

The assistant legislative clerk proceeded to call the roll.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 12:15 p.m.

Thereupon, at 11:54 a.m., the Senate recessed until 12:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. SESSIONS).

The PRESIDING OFFICER. The pending business is the Treasury and General Government appropriations bill, fiscal year 1999.

Mr. THOMAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I ask unanimous consent to speak as in morning business for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL ACTIVITIES INVENTORY REFORM ACT

Mr. THOMAS. Mr. President, there are a number of things that many of us feel to be very important in terms of principles. One of them is federalism, of course—making the appropriate division between those things that are done in State government and those things that are done in local government, and the role of Federal Government. Another, it seems to me, is to do those things that can be done in the private sector, and that has, indeed, been the policy of this Government for a very long time.

I rise today to express my deep appreciation for the members of the Senate Governmental Affairs Committee and staff for their time and effort in developing a consensus on my legislation to codify this 40-year-old Federal principle that has been in place.

In the beginning of this Congress, I introduced S. 314, the Freedom from Government Competition Act. This legislation is an attempt to put in statute a workable process by which the Federal Government utilizes the private sector to do those things that are commercial in nature. This, indeed, has been the policy of the Government for a very long time. In fact, as early as 1932, Congress first became aware of the fact that the Federal Government was starting to carry out activities of a commercial nature and said that is not necessary and we should not do that.

In 1954, a bill to address the issue passed the House and was reported by the Committee on Governmental Affairs. At that time, the Eisenhower administration said that we would take care of it administratively. Therefore,

Bureau of the Budget Bulletin 55-4 was issued, and there was no further action taken.

To make a relatively long story short, all the administrations since that time in one way or another have endorsed the idea of taking those things that could at least as well be done in the private sector as in the Government, allowing for some competition.

There is a circular now called A-76 which has been endorsed since 1955. Unfortunately, it hasn't been enforced. Unfortunately, when it is only a bulletin or Executive order, there is no real appeal process. What we are seeking to do is to put that concept into statute—it has now been approved by the committee in the Senate; it has been approved by the committee in the House—that would simply say to agencies, we want you to take an annual inventory of those kinds of things that you do, those that are commercial in nature. There ought to be a fair opportunity for the private sector to seek to compete in those areas.

Mr. President, we hope that that will come before the Senate and the House before this session is over; that it would, indeed, be put in statute, that concept that has been there for a very long time, the notion simply being that the taxpayers benefit from the cost, and whoever can do this the most efficiently, whether it be mapping, whether it be laboratory work, whether it be all kinds of things that are often and always done in the private sector, that can be done better and more efficiently there, will, indeed, be done there.

To reiterate, that policy is now found in OMB Circular A-76 and has been endorsed by every administration, of both parties, since 1955. However, the degree of enthusiasm for implementation of the circular has varied from one administration to another. In fact, the issue of government competition has become so pervasive that all three sessions of the White House Conference on Small Business, held in 1980, 1986 and 1995, ranked this as one of the top problems facing America's small businesses. According to testimony we received, it is estimated that more than half a million Federal employees are engaged in activities that are commercial in nature.

However, the purpose of my legislation is not to bash Federal employees. I believe most are motivated by public service and are dedicated individuals. However, from a policy standpoint, I believe we have gone too far in defining the role of government and the private sector in our economy. Because A-76 is nonbinding and discretionary on the part of agencies, too many commercial activities have been started and carried out in Federal agencies. Because A-76 is not statutory, Congress has failed to exercise its oversight responsibilities. Further, by leaving "make or buy" decisions to agency managers, there has been no means to assure that agencies "govern" or restrict themselves to in-

herently governmental activities, rather than produce goods and services that can otherwise be performed in and obtained from the private sector.

Among the problems we have seen with Circular A-76 is (1) agencies do not develop accurate inventories of activities (2) they do not conduct the reviews outlined in the Circular, (3) when reviews are conducted they drag out over extended periods of time and (4) the criteria for the reviews are not fair and equitable. These are complaints we heard from the private sector, government employees, and in some cases from both.

In the 1980's our former colleague Senator Warren Rudman first introduced the "Freedom from Government Competition Act" in the Senate. Later, Representative JOHN J. DUNCAN, Jr. (R-TN) introduced similar legislation in the House. I was a cosponsor of that bill when I served in the other body. Upon my election to the Senate in the 104th Congress, I introduced the companion to Representative DUNCAN's bill in the Senate.

On Wednesday, July 15, 1998 the Senate Governmental Affairs Committee unanimously reported a version of S. 314 that is a result of many months of discussions among both the majority and minority on the committee, OMB, Federal employee unions and private sector organizations. The amendment in the nature of a substitute offered by Chairman FRED THOMPSON and approved by the committee is a consensus and a compromise.

It is important to point out that the bill that I introduced in the 104th Congress was an attempt to codify the original 1955 policy that the government should rely on the private sector. After a hearing on that bill was convened by Senator STEVENS, during his tenure as chairman of the Committee on Governmental Affairs, it became clear to me that it was necessary to add to the bill the concept of competition to determine whether government performance or private sector performance resulted in the best value to the American taxpayer. While S. 314 as introduced, and H.R. 716 introduced in the House, was still entitled the "Freedom from Government Competition Act," it in fact not only did not prevent government competition, but it mandated it. This was not a change that private sector organizations came to comfortably support. However, inasmuch as OMB Circular A-76 changed through the years from its original 1955 philosophical statement to its more recent iterations that required public-private competition, I revised my bill when introducing it last year to include such competitions, provided they in fact are conducted and that when conducted, they are fair and equitable comparisons carried out on a level playing field.

I would also hasten to add that the measure reported by the Senate Governmental Affairs Committee, which I hope will be promptly approved by the