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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE: 4/8/83

TO: Mr. Roberts
FROM: Mr. Bedell

call in: why not
object to limit on
new creation?
Jim Mann told me
we were going to
get that in timing
benefits

OMB FORM 38
REV AUG 73

DRAFT#4 4/6/83

*new file:
Reorganization
Authority*

EMBARGOED FOR RELEASE

UNTIL 10 AM
APR 12, 1983

REORGANIZATION AUTHORITY

Mr. Chairman and Members of the Committee.

I am pleased to appear this morning to testify on H.R. 1314, the Reorganization Act of 1982. This bill would renew, with amendments, the authority of the President to propose reorganization plans to effect changes in the Federal organizational structure.


Mr. Chairman, the President urges that the reorganization authority be renewed to help meet his responsibilities for the effective and efficient management of the Executive branch. The reports of this Committee over the years, and the testimony ~~of~~ officials from ~~of~~ this and prior Administrations, detail the reasons the authority is valuable to both the President and the Congress. The value of this authority is also evident from a review of those reorganization plans which have become effective. These plans also are the best indication of the types of ~~the~~ plans that this Administration may propose.

The reorganization authority has been available to Presidents since 1939. Since that time, every President, with the exception of one, has had this authority available to him. President Ford submitted a proposal in 1975, but the Congress did not extend the authority. In the last Congress, this Administration also urged passage of a bill to extend the authority which expired in 1981.

Over time, Congress has limited what can be done by the reorganization authority and has circumscribed significantly the procedures by which plans become effective. The most recent enactment of the reorganization authority in 1977 continued this progression by instituting several significant limitations in the grant of authority. H.R. 1314 proposes changes, some of which, would impose still further limitations and constraints on the President's flexibility in using reorganization plans to improve executive branch organization and management.

The most obvious change that H.R. 1314 would make to the authority that was available to previous Presidents concerns ~~the~~ the procedures by which plans would become effective. Previously, plans would become effective after 60 days unless one House of Congress disapproved it. The absence of a vote by a House did not prevent a plan from becoming effective--only a vote disapproving a plan would prevent its taking effect. H.R. 1314 would change this process significantly. For a proposed plan to become effective, both Houses of Congress would have to pass--by an affirmative vote-- within 90 days, a joint resolution approving a plan.

If one House did not act within that time, the plan would not become effective under the reorganization authority provided for by H.R. 1314. We think that this change in procedure will work, and we think that it avoids the possibility of confusion and uncertainty that would result if the previous procedure of the reorganization authority were enacted now but then ruled invalid by the Judiciary. However the key to making the procedures of H.R. 1314 work, of course, is to ensure that each House will vote on the proposed plan within the 90 days provided for Congressional consideration. We believe these procedures will work because of your past practice, Mr. Chairman, of taking these plans before the full House for its judgment on proposed plans.



One of the new limitations which H.R. 1314 contains would provide that a new agency which would not be a part of an existing department or agency could no longer be created by reorganization plan. To illustrate, the Environmental Protection Agency and the Federal Emergency Management Agency were both created by plan, but could not have been under the authority proposed in H.R. 1314. This restriction would significantly constrain the authority available to previous Presidents to affect changes in the Federal organization. Although we do not foresee the need to create new agencies, under H.R. 1314 to create a new agency, we would have to propose to Congress and Congress would have to pass a statute.

H.R. 1314 would also increase the time it would take for Congress to consider and approve reorganization plans. The number of days for a plan to be before Congress would be changed from 60 to 90 "days of continuous session." The intermediate dates would similarly be increased by 30 days. For example, any amendments by the President to his original plan must be transmitted by the 60th day rather than by the 30th. The committees considering the plan must report it out by the 75th day rather than the 45th day. Of course, Congress could act on a plan at any time within the 90 days if its consideration is complete before that time.

Finally, H.R. 1314 would prohibit a plan being used to change the name of a department. We view this prohibition as confirmation and clarification of the existing prohibition against creating or abolishing a department by plan.

We support H.R. 1314 and urge its prompt consideration and enactment by the Congress. We have two suggested changes to H.R. 1314, however which we think are not major changes, and we urge that the Committee consider them:

H.R. 1314 would require that a draft executive order or other presidential directive would accompany the message transmitting a reorganization plan when the reorganization provided in a plan requires promulgation of an executive order or directive. Apparently, the purpose of this provision is to enable the Congress to appreciate the full scope of a reorganization so that Congress can have a more complete understanding of what it is asked to approve.

now
to
x
on 3

We do not disagree with the purpose of this provision. However, we propose an alternative approach. We suggest that the provision require the President to describe in an accompanying message the actions that are ~~be~~ necessary or planned in order to complete a reorganization. This change would avoid problems of disclosing draft or working documents of the President; would avoid problems concerning changes later made to these drafts; and would provide the Congress information it needs, when it needs it.

The second change we suggest is to increase by one the number of plans that can be pending before Congress at any single time. The authority that expired in 1981 limited the number that may be pending to three. That provision was added in 1977, in part to ensure that the prior Administration's zeal for proposing reorganization did not overwhelm the Committees. H.R. 1314 would increase the time limits for Congressional considerations of each plan ~~has increased~~ from 60 to 90 days, thereby providing much more time for the consideration of each plan. Furthermore, the procedures by which a plan becomes effective have also changed--and significantly so. If H.R. 1314 were enacted, the consequence of a failure by Congress to act would be that the plan would not become effective. Previously, the consequence was that a plan would become effective (unless the other House blocked the plan by a vote). Overloading the ~~legislative~~ system would be less of a ~~congressional~~ concern and more of an Executive concern. The increase would also permit more plans to become effective in the next two years.

Again, we support H.R. 1314. Many of the key changes H.R. 1314 would make in the authority were proposed by you in 1977 and were considered by the Committee at that time. I urge expeditious action by this Committee and the Congress to reenact this authority.

I will be pleased to respond to any questions.

THE WHITE HOUSE

WASHINGTON

April 4, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: H.R. 1314 -- Reorganization
Act Amendments of 1982

James C. Murr of OMB has asked for our views on the above-referenced bill, which is expected to be the subject of hearings this month before the House Committee on Government Operations. The bill, which is the result of long negotiations between OMB and Chairman Brooks, essentially repeals the legislative veto mechanism for approval of reorganization plans. Reorganization plans currently become effective if not "vetoed" by either House within sixty days, 5 U.S.C. § 906. The bill would require a joint resolution approving the reorganization, signed by the President.

The bill represents the Administration's legislative veto position coming home to roost, since its effect in this case will be to make it much more difficult for a President to achieve a reorganization. I discussed the question with Ted Olson, who believes that the bill is not only constitutionally permissible but constitutionally required. He noted that the Carter Administration had taken the position that legislative veto provisions with respect to reorganization plans were somehow "different" and less objectionable than run-of-the-mill legislative vetoes. This position, however, was rejected by this Administration during arguments in the Chada case.

I am advised by James Murr that OMB and Brooks have reached an informal agreement in support of the bill. OMB would now like to send a formal letter indicating Administration support. The letter would object to two aspects of the bill other than the repeal of the legislative veto. Section 4 of the bill requires submission of drafts of any executive order, directive, or administrative action likely to accompany a reorganization. OMB plans to object to such a formal requirement. Section 5 of the bill adds two items to the list of restrictions on the possible contents of reorganization plans in 5 U.S.C. § 905. Section 5 would preclude renaming executive departments and creating new agencies

through reorganization plans. OMB plans to object to the provision barring creation of new agencies by reorganization plan. The issue is really not significant, since H.R. 1314 would make a reorganization plan essentially like any other bill. Providing that some proposals must be submitted as a regular bill rather than a reorganization plan thus does not alter the President's powers -- the alteration is accomplished by repeal of the legislative veto. Nonetheless, there are advantages in terms of legislative scheduling and priorities accompanying reorganization plan treatment, and there is no harm in the contemplated OMB objection.

Attachment

THE WHITE HOUSE

WASHINGTON

April 4, 1983

MEMORANDUM FOR JAMES C. MURR
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING ^{Orig. signed by FFF}
COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 1314 -- Reorganization
Act Amendments of 1982

Counsel's Office has no objection to a letter in support of the above-referenced bill. It is our understanding that the contemplated letter will object to sections 4 and 5 of the bill.

FFF:JGR:aw 4/4/83

cc: FFFielding
JGRoberts
Subj.
Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
 - H - INTERNAL
 - I - INCOMING
- Date Correspondence Received (YY/MM/DD) 1 / 1 / _____

Name of Correspondent: Jim Murr

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: H.R. 1314 - Reorganization Act
Amendments of 1982

ROUTE TO:	ACTION	DISPOSITION
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD
<u>W Holland</u>	ORIGINATOR	<u>83104101</u>
<u>WAT18</u>	D	<u>83104101</u>

- ACTION CODES:**

 - A - Appropriate Action
 - C - Comment/Recommendation
 - D - Draft Response
 - F - Furnish Fact Sheet to be used as Enclosure

- I - Info Copy Only/No Action Necessary
 - R - Direct Reply w/Copy
 - S - For Signature
 - X - Interim Reply

DISPOSITION CODES:

 - A - Answered
 - B - Non-Special Referral
 - C - Completed
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- FOR OUTGOING CORRESPONDENCE:**

Type of Response = Initials of Signer
Code = "A"
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Comments: _____

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE !

TO Richard Hauser

*Recommened
John Roberts*

*Fast turnaround
needed.*

Discuss with me

For your information

See remarks below

FROM Jim Murr (x4870)

DATE 4/1/83

REMARKS

H.R. 1314 - Reorganization Act
Amendments of 1982

Per your conversation with Bob Bedell, attached is a copy of H.R. 1314 for your review. The Department of Justice advises that the bill presents no constitutional problems.

OMB is preparing a letter to Chairman Brooks that would support the bill, but with suggestions for changing Sec. 4 and two other less significant changes. Mike Uhlmann, however, asked me to obtain your sign-off on the bill before we take a formal position supporting it.

May we please have your comments ASAP.

Attachment

cc: Bill Cramer



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

March 25, 1983

LEGISLATIVE REFERRAL MEMORANDUM

TO: LEGISLATIVE LIAISON OFFICER

Department of Justice (OLC has already
reviewed this)

SUBJECT: H.R. 1314 - Reorganization Act Amendments of 1982

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than

Thursday, March 31, 1983 (Hearings are expected in early April.)

Direct your questions to Maurice E. White (395-3856), the legislative analyst in this office.


James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: Melissa Allen ✓ Mike Uhlmann ✓
Rudy Dutzman, Rm 238

Bob Bedell B. Cramer
A. Curtis/Karen Wilson

f 2-1185.2
white

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NINETY-EIGHTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON GOVERNMENT OPERATIONS

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, D.C. 20515

March 21, 1983

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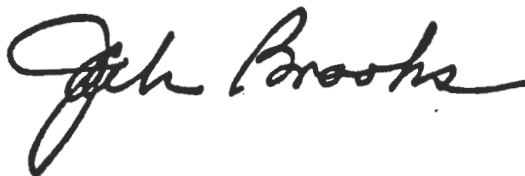
OPD

Honorable David A. Stockman
Director
Office of Management and Budget
252 Old Executive Office Building
17th and Pennsylvania Avenue
Washington, D.C. 20503

The committee herewith submits to you the enclosed
bill, H.R. 1314, upon which the committee
would appreciate a prompt report, together with such
comment as you may desire to make.

Will you kindly transmit your reply in triplicate.

Respectfully,



Chairman.

Enclosure.

Reports also requested: GAO
Justice

98TH CONGRESS
1ST SESSION

H. R. 1314

Legis
5/14/77
Rules
not being

To extend and revise the authority of the President under chapter 9 of title 5, United States Code, to transmit to the Congress plans for the reorganization of the agencies of the executive branch of the Government, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 1983

Mr. BROOKS (for himself and Mr. HORTON) introduced the following bill; which was referred jointly to the Committees on Government Operations and Rules

A BILL

To extend and revise the authority of the President under chapter 9 of title 5, United States Code, to transmit to the Congress plans for the reorganization of the agencies of the executive branch of the Government, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Reorganization Act
- 4 Amendments of 1982".

1 EXTENSION OF AUTHORITY

2 SEC. 2. Subsection (b) of section 905 of title 5, United
3 States Code, is amended to read as follows:

4 “(b) A provision contained in a reorganization plan may
5 take effect only if the plan is transmitted to Congress (in
6 accordance with section 903(b)) on or before December 31,
7 1984.”

8 METHOD OF TAKING EFFECT

9 SEC. 3. (a) Section 906 of title 5, United States Code, is
10 amended—

11 (1) by striking out subsection (a) and inserting in
12 lieu thereof the following:

13 “(a) Except as provided under subsection (c) of this sec-
14 tion, a reorganization plan shall be effective upon approval by
15 the President of a resolution (as defined in section 909) which
16 has been adopted by the House of Representatives and the
17 Senate, within the first period of ninety calendar days of con-
18 tinuous session of Congress after the date on which the plan
19 is transmitted to it. Failure of either House to act upon such
20 resolution by the end of such period shall be the same as
21 disapproval of the resolution.”; and

22 (2) by striking out everything after “otherwise is
23 effective” in subsection (c) and inserting in lieu thereof
24 a period.

1 (b) Chapter 9 of title 5, United States Code, is further
2 amended—

3 (1) by striking out “thirty calendar days” in sec-
4 tion 903(c) and inserting in lieu thereof “60 calendar
5 days”;

6 (2) by striking out “sixty calendar days” in such
7 section and inserting in lieu thereof “90 calendar
8 days”;

9 (3) by striking out “45 calendar days” in section
10 910(b) and inserting in lieu thereof “75 calendar
11 days”; and

12 (4) by striking out “45 calendar days” in section
13 911 and inserting in lieu thereof “75 calendar days”.

14 (c) Section 909 of title 5, United States Code, is amend-
15 ed—

16 (1) by striking out “a resolution of either House
17 of Congress” and inserting in lieu thereof “a joint reso-
18 lution of the Congress”; and

19 (2) by striking out “the — does not favor” and
20 inserting in lieu thereof “the Congress approves”.

21 (d)(1) Section 912 is amended by adding at the end
22 thereof the following new subsection:

23 “(e) If, prior to the passage by one House of a resolu-
24 tion of that House, that House receives a resolution with

1 respect to the same reorganization plan from the other
2 House, then—

3 “(1) the procedure in that House shall be the
4 same as if no resolution had been received from the
5 other House; but

6 “(2) the vote on final passage shall be on the res-
7 olution of the other House.”.

8 (2) The heading of such section is amended by strik- ing
9 out ~~“disapproval”~~ and inserting in lieu thereof
10 “approval”.

11 INFORMATION TO ACCOMPANY PLANS

12 SEC. 4. Section 903(b) of title 5, United States Code, is
13 amended by adding at the end thereof the following new sen-
14 tences: “If the implementation of the reorganization provided
15 for in a plan will or is likely to require or otherwise involve
16 the promulgation of an Executive order, Presidential direc-
17 tive, or other administrative action, a draft of each such
18 order, directive, or action shall accompany such message.
19 The President shall also submit such further background or
20 other information as the Congress may require for its consid-
21 eration of the plan.”.

22 RESTRICTIONS ON CONTENTS OF PLANS

23 SEC. 5. (a) Section 905(a) of title 5, United States
24 Code, is amended—

1 (1) by inserting "or renaming an existing execu-
2 tive department" immediately after "a new executive
3 department" in paragraph (1);

4 (2) by redesignating paragraphs (5) and (6) as
5 paragraphs (6) and (7), respectively, and by inserting
6 immediately after paragraph (4) the following new
7 paragraph:

8 "(5) creating a new agency which is not a compo-
9 nent or part of an existing executive department or in-
10 dependent agency;"

11 (b) Section 904(l) of such title is amended by inserting "
12 subject to section 905," immediately after "may".

○