

This is a modest bill, but one that can make a big difference in certain places that have the potential for more prosperity, more job growth, and more economic growth like West Virginia. Reviving and revising section 29 will put an incentive in place to seize more of this potential while reducing the entire country's dependence in foreign oil. I urge the Senate to find a way to make this bill a reality—the sooner, the better.

By Mr. HATCH (for himself, Mr. CONRAD, Mr. PRESSLER, Mr. PRYOR, Mr. NICKLES, and Mr. BAUCUS):

S. 2047. A bill to amend the Internal Revenue Code of 1986 to modify the application of the pension nondiscrimination rules to governmental plans; to the Committee on Finance.

#### NONDISCRIMINATION RULES FOR GOVERNMENT PENSION PLANS LEGISLATION

Mr. HATCH. Mr. President, I rise today to introduce legislation with Senators CONRAD, PRESSLER, PRYOR, NICKLES, and BAUCUS that would make permanent the current moratorium on the application of the pension nondiscrimination rules to State and local government pension plans.

For nearly 20 years, State and local government pension plans have been deemed to satisfy the complex nondiscrimination rules of the Internal Revenue Code for qualified retirement plans until Treasury can figure out how or if these rules are applicable to unique Government pension plans. This bill simply puts an end to this stalled process and dispels over 20 years of uncertainty for administrators of State and local retirement plans. Let me summarize the evolution of this issue and why this bill is being introduced today.

Mr. President, the Federal Government has a long-established policy of encouraging tax deferred retirement savings. Most retirement plans that benefit employees are employer sponsored tax deferred retirement plans. Over the years, Congress has required that these plans meet strict nondiscrimination standards designed to ensure that they do not provide disproportionate benefits to business owners, officers, or highly compensated individuals.

In response to the growing popularity of employer sponsored tax deferred pension plans, Congress passed the Employee Retirement Income Security Act [ERISA] in 1974 to enhance the rules governing pension plans. However, during consideration of ERISA Congress recognized that nondiscrimination rules for private pension plans were not readily applicable to public pension plans because of the unique nature of governmental employers. Former Representative Ullman, during Ways and Means Committee consideration of ERISA, stated, "The

committee exempted Government plans from the new higher requirements because adequate information is not now available to permit a full understanding of the impact these new requirements would have on Governmental plans." Thus, Congress was not prepared to apply nondiscrimination rules to public plans. After studying the issue, the Internal Revenue Service on August 10, 1977, issued News Release IR-1869, which stated that issues concerning discrimination under State and local government retirement plans would not be raised until further notice. Thus, an indefinite moratorium was placed on the application of the new rules to government plans.

In 1986, Congress passed the Tax Reform Act of 1986, which made further changes to pension laws and the general nondiscrimination rules. On May 18, 1989, the Department of the Treasury, in proposed regulations, lifted the 12-year public sector moratorium and required that public sector plans comply with the new rules immediately. However, further examination revealed, and Treasury and the IRS recognized, that a separate set of rules was required for State and local government plans because of their unique features. Consequently, through final rules issued in September 1991, the Treasury reestablished the moratorium on a temporary basis until January 1, 1993, and solicited comments for consideration. In addition, government pension plans were deemed to satisfy the statutory nondiscrimination requirements for years prior to 1993. Since then, the moratorium has been extended three more times, the latest of which began this year and is in effect until 1999.

Mr. President, here we are, in August 1996, 22 years since the passage of ERISA and State and local government pension plans are still living under the shadow of having to comply with the cumbersome, costly, and complex nondiscrimination rules. Experience over the past 20 years has shown that the existing nondiscrimination rules have limited utility in the public sector. Furthermore, the long delay in action illustrates the seriousness of the problem and the doubtful issuance of nondiscrimination regulations by the Department of the Treasury.

Mr. President, last year during consideration of another extension of the moratorium, a coalition of associations representative of State and local governmental plans summarized their current position in a letter to IRS Commissioner Margaret Richardson dated October 13, 1995.

In our discussions with Treasury over the past two years, there have been no abuses or even significant concerns identified that would warrant the imposition of such a cumbersome thicket of federal rules on public plans that already are the subject of State and local government regulation.

Accordingly, while we always remain open to further discussion, as our Ways and Means statement indicates the experience of the past two years in working with Treasury to

develop a sensible and workable set of nondiscrimination rules for governmental plans has convinced us that the task ultimately is a futile one—portending tremendous cost, complexity, and disruption of sovereign State operations in the absence of any identifiable problem.

Mr. President, the sensible conclusion of this 20 year exercise is to admit that the Treasury is not likely to issue regulations for State and local pension plans and Congress should make the temporary moratorium permanent.

Furthermore, there are examples to support this legislation. Relief from the pension nondiscrimination rules is not a new concept. Multiemployer plans are currently not covered by the nondiscrimination rules under the theory that labor-management collective bargaining will ensure nondiscriminatory treatment to rank-and-file workers. In reality, Mr. President, State and local government pension plans face an even higher level of scrutiny. State law generally requires publicly elected legislators to amend the provisions of a public plan. Electoral accountability to the voters and media scrutiny serve as protections against abusive and discriminatory benefits.

Moreover, further precedent exists for Congress to grant relief from the nondiscrimination rules. In 1986, the Congress established the Thrift Savings Fund for Federal employees. As originally enacted, the Fund was required to comply with the 401(k) nondiscrimination rules on employee contributions and matching contributions to the fund. However, in 1987, as part of a Continuing Appropriations Act for 1988, the Congress passed a provision that made these nondiscrimination rules inapplicable to the Federal Thrift Savings Fund. Thus, Congress has reaffirmed the need to treat Governmental pension plans as unique.

Mr. President, this legislation is not sweeping nor does it grant any new treatment to these plans. Because of moratorium, governmental plans are currently treated as satisfying the nondiscrimination rules. Lifting the moratorium would impose on governmental pension plans the costly task of testing for discrimination when no significant abuses or concerns exist. In fact, finally imposing these rules may require benefits to be reduced for State and local government employees and force costly modifications to these retirement plans. This legislation coincides with the principle of allowing a State to enjoy the right to determine the compensation of its employees.

Mr. President, with another expiration of the moratorium looming in the future, I believe it is time to address this issue. I am under no delusion that it will be resolved quickly. The complexities of these rules and the uniqueness of governmental plans have brought us to where we are today. I believe that as members better understand the history of this issue they will agree with us that the appropriate step is to end this uncertainty and make the temporary moratorium permanent.

Mr. President, I ask unanimous consent that the text of the bill be printed following my remarks.

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

S. 2047

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. MODIFICATIONS TO NONDISCRIMINATION AND MINIMUM PARTICIPATION RULES WITH RESPECT TO GOVERNMENTAL PLANS.**

(a) GENERAL NONDISCRIMINATION AND PARTICIPATION RULES.—

(1) NONDISCRIMINATION REQUIREMENTS.—Paragraph (5) of section 401(a) of the Internal Revenue Code of 1986 (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by adding at the end the following new subparagraph:

“(F) GOVERNMENTAL PLANS.—Paragraphs (3) and (4) shall not apply to a governmental plan (within the meaning of section 414(d)).”

(2) ADDITIONAL PARTICIPATION REQUIREMENTS.—Subparagraph (H) of section 401(a)(26) of such Code is amended to read as follows:

“(H) EXCEPTION FOR GOVERNMENTAL PLANS.—This paragraph shall not apply to a governmental plan (within the meaning of section 414(d)).”

(3) MINIMUM PARTICIPATION STANDARDS.—Paragraph (2) of section 410(c) of such Code is amended to read as follows:

“(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section for purposes of section 401(a), except that in the case of a plan described in subparagraph (B), (C), or (D) of paragraph (1), this paragraph shall only apply if such plan meets the requirements of section 401(a)(3) (as in effect on September 1, 1974).”

(b) PARTICIPATION STANDARDS FOR QUALIFIED CASH OR DEFERRED ARRANGEMENTS.—Paragraph (3) of section 401(k) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

“(E)(i) The requirements of subparagraph (A)(i) and (C) shall not apply to a governmental plan (within the meaning of section 414(d)).

“(ii) The requirements of subsection (m)(2) (without regard to subsection (a)(4)) shall apply to any matching contribution of a governmental plan (as so defined).”

(c) NONDISCRIMINATION RULES FOR SECTION 403(b) PLANS.—Paragraph (12) of section 403(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

“(C) GOVERNMENTAL PLANS.—For purposes of paragraph (1)(D), the requirements of subparagraph (A)(i) shall not apply to a governmental plan (within the meaning of section 414(d)).”

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning on or after the date of enactment of this Act.

(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—A governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986) shall be treated as satisfying the requirements of sections 401(a)(3), 401(a)(4), 401(a)(26), 401(k), 401(m), 403 (b)(1)(D) and (b)(12), and 410 of such Code for all taxable years beginning before the date of enactment of this Act.

By Mr. MOYNIHAN (for himself,  
Mr. D'AMATO, and Mr. DODD):

S. 2048. A bill to amend section 552 of title 5, United States Code (commonly

referred to as the Freedom of Information Act), to provide for disclosure of information relating to individuals who committed Nazi war crimes, and for other purposes; to the Committee on the Judiciary.

WAR CRIMES DISCLOSURE ACT

Mr. MOYNIHAN. Mr. President, today I am joined by Senators D'AMATO and DODD in introducing the War Crime Disclosure Act. This legislation is a companion measure to a bill pending in the House, H.R. 1281, sponsored by Representative MALONEY.

The measure is a simple one. It requires the disclosure of information under the Freedom of Information Act regarding individuals who participated in Nazi war crimes.

Ideally, such documents would be made available to the public without further legislation and without having to go through the slow process involved in getting information through the Freedom of Information Act [FOIA]. Unfortunately this is not the case. Researchers seeking information on Nazi war criminals are denied access to relevant materials in the possession of the United States Government, even when the disclosure of these documents no longer pose a threat to national security—if indeed they ever did.

With the passing of time it becomes ever more important to document Nazi war crimes, lest the enormity of those crimes be lost to history. The greater access which this legislation will provide will add clarity of this important effort. I applaud those researchers who continue to pursue this important work.

I would also like to call to the attention of my colleagues the excellent work of the Office of Special Investigations of the Department of Justice. This office has a monumental task and I would not wish to add to that burden or divert its officials from their primary goal of pursuing Nazi war criminals. To that end, I would note that this legislation does not apply to the Office of Special Investigations, as it is not identified in paragraph (1)(B) of the bill as a “specified agency.” I would also add that there is a provision in the bill which specifically prohibits the disclosure of information which would compromise the work of the Office of Special Investigations.

Mr. President, I would like to thank Representative MALONEY for her original work on this subject in the House of Representatives. I would also thank Senators D'AMATO and DODD for joining me in this effort here in the Senate. Finally, I would be remiss if I did not pay special tribute to A.M. Rosenthal, whose indefatigable efforts on this subject are as admirable as they are effective.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2048

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “War Crimes Disclosure Act”.

**SEC. 2. REQUIREMENT FOR DISCLOSURE UNDER FOIA OF INFORMATION RELATING TO INDIVIDUALS WHO COMMITTED NAZI WAR CRIMES.**

(a) IN GENERAL.—Section 552 of title 5, United States Code, is amended—

(1) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively; and

(2) by inserting after subsection (c) the following new subsection:

“(d)(1)(A) Notwithstanding subsection (b), this section shall apply to any matter in the possession of a specified agency, that relates to any individual as to whom there exists reasonable grounds to believe that such individual, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of or in association with—

“(i) the Nazi Government of Germany,  
“(ii) any government in any area occupied by the military forces of the Nazi Government of Germany,

“(iii) any government established with the assistance or cooperation of the Nazi government of Germany, or

“(iv) any government that was an ally of the Nazi government of Germany, ordered, incited, assisted or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion.

“(B) For purposes of subparagraph (a), the term ‘specified agency’ means the following entities, any predecessors of such an entity, and any component of such an entity (or of such a predecessor):

“(i) The Central Intelligence Agency.  
“(ii) The Department of Defense.  
“(iii) The National Security Agency.  
“(iv) The National Security Council.  
“(v) The Department of State.  
“(vi) The Federal Bureau of Investigation.  
“(vii) The United States Information Agency.

“(2)(A) Except as provided in subparagraph (B), Paragraph (1) shall not apply to the disclosure of any matter when there is clear and convincing evidence that such disclosure would—

“(i) reasonably be expected to constitute an unwarranted invasion of personal privacy;  
“(ii) pose a current threat to military defense, intelligence operations, or the conduct of foreign relations of the United States;

“(iii) reveal an intelligence agent whose identity currently requires protection;

“(iv) compromise an understanding of confidentiality currently requiring protection between an agent of the Government and a cooperating individual or a foreign government;

“(v) constitute a substantial risk of physical harm to a living person who provided confidential information to the United States; or

“(vi) compromise an enforcement investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice.

“(B) Subparagraph (A) shall only apply to records, information, or other relevant matter which is—

“(i) properly classified; and  
“(ii) the protection of which outweighs the public interest in disclosure.

“(3) Any reasonably segregable portion of a matter referred to in paragraph (2) shall be provided, after deletion of all portions of the matter that are referred to in such subparagraph, to any person requesting the matter

under this section if the reasonably segregable portion of the matter would otherwise be required to be disclosed under this section.

"(4) In the case of a request under this section for any matter required to be disclosed under this subsection, if the agency receiving such request is unable to locate the records so requested, such agency shall promptly supply, to the person making such a request, a description of the steps which were taken by such agency to search the indices and other locator systems of the agency to determine whether such records are in the possession or control of the agency."

(b) INAPPLICABILITY OF NATIONAL SECURITY ACT OF 1947 EXEMPTION.—Section 701 of the National Security Act of 1947 (50 U.S.C. 431) is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following new subsection:

"(e) Subsection (a) shall not apply to any operational file, or any portion of any operational file, described under section 552(d) of title 5, United States Code (Freedom of Information Act)."

### SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply to requests made after the expiration of the 180-day period beginning on the date of the enactment of this Act.

### ADDITIONAL COSPONSORS

S. 607

At the request of Mr. AKAKA, his name was added as a cosponsor of S. 607 a bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify the liability of certain recycling transactions, and for other purposes.

S. 1487

At the request of Mr. GRAMM, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 1487 a bill to establish a demonstration project to provide that the Department of Defense may receive medicare reimbursement for health care services provided to certain medicare-eligible covered military beneficiaries.

S. 1493

At the request of Mr. LAUTENBERG, the name of the Senator from Oregon [Mr. WYDEN] was added as a cosponsor of S. 1493, a bill to amend title 18, United States Code, to prohibit certain interstate conduct relating to exotic animals.

S. 1542

At the request of Mr. LEVIN, his name was added as a cosponsor of S. 1542, a bill to amend the Internal Revenue Code of 1986 to provide for the expensing of environmental remediation costs in empowerment zones and enterprise communities.

S. 1662

At the request of Mr. HATFIELD, the name of the Senator from Oregon [Mr. WYDEN] was added as a cosponsor of S. 1662, a bill to establish areas of wilderness and recreation in the State of Oregon, and for other purposes.

S. 1735

At the request of Mr. PRESSLER, the name of the Senator from Iowa [Mr.

GRASSLEY] was added as a cosponsor of S. 1735, a bill to establish the United States Tourism Organization as a non-governmental entity for the purpose of promoting tourism in the United States.

S. 1820

At the request of Mr. DASCHLE, the name of the Senator from Washington [Mrs. MURRAY] was added as a cosponsor of S. 1820, a bill to amend title 5 of the United States Code to provide for retirement savings and security.

S. 1821

At the request of Mr. DASCHLE, the name of the Senator from Washington [Mrs. MURRAY] was added as a cosponsor of S. 1821, a bill to amend the Internal Revenue Code of 1986 to provide for retirement savings and security.

S. 1832

At the request of Ms. MIKULSKI, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of S. 1832, a bill to amend title II of the Social Security Act to provide that a monthly insurance benefit thereunder shall be paid for the month in which the recipient dies, subject to a reduction of 50 percent if the recipient dies during the first 15 days of such month, and for other purposes.

S. 1892

At the request of Mr. LAUTENBERG, the name of the Senator from Illinois, [Mr. SIMON] was added as a cosponsor of S. 1892, a bill to reward States for collecting medicaid funds expended on tobacco-related illnesses, and for other purposes.

S. 1900

At the request of Mr. DORGAN, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 1900, a bill to amend title XVIII and XIX of the Social Security Act to permit a waiver of the prohibition of offering nurse aide training and competency evaluation programs in certain nursing facilities.

S. 1901

At the request of Mr. DORGAN, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 1901, a bill to amend title XIX of the Social Security Act to repeal the requirement for annual resident review for nursing facilities under the Medicaid program and to require resident reviews for mentally ill or mentally retarded residents when there is a significant change in physical or mental condition.

S. 1944

At the request of Mr. HATFIELD, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 1944, a bill to establish a commission to be known as the Harold Hughes Commission on Alcoholism.

### SENATE RESOLUTION 277

At the request of Mr. CRAIG, the name of the Senator from Kansas [Mrs. FRAHM] was added as a cosponsor of Senate Resolution 277, a resolution to express the sense of the Senate that, to

ensure continuation of a competitive free-market system in the cattle and beef markets, the Secretary of Agriculture and Attorney General should use existing legal authorities to monitor commerce and practices in the cattle and beef markets for potential antitrust violations, the Secretary of Agriculture should increase reporting practices regarding domestic commerce in the beef and cattle markets (including exports and imports), and for other purposes.

### SENATE CONCURRENT RESOLUTION 68—TO CORRECT THE ENROLLMENT OF H.R. 3103

Mr. WELLSTONE (for himself, Mr. KENNEDY, and Mr. WYDEN) submitted the following resolution; which was considered and agreed to:

S. CON. RES. 68

*Resolved by the Senate (the House of Representatives concurring).* That in the enrollment of the bill (H.R. 3103) entitled "An Act to amend the Internal Revenue Code of 1986 to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes", the Clerk of the House of Representatives shall make the following correction:

Strike subtitle H of title II.

### SENATE CONCURRENT RESOLUTION 69—RELATIVE TO EUTHANASIA DURING WORLD WAR II

Mr. SANTORUM (for himself and Mrs. FEINSTEIN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 69

Whereas Dr. Hans Joachim Sewering was a member of the Nazi party beginning on November 11, 1933, as well as a member of the SS;

Whereas Dr. Sewering served as staff physician and medical director at the Schoenbrunn Sanitarium beginning in 1942;

Whereas, between 1943 and 1945, under Dr. Sewering's supervision, 909 German Catholic mentally and physically disabled patients, mainly children, were transferred from the sanitarium to a "Healing Center" at Eglfing-Haar;

Whereas, subsequently, these patients were killed by starvation and an overdose of a sleeping drug, Luminal;

Whereas there is documentation with Dr. Sewering's signature on its that transfers a 14-year-old epileptic girl names Babette Frowis from the sanitarium to the healing center on October 26, 1943;

Whereas Babette Frowis was pronounced dead on November 16, 1943, just 15 days after being transferred there by Dr. Sewering;

Whereas Dr. Sewering has enjoyed a successful and lengthy medical career after the war, most recently acting as the President of the Federal Physicians Chamber in Germany;

Whereas 4 Franciscan nuns, who worked in the sanitarium at the time these acts occurred, came forward in January of 1993 to corroborate the accusations against Dr. Sewering made by physicians in Germany;