Ensign	Kennedy	Nickles
Feingold	Kohl	Pryor
Graham (FL)	Lautenberg	Reed
Graham (SC)	Leahy	Reid
Gregg	Levin	Rockefeller
Hagel	Lott	Sarbanes
Harkin	McCain	Schumer
Hollings	Mikulski	Stabenow
Inouye	Murray	Sununu
Johnson	Nelson (FL)	

NOT VOTING—2

Kerry	Lieberman

The conference report was agreed to.

Mr. FRIST. Mr. President, I move to reconsider the vote.

Mr. BOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, this is an extraordinary day for seniors and indeed all Americans. The legislation that we just passed is consequential. It is far reaching for every American. It touches all of us in material ways, in meaningful ways. It is epical in the sense that it modernizes Medicare to provide 21st century care for our seniors, with preventive care, with disease management, and especially with prescription drugs. This bill is notable in its 54-to-44 vote in being a bipartisan bill.

For the information of our colleagues, we will have no more rollcall votes. We currently remain in discussion on the appropriations bills. The bill will not be filed until later today in the House of Representatives. I will be in discussion with the Democratic leadership as to what appropriate time we will be addressing those appropriations bills. There will be no more rollcall votes today. I wish everybody a very happy, enjoyable, and especially safe Thanksgiving.

ADMINISTRATION EFFORTS TO GUT THE ''COMPETITIVE SOURCING'' COMPROMISE

Mrs. MURRAY. Mr. President, I rise to alert my colleagues and the public to a secret effort by the White House to quash the rights and eliminate the jobs of thousands if not millions of Federal workers.

Right now, the White House is actively working behind the scenes—in closed-door meetings—to reverse a bipartisan agreement that House and Senate appropriators reached just 12 days ago. And I regret to say, the President's operatives appear to be succeeding.

I rise to expose these backroom efforts because I believe all taxpayers should be made aware of the White House's efforts.

If the White House prevails in this scheme, Federal jobs could be contracted out even if it costs taxpayers more money, Federal workers will have to compete to keep their jobs with their hands tied behind their backs, and Federal workers will not be able to appeal a decision to contract out their job while private companies can appeal a decision that doesn't go their way.

If the White House gets everything it wants, Federal workers could actually lose their jobs and see that work shipped overseas. This administration has sent enough good American jobs overseas. It is outrageous that this White House is now questioning our agreements which ensure that the work of the American Government is done by workers here in America.

When it comes to allowing Federal workers to compete to keep their jobs, the White House does not want a level playing field. That's why they're engaging in all these backroom deals, and that's why the White House has seen to it that the bipartisan Transportation/Treasury conference report has never been filed.

What kind of Federal workers am I talking about here? I am talking about people who protect our borders and keep terrorists off U.S. soil; people who purchase and maintain equipment for our troops, both here and overseas; people who help us get the Social Security checks, or price support payments, or unemployment insurance payments that we are eligible for; people who make sure our food is safe; and many, many more.

These are hard-working Americans that serve the taxpayer everyday and deserve a fair shot at keeping their jobs. But, as my colleagues know, for some time the Bush administration has been trying to eliminate Federal jobs through what it calls ''competitive sourcing.'' This policy is highly controversial and with good reason.

Just look at what happened to Federal employees of the Defense Finance Accounting Service in Ohio: Their work was contracted out to a company in Dallas, TX in January 2002; then the Pentagon's inspector general found that the move saved no money and actually cost the taxpayer an additional $20 million; and now that work is being shipped to yet another contractor.

So this entire policy of contracting out Federal work needs much more scrutiny and oversight. But instead of allowing a balanced set of rules to be put in place to avoid the situation I just described, the Bush administration is working to undermine it.

Let me review some of the recent events to show why this effort by the White House is so disturbing. On May 29 of this year, the Bush administration issued revisions to OMB's Circular A–76. This is the circular that dictates the terms and conditions through which executive agencies can privatize activities currently performed by Federal employees.

These revisions were highly controversial and were designed in many ways to undermine the efforts of Federal employees to keep their jobs. The fairness of these revisions was questioned, and not just by Democrats and the Federal employee unions. Several House and Senate Republicans identified flaws, including the chairmen of the relevant authorizing committees and subcommittees.

When the Transportation, Treasury and General Government Appropriations bill was brought to the House Floor, Representative VAN HOLLEN offered an amendment to address these flaws. The Van Hollen amendment was adopted on a bipartisan vote of 220–198. The Van Hollen amendment effectively suspended the President's new OMB circular. It required any contracting out activities to be conducted according to the older A–76 rules. Immediately, the White House threatened a veto, so the Senate took a different approach.

During Senate debate, we adopted an amendment offered by Senator MIKULSKI and Senator COLLINS, the authorizing committee chairman. The Senate also adopted an amendment offered by Senator THOMAS and Senator VOINOVICH, the authorizing subcommittee chairman.

The substance of both amendments centered on putting some basic fairness into the contracting out process—especially the process through which Federal employees and private contractors submit bids to retain Federal work and how those bids are compared. In some cases, the amendments reflected language that the President had already signed into law or that the Congress had already adopted on the Department of Defense and Department of Interior appropriations bills.

When the conference committee convened to reconcile these two very different bills, we all recognized that the Van Hollen amendment could not be included in the conference report because of the President veto threat, so we put together a thoughtful and fair compromise. Our compromise was designed to provide a level playing-field between Government contractors and Federal employees. Our compromise ensured fairness in five ways.

First, the compromise ensured that the rules pertaining to all the Federal agencies would be the same. Second, the compromise ensured that the administration would have to demonstrate that there are real cost savings that would result from a privatization effort before Federal employees lost their jobs to the private sector. Third, the compromise ensured that Federal employees—and not just private contractors—would have the opportunity to appeal a potentially wrongful decision to contract out work. Fourth, the compromise ensured that no jobs that are contracted out would be transferred overseas. And fifth, the compromise ensured that Government employees have the opportunity to put together their best and most efficient bid in order to compete to keep their jobs.

In other words, they do not just need to submit a bid based on the way they currently operate. They could propose new efficiencies to make their bid competitive so that all taxpayers benefit.

As I said, this was a thoughtful, carefully crafted compromise in which neither side got everything they wanted.

Mr. President, I ask unanimous consent that at the conclusion of my remarks, the bill language reflecting this bipartisan compromise be printed in the RECORD.

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

(See exhibit 1.)

Mrs. MURRAY. Mr. President, I am placing this language in the RECORD because I have been given reason to believe that some very different language will appear in the omnibus appropriations act, once it is actually filed.

A lot of credit belongs to Chairman ISTOOK, Chairman STEVENS, and Chairman SHELBY for allowing the conferees on the Transportation/Treasury bill to work through the issues and develop our original compromise.

When I left the Capitol building late in the evening on Wednesday, November 12, all the conferees expected that compromise to be incorporated into the conference agreement on the Transportation/Treasury bill that was to be filed the next day. Each and every Senator, Republican and Democrat, that participated in that conference agreement was content with the compromise and signed the conference report. What has happened since then has been one of the most astonishing and deplorable process that I have ever witnessed in my 11 years in the Senate.

When the Bush White House learned that the conferees decided to insist upon a level playing field and some demonstration of taxpayer benefits for Federal jobs to be contracted out, they began a quiet but relentless campaign to the gut the compromise. Despite the fact that the conference committee adjourned well over a week and a half ago, the White House has seen to it that the bipartisan conference agreement has not been filed in either the House or Senate while they work to emasculate the compromise.

The administration's alternative language makes their true motives clear. One language change that the Bush administration has been promoting would effectively eliminate the requirement that the administration demonstrate any cost savings before throwing Federal employees out onto the unemployment line. Indeed, the loophole language they are promoting would allow them to award Federal work to private contractors even if the contractor's costs are considerably higher than letting Federal employees keep the work.

Could it be that we are seeing yet another attempt by the Bush/Cheney administration to use Federally appropriated resources to reward their friends?

I am told that the administration has even voiced reservations about the language in our compromise prohibiting Federal jobs from being shipped overseas. Where does it stop.

This administration seems to see no problem with senior citizens picking up a phone to call Social Security Administration and the phone being answered by a Federal contractor in India—and it could actually cost taxpayers more. That's absurd.

On another provision, the administration is objecting to language allowing Federal employees to put forward their best and most efficient bid in order to keep their jobs. Why? Because the administration doesn't want Federal employees to retain this work no matter what the benefit to the taxpayer.

This is the first year that I have served as the senior Democrat on the Appropriations Subcommittee overseeing these government-wide procurement issues. Over the course of this year, I have been increasingly appalled by the disrespect and disdain that the Bush administration holds for the thousands of Americans that come to work for our Government every day.

As of today, I regret to inform the Senate that the Bush administration appears to be making meaningful progress in its campaign to gut the bipartisan compromise that was agreed to as part of the Transportation/Treasury conference.

My subcommittee staff was present with language that was intended to be included in the omnibus appropriations bill. That language guts our original compromise in three fundamental ways.

First, the rules included in the Transportation/Treasury bill will no longer apply to all Federal agencies. They will only apply to the agencies funded in the Transportation/Treasury bill. So these provisions will apply only to jobs being contracted out in the Department of Transportation, the Treasury Department, the General Services Administration, the Office of Personnel Management, and a few smaller, related agencies.

None of these protections will apply to the hundreds of thousands of employees in the other major Federal civilian agencies, such as the State Department, Commerce Department, Agriculture Department, Labor Department, and the Health and Human Services Department. There will be a distinctly different set of rules for jobs in the Department of the Interior and still different rules for jobs in the Department of Defense.

This makes a sham of our Federal contracting-out policy, but the Bush administration certainly doesn't seem to care.

The first major change is in the scope of the agreement. Instead of applying to all civilian agencies, it would just apply to a few. The second major change undermines the fairness of our agreement. The language being slipped into the omnibus bill would now deny Federal employees the legal standing to appeal a wrongful decision to contract out their jobs. Under current regulations, only contractors can appeal a decision that doesn't go their way. Federal employees who are losing their jobs have no such right.

The administration obviously does not want its decision to ever face a truly fair appeals process.

The third major change effectively eliminates the requirement that there be any meaningful cost savings to the taxpayer before jobs are contracted out. That is deplorable.

No wonder the Bush administration will only push for these changes in back rooms.

I think this result is bad enough. However, I am now being told that the administration has not given up on weakening our provision even further.

As I stand here today, the conference agreement on the omnibus appropriations bill, including the Transportation/Treasury section, has still not been filed. The back-room dealing continues and the basic principle of fairness and respect for our Federal employees continues to be under attack.

I have to say that in my many years on the Appropriations Committee, I have never witnessed such a cynical effort to undermine a fair and equitable conference agreement.

I want to emphasize that it is not the fault of Chairman ISTOOK, Chairman SHELBY, Chairman STEVENS, Chairman YOUNG, or any of the other members of the Transportation/Treasury conference. Those honorable gentlemen reached a deal at the conference room table and, I believe, had every intention of standing by our compromise.

This attack on Federal workers, on fairness and on taxpayers has only one source—the administration of George Bush. It is the White House that is keeping our compromise from being enacted—or even filed—so that the American public can read and understand it.

Next year, I hope that our Transportation/Treasury Subcommittee will hold hearings with the appropriate administration officials so that they can explain to us why it is so important to them to deny Federal employees even the most basic rights when competing to keep their jobs. I hope they will explain why it is important to the Bush administration that different Federal workers be subjected to a hodgepodge of differing rules depending on where they work. Perhaps they could also explain why they think it is appropriate that only contractors—and not Federal employees—have the right to appeal a ''contracting out'' decision.

This issue will not go away. I can guarantee you that efforts will be made on next year's Transportation/Treasury bill to rectify this situation and restore a government-wide policy based on fairness and savings for the taxpayer.

I only hope the Bush administration will have the decency to articulate its position before the public—and on paper—rather than in the back rooms in the dark of night.

EXHIBIT 1

FINAL A–76 COMPROMISE LANGUAGE FOR CONFERENCE REPORT ON THE TRANSPORTATION, TREASURY AND INDEPENDENT AGENCIES APPROPRIATIONS ACT

SEC. 7 . (a) LIMITATION ON CONVERSION TO CONTRACTOR PERFORMANCE.—None of the

funds appropriated by this or any other Act shall be available to convert to contractor performance an activity or function of an executive agency, on or after the date of enactment of this Act, is performed by more than ten federal employees unless the

(1) the conversion is based on the result of a public-private competition plan that includes a most efficient and cost effective organization plan developed by such activity or function; and

(2) the Competitive Sourcing Official determines that, over all performance periods stated in the solicitation of offers for performance of the activity or function, the cost of performance of the activity or function by a contractor would be less costly to the executive agency by an amount that equals or exceeds the lesser of—

(A) 10 percent of the most efficient organization's personnel-related costs for performance of that activity or function by federal employees; or

(B) $10,000,000.

(b) EXCEPTIONS FOR THE DEPARTMENT OF DEFENSE.—

(1) This section and subsections (a), (b), and (c) of section 2461 of title 10, United States Code do not apply with respect to the performance of a commercial or industrial type function of the Department of Defense that—

(A) is included on the procurement list established pursuant to section 2 of the Javits-Wagner-O'Day Act (41 U.S.C. 47);

(B) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or

(C) is planned to be converted to performance by a qualified firm under at least 51 percent ownership by an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), or a Native Hawaiian Organization, as defined in section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15)).

(2) This section shall not apply to depot contracts for depot maintenance as provided in sections 2469 and 2474 of title 10, United States Code.

(3) Treatment of Conversion—The conversion of any activity or function of the Department of Defense under the authority provided by this section shall be credited toward any competitive outsourcing goal, target, or measurement that may be established by statute, regulation, or policy and is deemed to be awarded under the authority of, and in compliance with, subsection (h) of section 2304 of title 10, United States Code, for the competition or outsourcing of commercial activities.

(c) Not later than 120 days following the enactment of this Act and not later than December 31 of each year thereafter, the head of each executive agency shall submit to Congress (instead of the report required by section 642) a report on the competitive sourcing activities on the list required under the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270; 31 U.S.C. 501 note) that were performed for such executive agency during the previous fiscal year by Federal Government sources. The report shall include—

(1) the total number of competitions completed;

(2) the total number of the competitions announced, together with a list of the activities covered by such competitions;

(3) the total number (expressed as a full-time employee equivalent number) of the Federal employees studied under completed competitions;

(4) the total number (expressed as a full-time employee equivalent number) of the Federal employees that are being studied under competitions announced but not completed;

(5) the incremental cost directly attributable to conducting the competitions identified under paragraphs (1) and (2), including costs attributable to paying outside consultants and contractors;

(6) an estimate of the total anticipated savings, or a quantifiable description of improvements in service or performance, derived from completed competitions;

(7) actual savings, or a quantifiable description of improvements in service or performance, derived from the implementation of competitions completed after May 29, 2003;

(8) the total projected number (expressed as a full-time employee equivalent number) of the Federal employees that are to be covered by the next report required under this section; and

(9) a general description of how the competitive sourcing decisionmaking processes of the executive agency are aligned with the strategic workforce plan of that executive agency.

(d) The head of an executive agency may not be required, under Office of Management and Budget Circular A–76 or any other policy, directive, or regulation, to automatically limit to 5 years or less the performance period in a letter of obligation, or other agreement, issued to executive agency employees, if such a letter or other agreement was issued as the result of a public-private competition conduced in accordance with the circular.

(e) Hereafter, the head of an executive agency may expend funds appropriated or otherwise made available for any purpose to the executive agency under this or any other Act to monitor (in the administration of responsibilities under Office of Management and Budget circular A–76 or any related policy, directive, or regulation) the performance of an activity or function of the executive agency that has previously been subjected to a public-private competition under such circular.

(f) For the purposes of subchapter V of chapter 35 of title 31, United States Code—

(1) the person designated to represent employees of the Federal Government in a public-private competition regarding the performance of an executive agency activity or function under Office of Management and Budget Circular A–76—

(A) shall be treated as an interested party on behalf of such employees; and

(B) may submit a protest with respect to such public-private competition on behalf of such employees; and

(2) the Comptroller General shall dispose of such a protest in accordance with the policies and procedures applicable to protests described in section 3551(1) of such title under the procurement protests system provided under such subchapter.

(3) The person designated to represent employees of the Federal Government shall be either:

(A) the agency tender official who submitted the agency competition proposal; or

(B) a single individual appointed by a majority of directly affected employees; or

(C) in the event of a dispute between the two individuals cited in (A) or (B) above, either of said individuals, to be determined by the U.S. General Accounting Office.

(g) An activity or function of an executive agency that is converted to contractor performance under Office of Management and Budget Circular A–76 may not be performed by the contractor at a location outside the United States except to the extent that such activity or function was previously been performed by Federal Government employees outside the United States.

(h) In this section, the term ''executive agency'' has the meaning given such term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

MORNING BUSINESS

Mr. FRIST. I ask unanimous consent that there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

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

APPROPRIATIONS

Mr. BOND. Mr. President, I commend our leader, Senator FRIST, as well as Senator GRASSLEY, Senator BAUCUS, and Senator BREAUX, for the tremendous work in passing this very difficult bill. This is a tremendous milestone. It is great news for the seniors of our Nation.

I also ask and plead with the leadership and the Members to realize that we have not yet finished work on the vitally important appropriations bills. It is extremely important we get these bills passed this year prior to the start of 2004, because there is so much in these bills that must be passed now.

The Appropriations Committees, under the leadership of Chairman STEVENS and Senator BYRD, have worked long and hard to produce these bills. Senator MIKULSKI and I fought to get an increase in veterans health of $2.9 billion. We did that because of the pressing need for our veterans.

Our high-priority veterans are waiting sometimes 6 months just to get an appointment. We need that money in the VA system now, not sometime next year. We are also seeing more and more veterans coming back from the conflicts in Afghanistan and Iraq with serious injuries, long-term injuries, that are going to require veterans health care. We have to come to some agreement to get these bills passed this year, not sometime next year, not January or February or March. We cannot afford to miss a half a year.

In addition to that, the distinguished Senator from Kentucky and the Senator from Connecticut put in the over $1 billion needed for the Help America Vote Act.

Mr. MCCONNELL. Will the Senator yield for a question?

Mr. BOND. I would be happy to yield.

Mr. MCCONNELL. I ask my friend from Missouri, is it not true that if we do not get this omnibus bill funded, the election reform money, which guarantees that next year it will be easier to vote and harder to cheat, as the Senator from Missouri has said on so many occasions, that that money simply will not be there in time to begin this lengthy process of getting the money out to States and getting the reforms made in time for the 2004 election?

Mr. BOND. The distinguished Senator from Kentucky makes a very valid point. The time is now to get that money into the voting system in every