

**Calendar No. 120**

108th Congress }  
1st Session }

SENATE

{ REPORT  
{ 108-58

**RATIFICATION OF CERTAIN NOAA AP-  
POINTMENTS, PROMOTIONS, AND AC-  
TIONS**

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 886



JUNE 3, 2003.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

19-010

WASHINGTON : 2003

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

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108TH CONGRESS }  
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### RATIFICATION OF CERTAIN NOAA APPOINTMENTS, PROMOTIONS, AND ACTIONS

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JUNE 3, 2003.—Ordered to be printed

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Mr. MCCAIN, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### REPORT

[To accompany S. 886]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 886) to ratify otherwise legal appointments and promotions in the commissioned corps of the National Oceanic and Atmospheric Administration that failed to be submitted to the Senate for its advice and consent as required by law, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE OF THE BILL

The purpose of S. 886, the National Oceanic and Atmospheric Administration (NOAA) Corps Confirmation Correction Legislation, is to ratify the otherwise legal appointments and promotions in the commissioned corps of NOAA that failed to be submitted to the Senate for its advice and consent as required by law.

#### BACKGROUND AND NEEDS

The NOAA Corps is the smallest of the seven uniformed services of the United States (the others are the four Department of Defense services, the Coast Guard, and the Public Health Service). The NOAA Corps is comprised of slightly over 250 commissioned officers and operates a wide variety of specialized aircraft and ships used to conduct NOAA's environmental and scientific missions. Its commissioned officers provide NOAA with an important blend of operational, management, and technical skills that support the agency's science and surveying programs at sea, in the air, and

ashore. Corps officers operate and manage NOAA's ships and aircraft as well as serve in the agency's research laboratories and program offices throughout the nation and in remote locations around the world.

The NOAA Corps officer appointments and promotions are similar to the other uniformed services and, under section 226 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3026) and its antecedent, require nomination by the President and must be submitted to the Senate for its advice and consent. Historically, the Commerce Committee has considered NOAA promotions, along with routine Coast Guard officer promotions, during Full Committee Executive Sessions.

It recently came to the Committee's attention that NOAA has failed since October 1, 1999, to submit any of its NOAA Corps officer appointments and promotions to the President for nomination and subsequently to the Senate for its advice and consent. Since then, the NOAA Corps has made approximately 251 appointments and promotions, involving approximately 196 officers. An ongoing Department of Commerce investigation indicates these procedural problems may have existed prior to October 1, 1999, and additional officers' appointments and promotions may also be affected. These revelations raise serious questions concerning the validity of these appointments and promotions that could affect each individual officer's pay, entitlements, job status, and the ability to carry out the officer's official actions.

To address this serious situation, the legislation is designed to provide a framework for retroactive appointments and promotions for the affected officers in a manner that will protect the professional and financial aspects of their positions, and that will ensure that all past actions taken in the line of duty by such officers after their appointments and/or promotions are considered to have been official actions. The bill states that all actions performed in the line of duty by these NOAA corps officers are ratified and approved. In addition, the legislation states that all Federal agency actions (with respect to pay, benefits, and retirement) in relation to an unconfirmed NOAA corps officer shall be considered legally binding.

The bill provides that the President, acting alone, can make appointments and promotions for up to 180 days to allow these officers to maintain their status until the full Senate gives its advice and consent for these appointments and promotions going forward. Once this bill is enacted into law, the Administration is expected to submit the list of these officers to the Senate for its advice and consent.

#### LEGISLATIVE HISTORY

S. 886 was introduced on April 10, 2003, by Senators McCain, Hollings, Snowe, and Kerry, and referred to the Senate Committee on Commerce, Science, and Transportation. On May 1, 2003, the bill was considered by the Committee in an open executive session. The Committee, without objection, ordered S. 886 reported without amendments.

## ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 7, 2003.*

Hon. JOHN MCCAIN,  
*Chairman, Committee on Commerce, Science, and Transportation,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 886, a bill to ratify otherwise legal appointments and promotions in the commissioned corps of the National Oceanic and Atmospheric Administration that failed to be submitted to the Senate for its advice and consent as required by law.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contract is Deborah Reis.

Sincerely,

BARRY B. ANDERSON  
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 886—*A bill to ratify otherwise legal appointments and promotions in the commissioned corps of the National Oceanic and Atmospheric Administration that failed to be submitted to the Senate for its advice and consent as required by law*

S. 886 would ratify about 250 appointments or promotions of officers in the commissioned corps of the National Oceanic and Atmospheric Administration made since October 1, 1999. (These actions did not receive Senate approval at the time they were made.) CBO estimates that implementing this bill would have no effect on the federal budget because the legislation would confirm personnel actions that have already taken place. Enacting S. 886 would have no effect on revenues or direct spending.

The legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contract for this estimate is Deborah Reis. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

## REGULATORY IMPACT STATEMENT

Because S. 886 does not create any new programs, the legislation would have no additional regulatory impact, and will result in no additional reporting requirements. The legislation would have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses.

SECTION-BY-SECTION ANALYSIS

*Section 1. Ratification of certain NOAA appointments, promotions, and actions*

This section would ratify otherwise legal appointments and promotions in the commissioned corps of the National Oceanic and Atmospheric Administration that failed to be submitted to the Senate for its advice and consent as required by law.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

