

MEMBERS PRESENT

Chairman Dini
Mr. Harmon
Mrs. Westall
Mr. Fitzpatrick
Mr. Marvel
Dr. Robinson
Mr. Craddock
Mr. Jeffrey
Mr. Getto
Mr. Bedrosian
Mr. Bergevin

GUESTS PRESENT

See Guest List Attached

Chairman Dini called the meeting to order at 7:40 A.M. and stated the order of business would be to take up the Bills heard the previous day. Chairman Dini said he would like to hold AB 25 for a few days because he believed he could come up with a meritorious amendment and he received the unanimous consent of the Committee.

COMMITTEE ACTION

AB 87 - Mr. Craddock moved amend and DO PASS; the amendment would provide the reinstatement provision and take out the life insurance. The motion was seconded by Mr. Robinson and unanimously carried.

SB 16 - Mr. Bergevin moved DO PASS, seconded by Mr. Getto, and unanimously carried.

Dr. Robinson stated he met with Mr. Crossley, Mr. Wadhams, and Frank Daykin on the definition of agency in regard to SB 43. He said the Commerce Dept. has submitted the names of the associations that are private yet whose funds are within the jurisdiction of the Commerce Dept. He stated that it was Mr. Daykin's opinion since they are not actually an agency they would not fall under the scope of this Bill. Dr. Robinson said Mr. Crossley would write a letter of intent specifically naming these particular entities to Frank Daykin who then will put an endorsement on his letter stating the Bill then would not apply to these particular agencies and the Bill would then stand as it is without the need to be amended to define specifically what the definition of agency was.

COMMITTEE ACTION

SB 43 - Mr. Marvel moved DO PASS, seconded by Mr. Fitzgerald, and unanimously carried. Mr. Dini stated it would be held, however, until the Letter of Intent is received.

SB 44 - Dr. Robinson moved DO PASS, seconded by Mr. Getto, and unanimously carried.

SB 62 - Mr. Getto moved DO PASS, seconded by Mr. Marvel, and unanimously carried.

AB 165 - Dr. Robinson moved DO PASS, seconded by Mr. Getto, and unanimously carried.

AB 162 - Chairman Dini suggested this Bill be held until a committee report is received.

Chairman Dini then stated he had several BDR's for Committee introduction: BDR 58-402^{*}, 403^{**}, 404[†], 406, 408[°], 414[°], and 420[^]. He reviewed the purpose of each Bill for the Committee. Mr. Getto moved for Committee introduction, seconded by Mr. Jeffrey, and carried unanimously.

Chairman Dini then announced the first Bill on the Agenda for February 7th is AB 171.

AB 171 - REQUIRES A BIENNIAL REPORT FROM GOVERNOR TO LEGISLATURE ON MANAGEMENT OF EXECUTIVE DEPT.

SUE WAGNER, Assemblywoman, A.D. 25

Mrs. Wagner stated she thought the time had come to start seriously evaluating government programs. She stated the Bill would plan ahead in policy areas and establishes a methodology for government evaluation. Mrs. Wagner stated that the question is if Nevada can come up with a kind of government balance sheet or report card that will draw the press and the public's attention to the least effective programs. She stated the legislation she proposes would oblige the Governor every two years before the budget presentation to report to the Legislature on the management of the executive branch. The Governor would be required to rank programs within each department in accordance with their relative effectiveness as compared to other programs in the same dept. She stated it would also be required to include an accompanying evaluation

x AB 355 ° AB 352
* * AB 354 °° AB 351
+ AB 353 ^ AB 350

of the Governor's rankings. Mrs. Wagner suggested three mandatory sub-criteria to help judge a program's degree of success.

DON RHODES, Legislative Counsel Bureau, Research

Mr. Rhodes elaborated on the report card approach outlined by Mrs. Wagner. Mr. Rhodes stated that the report card approach augments other programs and sets the stage for public awareness of the need for programs to be abolished. He said it is in effect the Chief Executive's listing of government programs which need consideration for modification or termination.

Dr. Robinson commented he felt there had to be some way to get into the Bill getting around the fact you would have a prejudiced person doing the ranking and it would not be an impartial thing. Chairman Dini stated he wasn't sure that the Bill was not creating a nightmare for the Governor. He said it was his understanding the administration reviews its programs every year. Mrs. Wagner responded they do review their programs in terms of budget hearings but not publicly. She stated that was the point; that this would be public information. Mr. Bergevin stated he thought that somewhere in the budget process this ought to be going on already. Dr. Robinson stated he felt the Bill was also misleading in regard to cost.

GEORGE MILLER, Nevada State Welfare Administrator

Mr. Miller stated he was against the Bill. He elaborated on not being able to brief on the other side of the coin appearing before the Budget Director. He said he didn't think the Budget Office was where you get into programing. He stated that as he understood it the Bill puts it right back to the Budget Director to run the situation and it is wrong because he gets to have a final say anyway. Mr. Miller said he wanted to do his own throat cutting and he does not have his own choice.

DEL FROST, State Rehabilitation Division

Mr. Frost stated the Rehabilitation Division carries out on-going evaluations of itself constantly. He stated that as a result they had one of the highest production rates for services to people of all the states, always being in the top ten, and been as high as the number two state in the nation delivering services to people. He said he was concerned, however, about who does the evaluating and the

risk of duplicating some of the things outlined by George Miller. Mr. Frost stated he didn't feel the fiscal department in this state is competent to do the kind of evaluation called for in the Bill. He stated when he would spend all the time using a program budget approach, he would get over to the Budget Office and there would be arbitrary cutting of positions, not explaining why, not giving him an opportunity to establish priorities and determine what was really needed to do the job. He stated he would hate to see a law that identifies anybody in the executive branch of government who does the evaluating.

AB 210 - REVISES CERTAIN DISCIPLINARY AND APPEAL PROCEDURES FOR CLASSIFIED STATE EMPLOYEES

ASSEMBLYWOMAN PEGGY WESTALL

Mrs. Westall stated the Bill addresses disciplinary as well as the time element problems and referred the Committee to the witnesses who she felt were more knowledgeable to explain.

ROBERT GAGNIER, Executive Director, SNEA

Mr. Gagnier stated the Bill is the result of a lot of experience in dealing with the disciplinary procedures provided for in NRS 284. He stated over the years they found there were some loopholes in it and bad features and have tried to address them here. He stated the Bill does five things and he went through them very briefly to highlight what the Bill does. He enumerated as follows: in section 1 the Bill sets up by law progressive discipline; page 2, lines 10 and 11, removes the Personnel Advisory Commission from the disciplinary appeal procedure; lines 14 and 15, page 2, it includes in the type of discipline that may be used against an employee a reduction in salary grade and this would legalize what has already been done; page 3, line 6, provide State Hearing Officers with the ability to modify whereas the current law provides that the Hearing Officer can either uphold the action of an agency or overturn that action and there seems to be some question as to whether he has a right to modify; and, finally, on page 3, line 33, provide the Hearing Officer with the right to order discovery. Mr. Gagnier said he would not be unhappy with the first rule as it was written but it has no basis in law. He said a very controversial part of the Bill was that portion which would remove the Personnel Advisory Commission from the appeal procedure. He stated the steps involved were unnecessary. He stated the Hearing Officer feels he has the power to modify disciplinary action in all judicial districts except the one today.

Mr. Gagnier stated that in this district a former Judge ruled he does not have that right.

Dr. Robinson requested Mr. Gagnier to supply the Committee with Prohibitions and Penalties which Mr. Gagnier had stated most agencies have promulgated and were approved by the PAC.

JIM WITTENBERG, State Personnel Administrator

Mr. Wittenberg stated he was in opposition to AB 210 for a number of reasons. He said it was his opinion that the procedure they now had for handling disciplinary measures is adequate and is functioning well. He stated that currently the overall box score for the hearing process is reasonably well balanced. He went on to elaborate on the de novo hearing process in regard to appeals by both the employee and employer.

LUCY BARRIER, Personnel Officer, Welfare Division

MIKE MELNER, Deputy Attorney General, Dept. Human Resources

(Joint testimony by Miss Barrier and Mr. Melner)

Miss Barrier stated that the Prohibitions and Penalties is the answer for the Hearing Officer's authority; she stated she did not think he should have the power to modify decisions.

Mr. Melner stated he would be concerned about allowing modification by a Hearing Officer of a penalty. He stated for the Hearing Officer to change the substance of the punishment gets the Hearing Officer into management and he stated he did not think the Hearing Officer was set up to do that type of thing. Mr. Melner felt it should be a case of either the employee is guilty or not guilty. He said he felt taking the PAC out would be costly to employees and to the agencies and to the Attorney General's office.

Dr. Robinson requested Miss Barrier to likewise provide the Committee a set of the rules she drew up for the Welfare Department.

Chairman Dini announced the testimony was concluded on AB 210.

Chairman Dini announced the next order of business would be AB 209.

AB 209 - GIVES PRIORITY TO CLAIMS OF STATE OR ITS POLITICAL SUB-DIVISIONS AGAINST ILLEGAL ALIENS

COMMITTEE ACTION

AB 209 - Mr. Getto moved NO FURTHER CONSIDERATION, seconded by Mr. Jeffrey, ten in favor, Dr. Robinson opposed.

There being no further business to come before the meeting the same was adjourned at 10:30 A.M.

Respectfully submitted,



Sandra Shatzman
Assembly Attache

GUEST LIST

IF YOU
WISH TO SPEAK

NAME

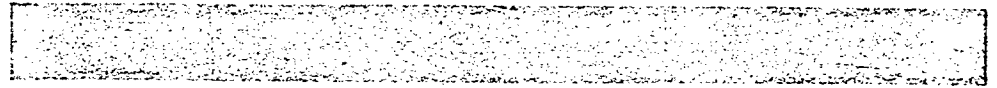
REPRESENTING

Pro Con

(Please print)

NAME	REPRESENTING	Pro	Con
BOB GAGNIER	SNEA	✓	
MISS McDONALD	LUASFC COUNTY	✓	
Sue Wagner	AB 171	✓	
Don Rhodes	AB 171 Legislative Council Bureau	✓	
Miss [unclear]	WELFARE DIVISION DEPUTY ATTORNEY GENERAL		✓
Paul W. Frost	representing AL KRANS	✓	
Al Krom	Al Krom	✓	
Geo. Miller	Welfare		✓
Darcy Barrier	Welfare		✓
Mr. C. Hayes	Nebraska Welfare		
Jim Wittenberg	Dept. of [unclear]		✓
Frank Holtzauer	Dept of Human Services		
Robert Sullivan	AB 171		AB 221

Commonsense



Mediating Structures:

The Missing Link Of Politics

Peter L. Berger

The Trouble With Federalism:

It Isn't Being Tried

James L. Buckley

If Not The Best,

At Least Not The Worst

Laurence H. Silberman

Prescription For Republicans

Michael Novak

Beyond The Water's Edge:

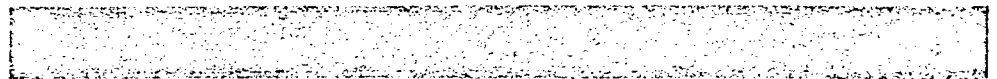
Responsible Partisanship In Foreign Policy

Fred C. Ikle

The Accessible Dream:

Financing Educational Needs

Bob Packwood



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If Not The Best, At Least Not The Worst

by Laurence H. Silberman

In this article I offer a legislative proposal to help identify those relatively ineffective governmental programs eligible for termination. I do so in the conviction that the inexorable, fundamentally aimless growth of government has become a serious, even dangerous, economic and social burden to our society. I also believe—and this is a separate consideration—that good management of government, the rational deployment of public sector resources, is virtually impossible unless we develop workable and credible techniques to bury our past governmental mistakes.

Candidate Carter promised the American people that, if elected, he would truly manage the federal government. Brandishing his own Excalibur, zero-based budgeting (hardly an innovation even to the government), he offered a vision of his management sword slicing away layers of superfluous bureaucratic fat. Along with needed surgery, the candidate committed himself to a massive reorganization designed to harmonize inconsistent and overlapping governmental functions into larger streamlined units.

To be sure, one cannot effectively manage the federal government or, for that matter, any organization, without a clear conceptual framework—not inappropriately called by some an ideology¹—a framework

Laurence H. Silberman is a Senior Fellow at the American Enterprise Institute and counsel to the law firm of Dewey, Ballantine, Bushby, Palmer & Wood. He is a former undersecretary of labor, deputy attorney general of the United States, and ambassador to Yugoslavia. He is a vice chairman of the Republican National Committee's Advisory Council on General Government and chairman of its subcommittee on Efficacy and Accountability of Government Programs. This article benefited from contributions by other members of the subcommittee, the majority of whom are in agreement with the proposal.

¹ Ideology is one of those words with a shifting, plastic meaning sometimes used as a pejorative by those who feel threatened by any coherent set of political ideas. (Ed. note: And it is sometimes used, by those who value coherence, as a term of disparagement toward particular sets of ideas which, because of their flaws, actually are threatening.)

which suggests coherent interrelated goals. Otherwise, individual decisions do not fit together, and it is impossible for a chief executive to delegate significant responsibilities to subordinates. Each new issue has to be decided by him alone since subordinates cannot predict his decision. Hence, we see the now familiar picture of President Carter pondering each new question as if it were an isolated *ad hoc* engineering problem. He does not seem to understand that talk of managing the government is empty without a clear presidential vision of what the government should and should *not* strive to accomplish.

That is why it is so exasperating to read the fatuous "advice" to the Republican Party certain liberal political columnists persist in offering: that pragmatism (meaning practicality) rather than ideology should be our by-word.² The two concepts are not by any means inconsistent. Pragmatism without ideology is quackery, but a coherent concept of governance without careful attention to realistic means of pursuing that concept is, similarly, doomed to failure.

Still, to give the President his due, he has implicitly recognized that managing government necessitates pruning dead bureaucratic branches. Unfortunately, his heralded methods, so far at least, have yielded little return. He has submitted his own first budget, and I defy anyone to point to the impact of zero-based budgeting. And, although he has combined energy functions into a new department (in the process he should have done some cutting), he plans to offset that consolidation by splitting HEW and establishing a new Department of Education. In short, Mr. Carter's management, so far at least, is nothing to write home to Georgia about.

The hard, miserable, squirmy but incontestable truth is that any effective strategy for managing government must come to grips with our overriding problem: We Americans cannot seem to eliminate *any* government programs no matter how wasteful they may be. This should be of equal concern to those who wish to maintain or even expand the present level of government as well as those who believe—as do most Republicans—that government's share of our GNP must be reduced. For we cannot create new governmental programs, given budgetary realities, unless other less desirable activities are shucked off. Indeed, our reluctance to initiate new programs is surely in part attributable to the widespread realization that a program, once initiated, achieves instant immortality.

Why is it so difficult for government to exercise what some have

²Perhaps by advising pragmatism these columnists really mean to suggest that Republicans should not fundamentally challenge dominant Democratic party ideology.

called constructive powers of self-destruction? By now, it is almost conventional to answer this question by pointing to the "iron triangle"; the relationship among congressional committees which develop programs, the bureaucracy which administers programs, and the constituency which benefits from the programs. This tight-knit triple alliance, it is argued, is inherently stronger than a generalized diffuse constituency for reform because although the latter is much larger, the former can always muster greater political power at the point of engagement. Intensity of defense, on the part of those with a great deal directly to lose, successfully withstands attack from those whose potential gain is only marginal.

Rather than decry the strength of the iron triangles, which will not in any way diminish their effectiveness, we should seek ways to enhance the political force of the generalized constituency for reform. The vast majority of Americans are aware that government is too large, too intrusive, but they cannot agree on which part should be cut back. Fundamental to the reformers' weakness, then, is the absence of a common evaluation language. Since there is no uniform method of evaluating programs, generating a national political consensus as to prime targets for elimination is extremely difficult. Although virtually everyone will agree that, theoretically, some government programs are more effective than others, the lack of generally accepted measuring techniques prevents widespread agreement as to those *least* effective.

Of course, the drive for expansion and resistance to cut-backs is hardly unique to governmental bureaucracies. All bureaucratic structures manifest an impulse to growth undoubtedly rooted in human nature. Even business enterprises would surely expand indefinitely were it not for economic limitations—limitations that are apparent only because of systematic accounting methods. Without balance sheets and profit-and-loss statements predicated on neutral objective evaluation criteria, corporations would find it extraordinarily difficult to prune failing or less successful branches. (Indeed, this is often difficult to accomplish even with these criteria.) Enterprises in Communist nations, operating without benefit of modern accounting techniques (some do experiment with market mechanisms, but the concept of profit remains ideologically offensive) are, for that reason, inherently less efficient than capitalist corporations. Without a means of constantly eliminating its least effective portions, no bureaucratic system can be truly efficient.

This problem is somewhat less acute for government defense spending, where the basis for evaluating programs is better established, than for social and economic programs. Military expenditures are subject to a conceptual discipline which the social programs lack;

defense planners work in the shadow of a hypothetical balance sheet. For instance, in the period between World War I and World War II the great questions of military planning were 1) should tanks be massed for breakout as De Gaulle, Guderian, Tukachevsky, and Patton argued, or should they be distributed throughout infantry companies as most General Staffs (particularly the French) maintained, and 2) did airpower (aircraft carriers) vastly outweigh the importance of battleships as Billy Mitchel contended and most fleet admirals denied? The first question was decisively answered in a few weeks in the spring of 1940 and the second in a few December days of 1941.

Since our social regulatory programs never face a similar day of reckoning, program evaluation isn't stimulated by the sense of urgent need that imposes a measure of discipline on those responsible for national defense. That is not to suggest that the Defense Department would not benefit from heightened evaluation pressure; the Pentagon's corridors are hardly off limits to roaming programmatic white elephants. But the hypothetical balance sheet—a possible future war—induces something of a competitive relationship between defense programs (of course, all military systems are designed to compete with other military systems) and that very competition breeds increased concern for effective evaluation.

In recent years social scientists have devoted enormous effort to developing techniques to evaluate the government's domestic programs, particularly social programs initiated during the Great Society era. Despite methodology still tentative, their work has succeeded in raising doubts as to the relative efficacy of many of these initiatives of the 1960s. But since often, indeed characteristically, government programs are launched by legislation that directs pursuit of vague and conflicting goals, evaluators are seriously handicapped. Results are often justified by goals shifted and tailored after the fact to fit evaluation findings. Some defenders even assert their favored programs can be supported on the basis of the bureaucratic employment they afford rather than the results they do (or do not) produce—a rationale that can be used to defend *any* governmental expenditure.

Moreover, since evaluation of governmental programs is complicated and confusing, normally the press pays it little attention and, therefore, the American people are ill-informed as to the relative effectiveness of various parts of their government. Washington cognoscenti are probably well aware of the least worthy federal programs, but that knowledge is not widely shared. For this reason, the sunset laws, designed to force Congress periodically to examine existing programs and either cancel or modify those that cannot be affirmatively ratified, are likely to be

ineffective. Without an informed and aroused public interest in the elimination of poor programs, there is little possibility of outmaneuvering the iron triangles at periodic "sunset" times.

II

Can we fashion a kind of government balance sheet that will serve to draw the press' and thereby the public's attention to the least effective federal programs? I propose legislation that would oblige the President once a year, six months before the budget presentation, to report to Congress on the management of the executive branch. In this report the President would be required to *rank* programs within each department in accordance with their relative effectiveness as compared to other programs in the same department and would also be required to include an accompanying explanation of his ranking. I suggest three mandatory sub-criteria to help judge a program's degree of success in meeting its goals: (a) coherence of statutory objectives, (b) design of the program, and (c) quality of management. To those who would say—correctly, I might add—that we already have too many presidential reports and that they are normally unread and unremarked, I assure *this* report would not go unnoticed. Since it has the ingredient that commands attention in Washington, winners and losers, it would surely attract intense interest.

The director of OMB would be asked to provide a second discretionary part of the report that would point to those programs throughout the federal government that have contradictory aims and, therefore, actually work against each other, and to propose appropriate corrective legislation.³ Further, the director would be called upon to propose elimination of any programs that he believed deserved interment. Since OMB would inevitably provide staff aid for the President's report, as it does for the development of the President's budget, the director (and the President) would surely reach some conclusions as to the least meritorious federal government programs. Admittedly, it does not follow that the administration would publicly recommend elimination of those programs; but it should have that opportunity. My guess is that most directors, almost as a matter of pride, would wish to point to poor programs or at least to some whose statutory goals or administrative design were faulty and needed rethinking. By placing this responsibility on the director rather than the President it is somewhat more likely that we would see meaningful analyses and recommenda-

³The form is similar to the President's annual economic report—part of which is formally authored by the President and part by the chairman of his Council of Economic Advisers.

tions; the political heat on the President would be a little less fierce. In any event, the presidential ranking portion of the report will carry its own prescriptive implications. That is why I believe the actual ranking should have a presidential imprimatur, in part, to give the report greater public visibility—which is after all its prime purpose—and, in part, to gain a greater impact on the bureaucracy.

Is the plan technically feasible? I believe so. OMB has often asked departments confidentially to rank their programs when tight budgets required cuts. Budget-wise administrators, to be sure, have sought to defeat this OMB strategy by listing programs in the reverse order of their popularity: That is, the most politically popular programs were listed as most eligible for budget cuts, without regard to effectiveness. Why, it might be asked, would not the same thing happen under this proposed legislation? Since the rankings would be public, accompanied by a rationale, no President and no department head would wish to appear foolish by adopting an unpersuasive technique. In the weeks leading up to the publication of the report constituencies would lobby fiercely for a higher place for their favored programs. It is virtually inconceivable, then, that a popular and effective program would be placed low on a department's list. Perhaps ineffective but particularly popular programs would gain a somewhat higher than deserved ranking; but if those at the bottom were not the very worst they almost certainly would be poor ones. The President's best defense against constituency cries of outrage would be his use of a respected methodology.

How would programs be defined? Generally in accordance with existing enabling or appropriations legislation that identifies discrete programs. Where that was not entirely feasible, definitions could be modified—perhaps by giving the President some definitional authority—to take into account separate functions managed separately (it is not my thought that staff functions would be compared as against other staff functions, but that should not be out of the question). Some department heads might try to lump vulnerable programs into broader categories, but OMB and the President would probably resist that device. More likely the plan's incentive would draw in the opposite direction; to induce breakdown of an agency's functions into smaller measurable units so that the most vulnerable ones at the bottom would represent a lesser portion of departmental "empires." Certainly, if a separable portion of a departmental function were particularly ineffective, that function's bureaucracy and constituency would not wish the better portions dragged down with the worst.

How burdensome would be compliance with this legislation? In my

view, most people who have managed federal departments have actually performed a similar function, although not as precisely and overtly as this legislation would require. Any good government manager faced with the ever present need to allocate relatively scarce resources has a rudimentary but, nonetheless, operative program ranking system in mind. (Despite the popular cliché, one always compares apples and oranges if one has a limited amount of money to buy fruit.) So this process will not be as shocking as it might otherwise seem. Of course, the first year the President is required to make this report will be the most difficult; subsequent years would benefit from development and criticism of the analytical base.

Different Presidents and different parties would surely take somewhat different positions as to the effectiveness of certain programs, but that is not undesirable. The administration that designs a new program normally will not be as objective in evaluating its relative effectiveness as successor administrations. And differing political values will have inevitable impact on the ranking process. Still, I predict we would all be surprised at the extent of agreement among succeeding administrations.

III

A distinguished professor of the Harvard Law School used to confess—tongue-in-cheek—that after many years of teaching he had been unable to conceive a way to eliminate the bottom half of a law school class. Recently a number of universities did discover that which had eluded the professor: Simply eliminate student ranking. Some have even altogether abolished grades. Grades, of course, evaluate the work of students and, therefore, are indispensable to a society which wishes to allocate opportunities in accordance with merit. Those who wished to attack the merit ethic, therefore, properly trained their guns on the academic grading systems. And elimination of class ranking by itself weakens that system because it removes the discipline which compels grading integrity. Without student ranking, which forces attention to the fairness of relative grading, there is a natural temptation to raise the grades of those in the bottom half, thereby tending to obliterate differences among students. Grade inflation can, and has, taken place even where students are ranked, but without ranking it progresses much more rapidly.

The point is that a ranking system has a tendency to force more credible evaluation because it provides discipline to any evaluation process. Thus, a presidential ranking of departmental programs would pressure program evaluators to produce evaluations that will be more

intelligible and persuasive. Indeed, press attention and criticism of the annual report would probably focus attention on the evaluation process throughout the year. That too, is a plus.

What impact would the proposed legislation have on the federal bureaucracy? Surely a desirable degree of competition among the managers of departmental programs would be introduced—not just quantitative competition (as is true today) but a qualitative competition. Bureaucrats faced with a day of program reckoning would necessarily devote greater efforts to managing existing resources than to seeking new resources. In fact, the prospect of future program expansion would be directly tied to existing performance.

Subcabinet officers—at the assistant secretary level—would encounter new pressures which they do not now find. Today, there is little incentive to devote the relatively short period most of these officials serve (less than two years on the average) to better management of programs. Such efforts normally go unnoticed and, therefore, unrewarded. Too often, the press naively labels those appointees who have minimal management impact on their agencies and consequently do not attract internal criticism as the good managers. An ambitious appointee is, therefore, induced to make a positive mark by launching a new program, preferably by legislation. Passage of a bill is the type of dramatic act, because it normally follows a political struggle, that attracts press attention and, therefore, confers political benefits. The annual report on management of the executive branch would change this dynamic. Which appointee would wish to see his programs listed at the departmental bottom, particularly if that represented a decline from previous years? And if it became difficult to recruit able persons to administer fundamentally misconceived programs, so much the better. This would add to the possibility of reform.

Although the President would accrue a political burden, he would, in return, gain a good deal of management clout over the bureaucracy. And lately the capacity of any President truly to direct the executive branch has considerably diminished. (It is not to excuse recent presidential abuses of power to recognize that they, in part, stemmed from presidential frustration over inability to direct the bureaucracy.) OMB is one key to any President's power to manage the government; and OMB's influence, as the agency which would provide the President with staff and expertise to perform this function, would necessarily increase. Furthermore, the President need not take all the political heat; when programs are ineffective because of inconsistent or inadequate legislative guidance, he could properly point to prior Congressional responsibility.

Finally, and most important, I believe this proposal, if made law, would induce Americans to think of government programs as competing against each other for limited resources. Annual publication of the least effective programs would provide a rallying point for the generalized constituency for reform. That is not to say that the least effective program in each department should or would be eliminated each year, but the truly worst programs would not escape concentrated attention because, over time, they would be widely seen for what they are. Changes in management or design of others would be encouraged. The sunset laws would have greater promise; Congress would find it considerably more difficult to reauthorize a program which the whole country recognized as ineffective.

If the Republican Party endorses this proposal, will President Carter support it? Of course he will: He is committed to *managing* the government—isn't he?



Nevada Legislature

SIXTIETH SESSION

TO: Assemblyman Wagner

*Tom
Cady*

PLEASE TAKE NOTICE:

The Assembly Government Affairs Committee will
be hearing A.B. 171
at 8:00 A. M. on Feb. 7th 1979.

If you wish to hear the discussion on the above,
or wish to testify in regard to same, please be present
at this meeting.

If you have any questions, please contact me, or
my secretaries, in Room 212, Tel. 885-5773.

Very truly yours,

Joe Dini
JOE DINI, Jr., Assemblyman
Chairman, Govt. Affairs

INCOMPATIBLE ACTIVITIES

In conformance with the law, no employee of the Department of Parole and Probation shall engage in any other employment, enterprise or activity inconsistent or incompatible, or in conflict with the programs of the department. Employment and conduct deemed to fall into such categories shall include, but not be limited to, the following:

1. Employment by any agency, either public or private, for the purposes of guarding prisoners, serving Warrants, citations or similar legal papers, or other forms of law enforcement or investigational work.
2. Employment in any business or activity which takes advantage of the employee's position with the Department of Parole and Probation for personal gain or profit.
3. Employment at any bar, race track, uncontrolled gambling establishment, or which involves operation or participation in gaming in any form or in any nightclub.
4. Employment or participation in any activity of an illegal nature.
5. Any employment or other activity which will prevent the individual from doing his job as an employee of the department in an efficient manner.
6. Employment which will prevent a prompt response to a call to report for duty in an emergency, or when otherwise requested to be present by his Supervisor.
7. Participating as a Specialist to give testimony which may result in a defendant being sentenced to an institution of Nevada State Prison, except in cases where the department is party to the action.
8. Using for private gain, the time, facilities, equipment or supplies of the State.
9. Providing confidential information to persons to whom conveyance of such information has not been authorized.

continue · INCOMPATIBLE ACTIVITIES

10. Serving either as an officer, member of the Board of Directors, or in any capacity for consideration, the interests of any corporation, company, association, partnership, or private business which transacts business with the State for profit when such employee holds a State position or review of control, even though remote, over such business transactions.
11. The employment and activities listed above do not necessarily include all those which may be prohibited. Every employee, before engaging in any outside employment, activity, or enterprise, shall submit a statement to his Supervisor naming the prospective employer, if any, his address and telephone number, and outlining the proposed duties or activities. This shall be in sufficient detail to enable the Chief to determine whether, in his opinion, the proposed activity does not fall in the prohibited class. The Chief shall notify the employee of his findings. All decisions are subject to appeal.

Association with clients, ex-felons, relatives or other known to be involved in criminal activity, shall be governed by the following:

1. An employee shall refrain from associating with, or having business relations with clients, (parolees or probationers), known criminals, or persons of bad or questionable character. This includes relatives of clients, and, under no circumstances, shall the employee accept gifts, gratuities, loans, or unofficial services from such persons.
2. No employee shall accept, directly or indirectly, from any person, firm or corporation, any complimentary tickets, passes, for the purpose of entertainment and/or food.

ALCOHOLIC BEVERAGES, CONDUCT

1. No employee shall drink alcoholic beverages while on duty.
2. Employee must not continuously socialize in bars of poor repute, or other establishments known to cater to, or be popular with, the criminal element, drug users, pimps, prostitutes, etc.

continue - INCOMPATIBLE ACTIVITIES

- 3. No employee shall, at any time, conduct himself or behave in a manner, or be a party to an act which would discredit or tend to impair the good order and discipline of the department.
- 4. No employee shall, for any reason, use threatening, abusive or insulting language, or behave in an insubordinate or disrespectful manner towards any client, superior or another employee.
- 5. No employee shall recommend to any prisoner, or any other person charged with a criminal offense, either directly or indirectly, the employment of any specific person or firm as an Attorney or Bail Bondsman.

ABUSE OF LEAVE PRIVILEGES:

Leave, Annual, Sick and Leave Without Pay rules, as outlined in the State Administrative Manual, are to be strictly followed. Requests for Annual Leave for an extended period (40 hours or more), should be applied for well in advance so as to not conflict with work performance or leave requests of other employees.

NOTE:

Exceptions to employment and association rules may be made by the Chief Parole and Probation Officer. All such exceptions will be made in writing before being recognized as official.

EMPLOYEE SIGNATURE

Subscribed and sworn to before me this _____ day of _____ 19____

Notary Public for Nevada

My commission expires:

8-6-76INCOMPATIBLE ACTIVITIES

In conformance with the law, no employee of the Department of Parole and Probation shall engage in any other employment, enterprise or activity inconsistent or incompatible, or in conflict with the programs of the department. Employment and conduct deemed to fall into such categories shall include, but not be limited to, the following:

1. Employment by any agency, either public or private, for the purposes of guarding prisoners, serving Warrants, citations or similar legal papers, or other forms of law enforcement or investigational work.
2. Employment in any business or activity which takes advantage of the employee's position with the Department of Parole and Probation for personal gain or profit.
3. Employment at any bar, race track, uncontrolled gambling establishment, or which involves operation or participation in gaming in any form or in any nightclub.
4. Employment or participation in any activity of an illegal nature.
5. Any employment or other activity which will prevent the individual from doing his job as an employee of the department in an efficient manner.
6. Employment which will prevent a prompt response to a call to report for duty in an emergency, or when otherwise requested to be present by his Supervisor.
7. Participating as a Specialist to give testimony which may result in a defendant being sentenced to an institution of Nevada State Prison, except in cases where the department is party to the action.
8. Using for private gain, the time, facilities, equipment or supplies of the State.
9. Providing confidential information to persons to whom conveyance of such information has not been authorized.

EXHIBIT

continue - INCOMPATIBLE ACTIVITIES

10. Serving either as an officer, member of the Board of Directors, or in any capacity for consideration, the interests of any corporation, company, association, partnership, or private business which transacts business with the State for profit when such employee holds a State position or review of control, even though remote, over such business transactions.
11. The employment and activities listed above do not necessarily include all those which may be prohibited. Every employee, before engaging in any outside employment, activity, or enterprise, shall submit a statement to his Supervisor naming the prospective employer, if any, his address and telephone number, and outlining the proposed duties or activities. This shall be in sufficient detail to enable the Chief to determine whether, in his opinion, the proposed activity does not fall in the prohibited class. The Chief shall notify the employee of his findings. All decisions are subject to appeal.

Association with clients, ex-felons, relatives or other known to be involved in criminal activity, shall be governed by the following:

1. An employee shall refrain from associating with, or having business relations with clients, (parolees or probationers), known criminals, or persons of bad or questionable character. This includes relatives of clients, and, under no circumstances, shall the employee accept gifts, gratuities, loans, or unofficial services from such persons.
2. No employee shall accept, directly or indirectly, from any person, firm or corporation, any complimentary tickets, passes, for the purpose of entertainment and/or food.

ALCOHOLIC BEVERAGES, CONDUCT

1. No employee shall drink alcoholic beverages while on duty.
2. Employee must not continuously socialize in bars of poor repute, or other establishments known to cater to, or be popular with, the criminal element, drug users, pimps, prostitutes, etc.

EXHIBIT

continue - INCOMPATIBLE ACTIVITIES

- 3. No employee shall, at any time, conduct himself or behave in a manner, or be a party to an act which would discredit or tend to impair the good order and discipline of the department.
- 4. No employee shall, for any reason, use threatening, abusive or insulting language, or behave in an insubordinate or disrespectful manner towards any client, superior or another employee.
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NOTE:

Exceptions to employment and association rules may be made by the Chief Parole and Probation Officer. All such exceptions will be made in writing before being recognized as official.

EMPLOYEE SIGNATURE

Subscribed and sworn to before me this _____ day of _____ 19____

Notary Public for Nevada

My commission expires:

EXHIBIT

INCOMPATIBLE ACTIVITIES

Procedure: 513

Refer Questions to: Dea Kuckenneister

Rehab Div

In compliance with Rule XI of the State Administrative Manual, this Procedure is intended as a guide to supplement existing rules and does not constitute coverage for all the various infractions and violations that could conceivably develop. It is to be used to assist the supervisor in taking appropriate corrective disciplinary action. Determination of a recommended action must be based on the seriousness and facts of each individual incident. Consistent with the Rehabilitation Division's philosophy as a provider of human resource services, supervisors and employees are encouraged to utilize the services available through the Personnel Division's Occupational Assistance Program.

This Division Procedure of incompatible activities and the appropriate cause for disciplinary action, as approved by the Personnel Advisory Commission in August, 1978, is outlined below. This Procedure does not preclude or exempt penalties and prohibitions as mentioned in the State Administrative Manual.

1. Warning - Usually Verbal
2. Reprimand - Written, often referred to as letter of instruction; or special evaluation - Contact Division Personnel Office
 - a. Use of NPD-41 is mandatory
3. Suspension - Contact Division Personnel Office
 - a. Use of NPD-41 is mandatory
4. Demotion - Contact Division Personnel Office
 - a. Use of NPD-41 is mandatory
5. Dismissal - Contact Division Personnel Office
 - a. Use of NPD-41 is mandatory

The extent of disciplinary action is discretionary with the appointing authority and may be any number listed under the offense.

	<u>1st OFFENSE</u>	<u>2nd OFFENSE</u>	<u>3rd OFFENSE</u>
A. FRAUD IN SECURING APPOINTMENT			
1. Willful falsification of application for employment or other personal record with respect to a material point which would have adversely affected selection for appointment	5.....	—.....	—.....
2. Permitting another person to take a portion of a State Civil Service examination for him or her, except when approved due to disability such as blindness	5.....	—.....	—.....
B. PERFORMANCE ON THE JOB			
1. Failure of an employee, who is designated as a supervisor and has supervisory authority, to take corrective disciplinary action where such action is needed	1,2....	2,3....	4,5....
2. Misconduct of supervisor because of prejudice, anger or other unjustifiable reason	1,2,3,4	2,3,4,5	4,5....
3. Failure of employee to maintain performance standards after reasonable period of instruction	1,2,3..	2,3....	4,5....
4. Failure to maintain prescribed records	1,2,3..	2,3,4,5	5.....
5. Willfully or negligently withholding information regarding their job from supervisors or other persons having necessity for said information	1,2,3,4,5	3,4,5..	5.....

6.	Endangering self, fellow employees or public through careless or willful violation of agency policy as contained in performance standards, procedures, and various Federal and state laws, regulations, and guidelines	2,3,4,5	3,4,5..	5.....
7.	Failure to cooperate with other employees and/or supervisors	1,2,3..	2,3,4,5	5.....
8.	Failure to account properly for state or federal funds	2,3,4,5	3,4,5..	5.....
9.	Negligent waste or loss of material, property or equipment	1,2,3..	2,3....	3,4,5..
10.	Willful or negligent destruction of or damage to state property	1,2,3,4,5	3,4,5..	5.....
11.	Unauthorized and willful destruction of state records	2,3,4,5	5.....	—.....
12.	Carelessness, indifference, laxness, and/or inattention to duty	1,2,3..	2,3,4,5	3,4,5..
13.	Soliciting or accepting a bribe	5.....	—.....	—.....
14.	Embezzlement or misappropriation of state funds or of other funds for personal gain which come into the employee's possession by reason of his official position	5.....	—.....	—.....
15.	Willful or negligent falsification of any public record, including sick leave requests forms, travel vouchers, and information in case files	2,3,4,5	5.....	—.....
16.	Willful or deliberate falsification of any public record that involves misuses of state or federal funds, which may not be for personal gain	2,3,4,5	5.....	—.....

17.	Concealment of material facts by willful omission from official records	2,3,4,5	5.....	—.....
18.	Unauthorized taking of property belonging to the state/federal or other employees	2,3,4,5	5.....	—.....
19.	Making personal profit from state transactions	2,3,4,5	5.....	—.....
20.	Deliberate failure to enforce or comply with the law and/or agency policies and regulations	2,3,4,5	5.....	—.....

C. NEGLIGENCE OF, OR INEXCUSABLE ABSENCE FROM THE JOB

1.	Negligence in performing official duties including failure to follow instructions or regulations	1,2,3..	2,3,4,5	3,4,5..
2.	Failure to report to work at specified times and in the prescribed manner	1,2,3..	2,3,4,5	3,5....
3.	Carrying on personal business during working hours	1,2,3..	2,3,4,5	3,5....
4.	Continual or frequent tardiness, or absence	1,2....	2,3....	3,5....
5.	Failure to notify supervisor promptly when unable to report for work	1,2....	2,3....	3,5....
6.	Absence from duty for less than five consecutive working days without permission or without adequate justification. (Unauthorized or unreported absences for five consecutive working days is an automatic resignation from State service.)	1,2,3..	3,4,5..	5.....
7.	Willful absence from duty without leave after having been denied permission to take such leave	3,4,5..	5.....	—.....

8. An employee who is on approved sick leave must be at home convalescing, or at the doctor's, or in a mode of treatment prescribed by a licensed medical practitioner. Exceptions to this policy must receive prior approval from immediate supervisor. 2,3,4,5 5..... —.....

D. RELATIONS WITH SUPERVISORS, FELLOW EMPLOYEES, OR THE PUBLIC

1. Refusal to comply with a reasonable and proper order of instruction from a supervisor 2,3,4,5 3,4,5.. 5.....

2. Threatening, attempting, or doing bodily harm to supervisor, public or fellow employee; using insulting or abusive language to supervisor, public, or fellow employee 2,3,4,5 3,4,5.. 5.....

3. Discourteous treatment of the public or a fellow employee 1,2,3,4,5 2,3,4,5 3,5....

E. USE OF ALCOHOLIC BEVERAGES, NARCOTICS, OR HABIT FORMING DRUGS

1. Inability to perform the duties of his position properly because of having been or being under the influence of liquor, narcotics, drugs or any other controlled substance 1,2,3,4,5 2,3,4,5 5.....

2. Convicted of driving under the influence of intoxicating liquor, narcotics, drugs or any other controlled substance when operating state equipment 2,3,4,5 3,4,5.. 5.....

3. Drinking intoxicating liquor, or taking any other unauthorized controlled substance during working hours 2,3,4,5 3,4,5.. 5.....

F. MISUSE OF STATE PROPERTY

1. Using or authorizing the use of state owned or lease equipment for other than official use	1,2,3..	3,4,5..	5.....
2. Operating state vehicle in negligent manner resulting in damage to the state equipment or other property	1,2,3,4,5	2,3,4,5	5.....
3. Failure to have state equipment properly serviced resulting in damage to the equipment	1,2,3..	2,3,4,5	5.....
4. Operating state equipment without proper authorization or credentials	2,3,4,5	5.....	—.....

G. OTHER ACTS OF MISCONDUCT OR INCOMPATIBILITY

1. Failure to report an accident involving state equipment assigned to an employee	2,3,4,5	3,4,5..	5.....
2. Improper disclosure of confidential information, or theft of confidential information for any purpose	2,3,4,5	5.....	—.....
3. Conviction of any criminal act involving moral turpitude	3,4,5..	5.....	—.....
4. Accepting gifts from any individual, firm, or organization connected with Division business when the employee is responsible for decisions (or for making recommendations for decisions) affecting the activities of the individual, firm or organization	2,3,4,5	3,4,5..	5.....
5. Rendering of services or goods to recipients that is not in accordance with Division manuals	2,3,4,5	3,4,5..	5.....

All permanent, classified employees have the right to file a grievance for any condition arising out of the employer-employee relationship including, but not limited to compensation, working hours, working conditions or the interpretation of any law, regulation or disagreement. An exception to the use of the grievance procedure is that no performance evaluation or written reprimand may be appealed beyond the department head level. All performance evaluations or written reprimands can only be appealed through step 4 of the grievance adjustment procedure.

Refer to Rule XV of the Rules for Personnel Administration (SAM) for the Grievance Adjustment Procedure (copies of this rule are available from your supervisor).

DF:DK:mr

07/18/78