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MEMORANDUM FOR: See Distribution

FROM:

[Redacted]

STAT

Chief, Legislation Division, OGC

SUBJECT:

S. 905, to Establish an Independent
National Archives and Records Administration

1. Attached for your information, review, and comment is a copy of S. 905, the "National Archives and Records Administration Act of 1983". This bill was introduced in the 97th Congress, but received no serious consideration. However, this year the bill has been favorably reported out of the Senate Governmental Affairs Subcommittee on Civil Service, Post Office, and General Services.

2. Subsection 2105(a) of the bill directs the Archivist to prescribe whatever rules and procedures he feels are necessary to carry out his functions, and the head of each federal agency is directed to issue whatever orders and directives are necessary to conform the agency's activities with the Archivist's procedures. Please review this subsection closely to determine whether this grant of authority could pose problems for the Agency in the future. In addition, please review carefully subsection 2105(f) concerning the furnishing of information and data to the Archivist by federal agencies.

3. At the moment, the bill has not been set for consideration by the full Governmental Affairs Committee. However, if there are problems with the bill we should know as soon as possible so that we can take the appropriate action. Please relay your comments as soon as possible, in writing or by telephone, to

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98TH CONGRESS
1ST SESSION

S. 905

Entitled the "National Archives and Records Administration Act of 1983".

IN THE SENATE OF THE UNITED STATES

MARCH 23 (legislative day, MARCH 21), 1983

Mr. EAGLETON (for himself, Mr. MATHIAS, Mrs. KASSEBAUM, Mr. SARBANES, Mr. CRANSTON, Mr. SASSER, Mr. LEVIN, Mr. NUNN, Mr. COHEN, Mr. DANFORTH, Mr. MOYNIHAN, Mr. JACKSON, Mr. DUBENBERGER, Mr. GLENN, and Mr. HATFIELD) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

Entitled the "National Archives and Records Administration Act of 1983".

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 "National Archives and
4 Records Administration Act of 1983".

5 AMENDMENTS TO TITLE 44, UNITED STATES CODE

6 SEC. 2. (a) Sections 2101, 2102, 2103, 2104, 2105,
7 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, and 2114
8 of title 44, United States Code, are redesignated as sections

1 2102, 2103, 2108, 2109, 2110, 2111, 2112, 2113, 2114,
2 2115, 2116, 2117, 2118, and 2119, respectively.

3 (b) Title 44, United States Code, is amended by insert-
4 ing before section 2102 (as redesignated by subsection (a))
5 the following new section:

6 "§ 2101. Purpose

7 "The purpose of this chapter is to establish an independ-
8 ent National Archives and Records Administration due to the
9 unique importance of the tasks of creating, identifying, and
10 preserving the records of the Nation which have permanent
11 value and making such records available to the public, to
12 Federal agencies, and to the Congress for historical and other
13 research purposes."

14 (c) Section 2102 of title 44, United States Code (as re-
15 designated by subsection (a)), is amended—

16 (1) by striking out "sections 2103-2113 of";

17 (2) by striking out the period at the end thereof
18 and inserting in lieu thereof a semicolon; and

19 (3) by adding at the end thereof the following new
20 paragraphs:

21 " 'executive agency' means any executive depart-
22 ment of independent establishment in the executive
23 branch of the Government, including any wholly-owned
24 Government corporation;

1 “ ‘Federal agency’ means any executive depart-
2 ment, military department, Government corporation,
3 Government-controlled corporation, or other establish-
4 ment in the executive branch of the Government (in-
5 cluding the Executive Office of the President), any in-
6 dependent regulatory agency, or any establishment in
7 the legislative or judicial branch of the Government
8 (except the Senate, the House of Representatives, and
9 the Architect of the Capitol, and any activities under
10 his direction);

11 “ ‘Archivist’ means the Archivist of the United
12 States appointed under section 2104; and

13 “ ‘Administration’ means the National Archives
14 and Records Administration established under section
15 2103.”.

16 (d) Section 2103 of such title is amended to read as
17 follows:

18 “§ 2103. Establishment

19 “There is established an independent establishment in
20 the executive branch of the Government to be known as the
21 National Archives and Records Administration. The Admin-
22 istration shall be administered under the supervision and di-
23 rection of the Archivist.”.

1 (e) Title 44, United States Code, is further amended by
2 inserting before section 2108 (as redesignated by subsection
3 (a)) the following new sections:

4 "§ 2104. Officers

5 "(a) The Archivist of the United States shall be appoint-
6 ed by the President by and with the advice and consent of the
7 Senate. The Archivist shall be appointed for a term of ten
8 years, but may continue to serve until his successor is ap-
9 pointed and confirmed. The Archivist shall be appointed
10 without regard to political affiliations and solely on the basis
11 of the professional qualifications required to perform the
12 duties and responsibilities of the office of Archivist.

13 "(b) The Archivist shall be compensated at the rate pro-
14 vided for level III of the Executive Schedule under section
15 5314 of title 5.

16 "(c) There shall be in the Administration a Deputy Ar-
17 chivist of the United States, who shall be appointed by and
18 who shall serve at the pleasure of the Archivist. The Deputy
19 Archivist shall be established as a career reserved position in
20 the Senior Executive Service within the meaning of section
21 3132(a)(8) of title 5. The Deputy Archivist shall perform
22 such functions as the Archivist shall designate. During any
23 absence or disability of the Archivist, the Deputy Archivist
24 shall act as Archivist. In the event of a vacancy in the office

1 of the Archivist, the Deputy Archivist shall act as Archivist
2 until an Archivist is appointed under subsection (a).

3 "§ 2105. Administrative provisions

4 "(a) The Archivist shall prescribe such policies, stand-
5 ards, criteria, procedures, rules, and regulations as he finds
6 necessary or appropriate to carry out his functions. The head
7 of each Federal agency shall issue such orders and directives
8 as may be necessary to conform the activities of the agency
9 with the policies, standards, criteria, procedures, rules, and
10 regulations prescribed by the Archivist.

11 "(b) Except as otherwise expressly provided by law, the
12 Archivist may delegate any of his functions to such officers
13 and employees of the Administration as he may designate,
14 and may authorize such successive redelegations of such
15 functions as he may deem to be necessary or appropriate. A
16 delegation of functions by the Archivist shall not relieve the
17 Archivist of responsibility for the administration of such
18 functions.

19 "(c) The Archivist may organize the administration as
20 he finds necessary or appropriate.

21 "(d) The Archivist is authorized to establish, maintain,
22 alter, or discontinue such regional, local, or other field offices
23 as he finds necessary or appropriate to perform the functions
24 of the Archivist or the Administration.

1 “(e) The Archivist shall cause a seal of office to be made
2 for the Administration of such design as he shall approve.
3 Judicial notice shall be taken of such seal.

4 “(f) Each Federal agency is authorized to furnish to the
5 Archivist, upon his request, any information or other data
6 which the Archivist finds necessary to carry out his duties.

7 “(g) The Archivist may establish advisory committees to
8 advise him with respect to any function of the Archivist or
9 the Administration. Members of any such committee shall
10 serve without compensation but shall be entitled to transpor-
11 tation expenses and per diem in lieu of subsistence in accord-
12 ance with section 5703 of title 5.

13 “(h) The Archivist shall advise and consult with inter-
14 ested Federal agencies with a view to obtaining their advice
15 and assistance in carrying out the purposes of this chapter.

16 “(i) If authorized by the Archivist, officers and employ-
17 ees of the National Archives and Records Administration
18 having investigatory functions are empowered, while engaged
19 in the performance of their duties in conducting investiga-
20 tions, to administer oaths.

21 “§ 2106. Personnel and services

22 “(a) The Archivist is authorized to select, appoint,
23 employ, and fix the compensation of such officers and em-
24 ployees, pursuant to part III of title 5, as are necessary to

1 perform the functions of the Archivist and the Adminis-
2 tration.

3 “(b) The archivist is authorized to obtain the services of
4 experts and consultants under section 3109 of title 5.

5 “(c) Notwithstanding the provisions of section 973 of
6 title 10 or any other provision of law, the Archivist, in carry-
7 ing out the functions of the Archivist or the Administration,
8 is authorized to utilize in the Administration the services of
9 officials, officers, and other personnel in other executive
10 agencies, including personnel of the armed services, with the
11 consent of the head of the agency concerned.

12 “(d) The Archivist is authorized to accept and utilize
13 voluntary and uncompensated services.

14 “§ 2107. Reports to Congress

15 “The Archivist shall submit to the Congress, in January
16 of each year and at such other times as he finds appropriate,
17 a report concerning the administration of functions of the Ar-
18 chivist and the Administration. The report shall include such
19 recommendations for legislation as he may find appropriate
20 as the result of the administration of such functions and a
21 citation of any law which has become obsolete by reason of
22 the enactment or administration of the provisions of this
23 title.”.

24 “(f)(1) The table of sections for chapter 21 of title 44,
25 United States Code, is amended to read as follows:

1 "CHAPTER 21—NATIONAL ARCHIVES AND RECORDS

2 ADMINISTRATION

"Sec.

"2101. Purpose.

"2102. Definitions.

"2103. Establishment.

"2104. Officers.

"2105. Administrative provisions.

"2106. Personnel and services.

"2107. Reports to Congress.

"2108. Acceptance of records for historical preservation.

"2109. Responsibility for custody, use, and withdrawal of records.

"2110. Preservation, arrangement, duplication, exhibition of records.

"2111. Servicing records.

"2112. Material accepted for deposit.

"2113. Presidential archival depository.

"2114. Depository for agreements between States.

"2115. Preservation of motion-picture films, still pictures, and sound recordings.

"2116. Reports; correction of violations.

"2117. Legal status of reproductions; official seal, fees for copies and reproductions.

"2118. Limitation on liability.

"2119. Records of Congress."

3 (2) The item relating to chapter 21 in the table of chap-
4 ters for title 44, United States Code, is amended to read as
5 follows:

"21. National Archives and Records Administration 2102".

6 (g)(1) Section 2103(4) of such title is amended by strik-
7 ing out "section 2107" and inserting in lieu thereof "section
8 2112".

9 (2) Section 2108 of such title is amended by striking out
10 "section 2107" each place it appears and inserting in lieu
11 thereof "section 2112".

12 (h) Chapters 7, 15, 17, 21 (as amended by this section),
13 22, 23, 25, 29, 31, and 33 of title 44, United States Code,
14 are amended by striking out "Administrator of General Serv-
15 ices" and "General Services Administration" wherever they

1 appear and inserting in lieu thereof "Archivist of the United
2 States" and "National Archives and Records Administra-
3 tion", respectively.

4 (i)(1) Section 101 of the Presidential Recordings and
5 Materials Preservation Act is amended—

6 (A) by striking out "section 2107" each place it
7 appears and inserting in lieu thereof "section 2112";

8 (B) by striking out "section 2101" and inserting
9 in lieu thereof "section 2102";

10 (C) by striking out "Administrator of General
11 Services" and inserting in lieu thereof "Archivist of
12 the United States": and

13 (D) by striking out "Administrator" each place it
14 appears and inserting in lieu thereof "Archivist".

15 (2) Section 102 of such Act is amended—

16 (A) by striking out "section 2107" and inserting
17 in lieu thereof "section 2112", and

18 (B) by striking out "Administrator" each place it
19 appears and inserting in lieu thereof "Archivist".

20 (3) Section 103 of such Act is amended by striking out
21 "Administrator" and inserting in lieu thereof "Archivist".

22 (4) Section 104 of such Act is amended by striking out
23 "Administrator" each place it appears and inserting in lieu
24 thereof "Archivist".

1 (j) Section 5314 of title 5, United States Code, is
2 amended by adding at the end thereof the following:

3 “() Archivist of the United States.”

4 (k) The item relating to chapter 29 in the table of con-
5 tents for title 44, United States Code, is amended to read as
6 follows:

“29. Records Management by Archivist of the United States..... 2901”.

7 (1) Sections 141-144 of title 4, Chapter 5, United
8 States Code, are amended by striking out “Administrator of
9 General Services,” and “General Services Administration”
10 wherever they appear and inserting in lieu thereof “Archivist
11 of the United States,” “Archivist,” and “National Archives
12 and Records Administration” respectively.

13 (m) Section 199a, title 25, United States Code, is
14 amended by striking out “Administrator of General Services”
15 wherever it appears and inserting in lieu thereof “Archivist
16 of the United States.”

17 (n) Sections 106a, 106b, and 112 of title 1, United
18 States Code are amended by striking out “Administrator of
19 General Services” wherever it appears and inserting in lieu
20 thereof “Archivist of the United States.”

21 (o) Sections 6 and 11-13 of title 3, United States Code,
22 are amended by striking out “Administrator of General Serv-
23 ices” and “General Services Administration” wherever they
24 appear and inserting in lieu thereof “Archivist of the United

1 States," and "National Archives and Records Administra-
2 tion," respectively.

3 (p) Paragraphs (b)(6) and (l)(1) of the Privacy Act of
4 1974 are amended by striking out "Administrator of General
5 Services" wherever it appears and inserting in lieu thereof
6 "Archivist of the United States."

7 (q) Section 2301 of title 44, United States Code, is
8 amended by striking out the second sentence of the section.

9 (r) Section 2501 of title 44, United States Code is
10 amended by striking out the last sentence of the section.

11 (s) Section 2504(a) of title 44, United States Code is
12 amended by striking out "the Administrator" from the final
13 sentence of the section and substituting in lieu thereof "the
14 President and the Congress."

15 DEFINITIONS

16 SEC. 3. For purposes of sections 3 through 8—

17 (1) the term "Archivist" means the Archivist of
18 the United States appointed under section 2104 of title
19 44, United States Code, as added by section 2 of this
20 Act; and

21 (2) the term "Administration" means the National
22 Archives and Records Administration established under
23 section 2103 of such title (as amended by section 2 of
24 this Act).

1 TRANSFER OF FUNCTIONS

2 SEC. 4. (a) All authorities and functions of the Adminis-
3 trator of General Services specified in chapters 7, 15, 17, 21,
4 22, 23, 25, 29, 31, and 33 of title 44, U.S.C. are transferred
5 to the Archivist of the United States appointed under section
6 2104 of title 44, U.S.C.

7 (b) The National Archives and Records Service of the
8 General Services Administration is transferred to the Nation-
9 al Archives and records Administration.

10 (c) The office of Office Information Systems of the Office
11 of Information Resources Automated Data and Management
12 of the General Services Administration is transferred to the
13 National Archives and records Administration.

14 (d) In the exercise of the functions transferred under this
15 Act, the Archivist shall have the same authority as had the
16 Administrator of General Services with respect to chapter 7,
17 15, 17, 21, 22, 23, 25, 29, 31, and 33 title 44, U.S.C., and
18 the actions of the Archivist shall have the same force and
19 effect as when exercised by such Administrator.

20 (e) Prior to the appointment and confirmation of an indi-
21 vidual to serve as Archivist of the United States under sec-
22 tion 2104 of title 44, United States Code, the individual hold-
23 ing the office of Archivist of the United States on the day
24 before the effective date of this Act may serve as Archivist

1 under such section, and while so serving shall be compensat-
2 ed at the rate provided under subsection (b) of such section.

3 TRANSFER OF PERSONNEL

4 SEC. 5. (a) Except as otherwise provided in this Act,
5 the personnel employed in connection with, and the assets,
6 liabilities, contracts, property, records, and unexpended bal-
7 ances of appropriations, authorizations, allocations, and other
8 funds employed, held, used, arising from, available to or to be
9 made available in connection with the functions and agencies
10 transferred by this Act, subject to section 202 of the Budget
11 and Accounting Procedures Act of 1950, are transferred to
12 the Archivist for appropriate allocation. A percentage of the
13 funds and associated positions in the General Management
14 and Administration appropriation for the General Services
15 Administration, proportionate to the percentage of National
16 Archives and Records Service employees in the General
17 Services Administration, is transferred to the Archivist for
18 appropriate allocation. Unexpended funds transferred pursu-
19 ant to this subsection shall be used only for the purposes for
20 which the funds were originally authorized and appropriated.

21 (b) The transfer pursuant to this title of full-time person-
22 nel (except special Government employees) and part-time
23 personnel holding permanent positions shall not cause any
24 such employees to be separated or reduced in grade or com-

1 pensation for one year after such transfer or after the effec-
2 tive date of this Act, whichever is later.

3 SAVINGS PROVISIONS

4 SEC. 6. (a) All orders, determinations, rules, regula-
5 tions, grants, contracts, agreements, permits, licenses, privi-
6 leges, and other actions which have been issued, granted,
7 made, undertaken, or entered into in the performance of any
8 function transferred under this Act shall continue in effect
9 according to their terms until modified, terminated, supersed-
10 ed, set aside, or revoked in accordance with law by any au-
11 thorized official, a court of competent jurisdiction, or by oper-
12 ation of law.

13 (b)(1) The transfer of functions under this Act shall not
14 affect any proceedings, including notices of proposed rule-
15 making, or any application for any license, permit, certificate,
16 or financial assistance pending on the effective date of this
17 Act before the General Services Administration; but such
18 proceedings and applications, to the extent that they relate to
19 functions transferred under this Act, shall be continued.
20 Orders shall be issued in such proceedings, appeals shall be
21 taken therefrom, and payments shall be made pursuant to
22 such orders, as if this Act had not been enacted; and orders
23 issued in any such proceedings shall continue in effect until
24 modified, terminated, superseded, or revoked by the Archi-
25 vist, by a court of competent jurisdiction, or by operation of

1 law. Nothing in this subsection shall be deemed to prohibit
2 the discontinuance or modification of any such proceeding
3 under the same terms and conditions and to the same extent
4 that such proceeding could have been discontinued or modi-
5 fied if this Act had not been enacted.

6 (2) The Archivist is authorized to promulgate regula-
7 tions providing for the orderly transfer of proceedings contin-
8 ued under paragraph (1) from the General Services Adminis-
9 tration to the Administration.

10 (c) Except as provided in subsection (e)—

11 (1) the provisions of this Act shall not affect ac-
12 tions commenced prior to the effective date of this Act,
13 and

14 (2) in all such actions, proceedings shall be had,
15 appeals taken, and judgments rendered in the same
16 manner and effect as if this Act had not been enacted.

17 (d) No action or other proceeding lawfully commenced
18 by or against any officer of the United States acting in his
19 official capacity shall abate by reason of any transfer under
20 this Act. No cause of action by or against the General Serv-
21 ices Administration or by or against any officer thereof in the
22 official capacity of such officer shall abate by reason of any
23 transfer of functions under this Act.

24 (e) If, before the date on which this Act takes effect, the
25 General Services Administration or any officer thereof in the

1 official capacity of such officer, is a party to an action, and
2 under this Act any function in connection with such action is
3 transferred to the Archivist or any other official of the Ad-
4 ministration, then such action shall be continued with the Ar-
5 chivist or other appropriate official of the Administration sub-
6 stituted or added as a party.

7 (f) Orders and actions of the Archivist in the exercise of
8 functions transferred under this Act shall be subject to judi-
9 cial review to the same extent and in the same manner as if
10 such orders and actions had been by the individual holding
11 the office of Archivist of the United States on the day before
12 the effective date of this Act or the Administrator of General
13 Services in the exercise of such functions immediately pre-
14 ceding their transfer. Any statutory requirements relating to
15 notice, hearings, action upon the record, or administrative
16 review that apply to any function transferred by this Act
17 shall apply to the exercise of such function by the Archivist.

18 REFERENCE

19 SEC. 7. With respect to any functions transferred by
20 this Act and exercised after the effective date of this Act,
21 reference in any other Federal law to the office of the Archi-
22 vist of the United States as in existence on the date before
23 the effective date of this Act or the National Archives and
24 Records Service of the General Services Administration or

1 any office or officer thereof shall be deemed to refer to the
2 Archivist or the Administration.

3 EFFECTIVE DATE

4 SEC. 8. The provisions of this Act shall take effect one
5 hundred and twenty days after enactment.

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