending for votes on Monday, July 10, we would not have any additional votes tonight or any votes tomorrow.

I am not certain we can get consent on the rescissions package. There may have to be votes, and those votes would occur tonight and, if necessary, tomorrow, because I think it is important. It has money in there for Oklahoma City; it has money for California earthquakes. There are a lot of different areas that have been waiting for a long time because the President vetoed the bill.

I hope we can work out any disagreements, and I will get back to my colleagues as soon as I have additional information. But if we can get a consent on the rescissions package, even if we have to have a couple of votes tonight, or pass them on a voice vote, and then we have two amendments that would be debated on Monday, July 10, to the pending bill on regulatory reform,

those votes would occur after 5 o'clock on Monday, July 10. If we cannot reach an agreement, then we will be here tonight and tomorrow.

Mrs. KASSEBAUM. Mr. President, I very much appreciate the Senator from Ohio letting me speak for a few minutes as if in morning business.

ARREST OF NIGERIAN GENERAL OBASANJO

Mrs. KASSEBAUM. Mr. President, I rise this evening to express my deep concern about the deteriorating situation in Nigeria. And I thought it was important to express my concern about what was happening there that has been illustrated by the arrest and detention of General Obasanjo of Nigeria and 23 other political prisoners. Recent reports indicate the military dictatorship in Lagos may be trying General Obasanjo in a secret tribunal on unspecified charges possibly leading to capital sentencing.

I join with President Clinton, Foreign Secretary Hurd of Great Britain, and much of the international community in strongly condemning the arrest and continuing detention of General Obasanjo. I have known General Obasanjo for a number of years and have long respected his intellect and leadership abilities. He is one of the few leaders in African history to peacefully step down from power in favor of a civilian democratic regime.

Despite the unbanning of political parties, I remain deeply skeptical about the commitment of the Nigerian military government to a democratic transition. The continuing imprisonment of General Obasanjo and disregard for basic human rights and due process only reinforces the mistrust of the current regime.

To date, I have supported the administration's policy of limited sanctions and diplomatic engagement in Nigeria. I believe the time is coming, however, where the United States, together with our European allies, should consider tougher and more aggressive steps to pressuring the Nigerian Government into political reform. I will chair a hearing of the Subcommittee on African Affairs of the Senate Foreign Relations Committee on July 20 to explore further options of U.S. policy.

Mr. President, I have long believed that Nigeria held the key to development of a large portion of Africa. It has been a large and rich and bountiful nation. It is a country with tremendous economic and human potential. It is also a country with a history of deep-seated ethnic and religious division. For these reasons, the continuing intransigence of the current military leadership is particularly troubling. It could lead, I fear, to further political and economic instability and great tragedy in Nigeria.

I firmly hope, together with all friends of Nigeria, that the Nigerian Government will move quickly toward