

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 conducted 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

State. We cannot delay any longer. Every week, every month we delay, means less likelihood that we will make the changes that were promised.

This body overwhelmingly adopted the Help America Vote Act which, as Senator MCCONNELL has said, will make it easier to vote and tougher to cheat. This is a commitment we made to the people of America that we would provide these reforms and we would fund them. If this money has to wait until the approval of these appropriations bills sometime in February and getting the money out in March or April, we are not going to get it done in time. They are not going to be able to implement these vitally important reforms in election.

I know many people want to get their voting machines improved. Frankly, I want to see the end of dogs and dead people voting. They are still trying that in St. Louis. There was a nice 180-count indictment issued by the prosecuting attorney in the city of St. Louis, the circuit attorney. That problem needs to stop and the only way we can get it to stop is by funding the Help America Vote Act.

There are many other good arguments, but I urge the leaders to come together to work on this matter. If we could do it by unanimous consent, that would be the best, but if we have to come back the second week in December, we have an obligation to the people of Missouri to do our job. I plead with the leadership to come to some agreement so we can finish these bills.

I yield the floor.

#### PASSAGE OF H.R. 1

Mr. SPECTER. Mr. President, I rise to comment briefly about the legislation which we have just passed and also about the omnibus appropriations bill. I compliment all of those involved in this Medicare bill. It is a long time in coming. It will provide much needed relief to America's seniors on the high cost of prescription drugs. It will eliminate the cuts in Medicare which were supposed to take effect in 2004 and 2005. It will, in fact, give the doctors an increase of 1.5 percent.

There was also a mechanism for changing the wage index classification for metropolitan statistical areas, the MSAs, so that the Secretary will have discretion to make that correction.

#### OMNIBUS APPROPRIATIONS

Mr. SPECTER. Mr. President, with respect to the omnibus appropriations bill, the Senator from Missouri is correct that we ought to complete it. He has pointed out the importance of having the increases for veterans. I would add to that the importance of increases in the appropriations bill for Labor, Health and Human Services, and Education, where I chair the subcommittee.

I would like to comment briefly on two points in the appropriations bill

for my subcommittee. One of them involves the issue of overtime pay. The Senate passed, by a decisive majority, 54 to 45, a prohibition on any expenditures to implement the regulation on overtime which would cut out overtime for many Americans who really need that compensation, especially in light of the fragility of the economy at the present time.

In the House of Representatives, the regulations stood by three votes. Then on a later vote in the House of Representatives, by 18 votes, the House directed the conferees to strike the regulation, not to fund it until September 30, 2004.

When the omnibus was in the final stages of preparation last week, it was apparent to me that any course of action would leave the regulation in effect. If Senator HARKIN and I had insisted on keeping in the Senate amendment striking funding for the regulation, then our appropriations bill was scheduled to be taken out of the omnibus and our three Departments, Health, Education, and Labor, would be funded on a continuing resolution and the regulation would remain in effect. If we agreed to remove the amendment striking the funding, then of course the regulation would go into effect. So either way, the regulation was going to go into effect. By having our bill included in the omnibus, we had \$4 billion more for vital programs in NIH, for Head Start, for education, Leave No Child Behind, and workers' safety. So in effect we did not have a Hobson's choice, we had no choice at all. Either way we went, the regulation would remain in effect. If we agreed to take it out so we would be included in the omnibus, then the prohibition against funding would fall. If we were taken out and made a part of the continuing resolution, then the regulation would stay in effect.

It is my hope, when this matter goes forward, the vote in the Senate will remain and the provision remains in the Senate bill to strike the funding for the regulation. So that battle is not over. We intend to continue to fight it right down to the wire, until the omnibus appropriations bill is adopted.

One other point, and I will be brief. I know my other colleagues are waiting to speak. One other point, and that involves the House language to prohibit funding for patents for human tissue. That provision in the appropriations bill for the Departments of Commerce, Justice, and State is going to cause enormous uncertainty. It is very expensive, and a very long process, to have a patent. There will be many people, who will be interested in proceeding with patents, who will not understand the ramifications of the language on human tissue.

I am against human cloning. I made that point emphatically clear in our conference, where I offered an amendment, a motion to strike the House language, which passed on the Senate side 18 to 8, but the House refused to

agree. So the language remained in the bill. But I believe the scientific community in America is going to march on the Congress to stop the meddling with scientific research with vague prohibitions which can only lead to grave difficulties and which impede medical science.

One concluding thought. I thank those on the other side of the aisle who, as I understand it, have removed the holds on all of the pending nominees. Just a word in support of Pennsylvania Attorney General Michael Fisher, who is up for confirmation for the Third Circuit. I have known Attorney General Fisher for the better part of three decades. He has an extraordinary record in the Pennsylvania Legislature and as the State attorney general and as candidate for Governor.

I ask unanimous consent that a full statement of his résumé be printed in the RECORD at the conclusion of these remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### ATTORNEY GENERAL MIKE FISHER

Mike Fisher, the Attorney General of Pennsylvania since 1997, was nominated on May 1, 2003, by President George W. Bush to serve on the United States Court of Appeals for the Third Circuit, which covers Delaware, New Jersey, Pennsylvania and the Virgin Islands. The nomination is subject to a majority confirmation by the United States Senate.

Currently serving his second four-year term, Attorney General Fisher is only the third elected Attorney General in State history. His top priorities have included protecting Pennsylvanians from crime, reducing the use of illegal drugs, stopping the tobacco industry from marketing to children, and expanding consumer protection services.

Attorney General Fisher personally argued major cases in State and Federal appellate courts. In March 1998, he successfully argued before the United States Supreme Court a precedent-setting case ensuring that paroled criminals meet the conditions of their release.

Attorney General Fisher has worked to improve the quality of justice in Pennsylvania. He is an active member of the Pennsylvania Bar Association (PBA), serving in its House of Delegates and on various committees. Working with the PBA, he has co-sponsored an innovative violence prevention program in Pennsylvania elementary schools called Project PEACE, which helps young people learn to resolve conflicts without violence. Fisher also encourages PBA participation by the attorneys in his office.

Before his election as Attorney General, Mike Fisher served for 22 years in the Pennsylvania General Assembly, serving six years in the State House and 16 years as a member of the State Senate. He was a member of the House and Senate Judiciary Committees, the Chair of the Senate Environmental Resources and Energy Committee and the Majority Whip of the Senate. During his legislative career, he was a leader in criminal and civil justice reform and an architect of many major environmental laws.

Attorney General Fisher began his legal career in his hometown of Pittsburgh following his graduation from Georgetown University in 1966 and Georgetown University Law Center in 1969. As an Assistant District Attorney for Allegheny County, he handled nearly 1,000 cases, including 25 homicides. He