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**Report/Article Title** By Mr. Cranston: S 991. A bill to amend title 38, United States Code, to require regulations providing for the resolution of Veterans' Administration benefits claims based on certain exposures to herbicides containing dioxin, to ionizing radiation from detonations of nuclear devices, and to certain other purposes; to the Committee on Veterans' Affairs.

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if such disclosure is not specifically prohibited by law and if the information is not specifically required by or pursuant to executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

"(2) a disclosure by such an employee or applicant to any civilian employee, nonappropriated fund instrumentality employee, or member of the armed forces designated by law or by the Secretary concerned to receive disclosures described in clause (1), of information which the employee or applicant believes evidences—

"(A) a violation of any law, rule, or regulation; or

"(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

"(c) This section does not apply to an employee in a position excluded from the coverage of this section by the President based upon a determination by the President that the exclusion is necessary and warranted by conditions of good administration.

"(d) The Secretary of Defense shall be responsible for the prevention of actions prohibited by subsection (b) and for the correction of any such actions that are taken. The authority of the Secretary to correct such actions may not be delegated to the Secretary of a military department or to the Assistant Secretary of Defense for Manpower, Reserve Affairs, and Logistics.

"(e) The Secretary of Defense, after consultation with the Director of the Office of Personnel Management and the Special Counsel of the Merit Systems Protection Board, shall prescribe regulations to carry out this section. Such regulations shall include provisions to protect the confidentiality of employees and applicants making disclosures described in clauses (1) and (2) of subsection (b)."

(2) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"1587. Employees of nonappropriated fund instrumentalities."

(b) Section 1587 of such title, as added by subsection (a), shall apply with respect to any conduct prohibited by subsection (b) of such section which occurs after the date of the enactment of this Act.

#### COMPENSATION FOR INJURIES INCURRED IN THE PERFORMANCE OF DUTY BY MEMBERS OF THE CIVIL AIR PATROL

SEC. 803. (a) Section 8141 of title 5, United States Code, is amended—

(1) in subsection (a), by inserting "under 18 years of age" after "Civil Air Patrol Cadet"; and

(2) in subsection (b)(1), by striking out "\$300" and inserting in lieu thereof "the rate of basic pay payable for step 1 of grade GS-9 in the General Schedule under section 5332 of this title".

(b)(1) The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) The amendment made by subsection (a)(1) shall apply only to deaths or injuries occurring on or after the date of the enactment of this Act.

(3) The amendment made by subsection (a)(2) shall apply only to the computation of compensation payable for periods commencing on or after the date of the enactment of this Act.

#### TITLE VII—EFFECTIVE DATE

##### EFFECTIVE DATE

SEC. 701. Except as otherwise provided in this Act, the provisions of this Act and amendments made by this Act shall take

effect on the date of the enactment of this Act or October 1, 1983, whichever is later. ●

By Mr. HEINZ:

S. 990. A bill to extend the Export-Import Bank Act of 1945, as amended; to the Committee on Banking, Housing, and Urban Affairs.

#### EXTENSION OF EXPORT-IMPORT BANK ACT

● Mr. HEINZ. Mr. President, at the request of the administration, I am today introducing the President's proposed extension of the Export-Import Bank Act. The bill consists of only one provision—a 5-year extension of existing law.

In my judgment, this is insufficient, and on March 21 I introduced my own proposal (S. 869) which contains a number of changes in the Bank's charter as well as a 6-year extension of the act. I would refer Senators to my statement of March 21 for details of S. 869. On March 22 and 24 the Subcommittee on International Finance and Monetary Policy conducted hearings on the Bank, and I anticipate we will mark up renewal legislation later this month. ●

By Mr. CRANSTON:

S. 991. A bill to amend title 38, United States Code, to require regulations providing for the resolution of Veterans' Administration benefits claims based on certain exposures to herbicides containing dioxin, to ionizing radiation from detonations of nuclear devices, and to certain other hazardous substances and for other purposes; to the Committee on Veterans' Affairs.

#### ADJUDICATION OF VETERANS' AGENT ORANGE AND RADIATION CLAIMS

Mr. CRANSTON. Mr. President, I am introducing today legislation aimed at improving the resolution by the Veterans' Administration of claims for service-connected disability compensation as a result of a veteran's exposure in service to agent orange, ionizing radiation, or other hazardous substances used for military purposes.

##### SUMMARY OF THE BILL

This legislation will require the Administrator of Veterans' Affairs to issue, through a formal rulemaking process and subject to judicial review, regulations providing guidance for the resolution of VA benefit claims—including claims for compensation and other service-connected benefits—based on a disability resulting from exposure in Vietnam to agent orange or another herbicide containing dioxin, exposure to ionizing radiation from a nuclear detonation, or exposure to certain other hazardous substances.

The regulations would be expressly required—

First, to give full effect to a present title 38 provision, section 354(b), which, as interpreted by the VA, requires the Administrator to "resolve every reasonable doubt in the favor of the veteran."

Second, to contain guidelines, standards, and criteria for resolving the claims involved.

Third, to specify any presumptions regarding exposure and service-connection that the Administrator determines should be applied to the resolution of the claims.

Proposed regulations would be required to be published in the Federal Register and to undergo the public review and comment process established in the Administrative Procedure Act for certain rulemaking processes. This process includes requirements that a public hearing be conducted at which interested parties have the opportunity to present alternatives to the VA-proposed regulation and testimony and other evidence in support of their positions and that the agency make findings and conclusions available and state the basis and reasoning therefor.

The Administrator's actions pursuant to these requirements and, very importantly, the regulations themselves would be subject to judicial review in Federal court. Because the individual veteran's or survivor's claim is not subject to court review—although our bill, S. 636, would correct this inequity—it is particularly appropriate and important that the procedures for deciding these claims be made reviewable. In this way, groups concerned about agent orange and radiation issues would be afforded the opportunity to have their day in court if they were dissatisfied with and had grounds to challenge either the fairness of the administrative process or the adequacy of the evidentiary basis for the regulations.

With regard to the times at which the VA would be required to act, the bill would require—

The publication of proposed dioxin and radiation regulations not later than 120 days after enactment of the bill;

Repetition of the process with respect to the dioxin regulations within 90 days after the submission of each report required with respect to the Public Law 96-151-mandated epidemiological study on agent orange—the first of these reports is due 24 months after OTA approval of the protocol and subsequent reports are due annually thereafter; and

Final regulations within 90 days after the end of each public review and comment period, each of which must be for at least 30 days.

Mr. President, no specific deadlines would be imposed with respect to hazardous substances other than dioxin or radiation. However, resort to court would be available to compel action if the Administrator were to refuse to develop and publish regulations with respect to other substances used for military purposes to which significant numbers of veterans were exposed and as to which the state of available medical and scientific evidence makes it impossible to determine whether their exposure has caused certain diseases.

## PRECEDENT FOR THE LEGISLATION

Mr. President, the time for this legislation clearly has arrived. Many of my colleagues may recall that, in September 1980, the Senate passed somewhat similar legislation with respect only to agent orange that my friend and colleague from Pennsylvania (Mr. HEINZ) and I, together with eight of our colleagues, including the present, very able chairman of the Veterans' Affairs Committee (Mr. SIMPSON) sponsored—unprinted amendment No. 1550 to S. 1188. Thereafter, in 1981, under the chairmanship of the Senator from Wyoming (Mr. SIMPSON), the Veterans' Affairs Committee reported and the Senate passed on June 16, 1981, identical legislation as part of S. 921/H.R. 3499.

The only major distinction with respect to the agent orange issue between the 1980 and 1981 Senate-passed legislation and the bill I am introducing today is that the Administrator, under the proposed bill, would be required to develop regulations relating to the resolution of claims based on exposure to agent orange in advance of the results of the epidemiological study mandated by Public Law 96-151. The requirements once the results of that study become available, would be the same.

## NEED FOR THE LEGISLATION

Mr. President, requiring the development of regulations before study results are available may be viewed as premature. As an earlier point, I would have agreed and I, in fact, did. However, the epidemiological study to determine the health of Vietnam veterans exposed to agent orange was mandated by law in December 1979. Now, nearly 3½ years later, the study still has not been started. Indeed, its protocol has not yet been approved. The Congress should not wait any longer to require the executive branch to make specific determinations—in a publicly accountable, judicially reviewable process—on guidelines to govern resolution of agent orange exposure claims.

I have reached the same conclusion in the area of radiation-exposure claims. Nearly 4 years ago, the VA agreed to develop guidelines for the resolution of these claims. In carrying out that commitment, however, the agency provided no opportunity for public participation. The agency's action was challenged in a lawsuit filed in 1980. The trial court ruled against the agency and the matter is presently before the U.S. Court of Appeals for the District of Columbia Circuit. During the pendency of this litigation, the status of the guidelines has not been clear, and the agency has maintained its opposition to public participation, a position that I find inexplicable. Enactment of the proposed measure would settle this dispute by requiring the VA, with public participation and in a publicly accountable process, to develop guidelines for the

resolution of radiation-exposure claims.

Moreover, this morning's hearing on radiation-exposure issues before the Veterans' Affairs Committee demonstrated to all present, I believe, that the Veterans' Administration has no clear guidance or standards governing, or even practices routinely applied or followed in, the adjudication of radiation-exposure cases. The situation on this point can best be characterized as in a fundamental state of disarray, and clarifying regulations are urgently needed.

I believe this legislation is also an appropriate approach to the difficulties veterans encounter in their claims for disabilities resulting from exposure during military service to certain hazardous substances in connection with military purposes and as to which the state of medical and scientific evidence relating to the effects of exposure is unclear. The legislation, which reflects basic notions of fairness and evenhandedness by providing for similar treatment of all types of claims for service connection based on exposure to those kinds of environmental hazards—whether the hazard is dioxin, radiation, or some other hazard encountered as a result of military action—where a causal relationship between exposure and claimed disabilities cannot be established on the basis of available evidence, has several advantages.

First, the bill, by setting in motion a process that is designed to produce close scrutiny of available evidence regarding the effects of exposure to the various hazards and consideration of guidelines to govern the resolution of claims, would insure that the VA focuses clearly on these issues.

Second, it would make the process of adjudicating veterans' claims for benefits for such exposure an open one and invite public involvement. In cases involving exposure to these hazardous substances—in which causation is difficult to establish and in which the VA, because there is not judicial review of VA decisions, has the final say—the process of developing adjudication guidelines should be carried out in public view and with public participation.

Finally, the bill would transfer from Congress to a more appropriate arena some very technical judgments and analyses that Congress is ill-qualified to make and should undertake to make only after the executive branch has made clear, and clearly inequitable determinations.

## CONCLUSION

In my duties as a member of the Veterans' Affairs Committee over the last 12 years, serving for 4 years as chairman and now as ranking minority member, I have seen the many difficulties which veterans exposed during their service to agent orange and radiation have had. I sympathize greatly with these veterans and their loved ones and the anguish many of them

have endured. Through various efforts—including writing laws to mandate scientific studies and provide them with health care, conducting oversight hearings and other monitoring activities, and assisting with individual cases—I have tried to help these veterans.

I believe that further steps need to be taken in this effort and taken now, and I urge my colleagues to support this legislation to see that that these steps are indeed taken.

Mr. President, I ask unanimous consent that the text of S. 991 be printed in the Record at this point.

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

## S. 991

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Section 354 of title 38, United States Code, is amended—

(1) in subsection (b)—

(A) by striking out all beginning with "In" through "expedition, the" and inserting in lieu thereof "The"; and

(B) by striking out "such service" the first place it occurs and inserting in lieu thereof "a veteran's service on active duty"; and

(2) by adding at the end the following new subsection:

"(C)(1)(A) The regulations required to be prescribed by subparagraph (B) of this paragraph shall—

"(i) establish guidelines, standards, and criteria for the resolution of claims for benefits under laws administered by the Veterans' Administration where the benefit eligibility criteria include a requirement that a death or disability be service connected and the claim of service-connection is based on a veteran's exposure during service on active duty—

"(I) in the Republic of Vietnam during the Vietnam era, to a herbicide containing dioxin,

"(II) in connection with the veteran's participation in the test of a nuclear device or with the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946, to ionizing radiation from the detonation of a nuclear device, or

"(III) to another hazardous substance; and

"(ii) ensure that subsection (b) of this section is given full effect with respect to such claims.

"(B) The Administrator, in accordance with paragraph (2)(A) and (B) of this subsection, shall develop and publish regulations implementing this subsection. Promptly after each occasion on which the Administrator prescribes or amends the substance of any such regulations, the Administrator shall submit to the appropriate committees of the Congress a report containing any recommendations for legislative action, including proposed amendments to section 312 of this title, if any, that the Administrator considers appropriate in light of such guidelines, standards, and criteria.

"(C) Regulations developed and published pursuant to subparagraph (B) of this paragraph shall include specification of any presumptions (including any presumptions regarding exposure and service-connection) to be applied to the resolution of the claims to which the guidelines, standards, and criteria in such regulations apply.

"(3)(A)(i) The Administrator shall develop the regulations required by paragraph (1) of

this subsection through a public review and comment process in accordance with the provisions of sections 553 (b) and (e), 556, and 557 of title 5.

"(H) Not later than one hundred and twenty days after the date of the enactment of this subsection, the Administrator shall develop and publish in the Federal Register, for public review and comment for a period of not less than thirty days, a proposed version of the regulations required by such paragraph for the resolution of claims for service-connection based on exposures specified in subclauses (I) and (II) of subparagraph (A)(i) of such paragraph.

"(B) Not later than ninety days after the end of each such period of public review and comment, the Administrator shall publish in the Federal Register final regulations containing the guidelines, standards, and criteria (together with explanations of the bases for such guidelines, standards, and criteria) for resolving the claims involved.

"(C) The Administrator's compliance with the provisions of, and any regulations prescribed pursuant to, this subsection shall be subject to judicial review in accordance with the provisions of chapter 7 of title 5.

"(3) For the purposes of this subsection, the term 'hazardous substance' means a substance with respect to which the Administrator determines, pursuant to the regulations required by paragraph (1) of this subsection, that—

"(A) a significant number of veterans were exposed (i) while serving on active duty, and (ii) as the result of (I) the use of such substance by a branch of the Armed Forces for military purposes, including training and testing programs, or (II) the action of a hostile force; and

"(B) there is insufficient medical or scientific evidence (i) to determine whether exposure to the substance causes a disease which has resulted in a disability in the cases of a significant number of veterans, or (ii) to determine whether a level (or range of levels) of exposure experienced by significant numbers of veterans is sufficient to cause such disease."

(b) Paragraph (3) of section 307(b) of the Veterans' Health Programs Extension and Improvement Act of 1979 (Public Law 96-151; 93 Stat. 1097), as added by section 401(b)(2) of the Veterans' Health Care, Training, and Small Business Loan Act of 1981 (Public Law 97-72; 95 Stat. 1061), is amended to read as follows:

"(3)(A) Not later than ninety days after the submission of each report under paragraph (2), the Administrator shall, based on the results described in such report and the comments and recommendations included therein and any other available pertinent information, develop and publish in the Federal Register, for public review and comment, a proposed version of the regulations required by paragraph (1) of subsection (c) of section 354 of title 38, United States Code, for the resolution of claims for service-connection based on the exposure specified in subparagraph (B)(i)(I) of such paragraph.

"(B) The Administrator's actions to comply with the provisions of subparagraph (A) shall be subject to the provisions of paragraph (2) of section 354(c) of such title as though such actions were required by such section."

By Mr. CRANSTON:

S. 992. A bill to amend title 38, United States Code, to establish an emergency job retraining and employment program for veterans; to the Committee on Veterans' Affairs.

#### VETERANS EMERGENCY RETRAINING ACT OF 1983

Mr. CRANSTON. Mr. President, I am introducing today, as the ranking minority member of the Committee on Veterans' Affairs, S. 992, the proposed Veterans Emergency Retraining Act of 1983. This measure would amend title 38, United States Code, to establish an emergency job retraining and employment program for veterans.

#### DESCRIPTION OF S. 992: "VERA"

**Eligibility:** The proposed Veterans Emergency Retraining Act—VERA—would focus on the needs of two categories of wartime veterans: those who are long-term unemployed—that is, those who have been out of work for 15 out of 20 weeks preceding application for the program—and veterans who have been laid off or terminated from a job to which they are unlikely to be able to return. These veterans would be entitled to participate in the program established by VERA for up to 12-month; service-connected disabled veterans with disability ratings of 30 percent or more could have that 12 months period extended by an additional 6 months. All veterans who had ever obtained entitlement to GI bill training—under the World War II, Korean conflict, or post-Korea/Vietnam-era GI bill programs—would be eligible for the program.

**Duration:** The program established by VERA would be of a limited duration, similar to the fixed-time extension of the delimiting period of certain Vietnam-era veterans enacted by Public Law 97-72 in 1981—the so-called targeted delimiting date authority. Under VERA, no assistance could be made available on behalf of a veteran for a training program that does not start within 30 months following the month in which VERA is enacted.

**Training programs:** Training programs eligible for approval under VERA would be those in "sustained-demand skill areas"—that is, areas of the labor market determined by the Secretary of Labor to have a high potential for sustained growth or demand. These areas could include, but would not necessarily be limited to, high-technology-related sectors. It should be noted in this regard that many "sustained-demand" job training opportunities might be found in more traditional areas, depending on the locale and particular labor markets. That jobs would not be limited to so-called high tech areas is aptly illustrated by the following excerpt from a March 30, 1983, Wall Street Journal article describing an on-job training program in the Detroit, Mich., area that pays employers half of employee wages during training:

The agency combs the local job market for openings that require the newly learned skills. Michael White got a job maintaining apartments soon after completing a course in building management, and he has already gotten an offer for the type of management job that would restore the income he made as an auto worker.

Most of those who have retrained successfully have found jobs in traditional heart-

land industries working as machinists, welders and pipefitters. By contrast, high-technology jobs are proving elusive. Just four of 25 workers who completed a nine-month robotics course in December have found jobs.

Approvable training programs could be programs conducted by educational institutions under arrangements or agreements with employers as well as training programs, including on-the-job training, conducted by the employer directly. In addition, all programs that are VA-approved for apprenticeship or other on-job training purposes under the current GI bill, chapter 34, would be considered to be approved for this new program.

**Payments:** Under VERA, Mr. President, employers hiring and training eligible veterans in approved training programs would receive quarterly payments of "retraining assistance" on behalf of the veteran. These payments would be made after each 3 months of training was certified and be the lesser of the following amounts: 50 percent of the wages paid to the veteran by the employer or an amount based on an annual rate of \$6,000—or, in the case of a 30-percent or more service-connected disabled veteran, on an annual rate of \$9,000. These payments would be deemed to compensate the employer for the costs of training the veteran and for the reduced productivity of the veteran during the training period.

**Protections:** The criteria for approving training programs under VERA, Mr. President, as set forth in proposed new section 1950(b) of title 38, are designed to protect the integrity of the training while at the same time not to be onerous for potential employers. Protections have been incorporated to avoid "substitution"—that is, an employer creating an artificial vacancy by laying off a regular employee so as to take advantage of the retraining assistance payment—and to help insure that the training leads to a permanent job. Other standard prohibitions on certain types of training for jobs that are seasonal, religious, or political in nature and limitations on receipt of assistance under other programs are included in new sections 1952 and 1953, respectively. Liability for and recovery of overpayments have been provided for in new section 1955.

#### IMPLEMENTATION PROCEDURES

Mr. President, under the proposed VERA, the VA and the Department of Labor would have interrelated responsibilities for implementing the program. The VA would be responsible for the actual payment to employers of the quarterly retraining assistance after each 3 months of training. Together, the Administrator and the ASVE would be required to conduct public information and outreach initiatives to inform veterans and employers, as well as unions, trade associations, and educational institutions of opportunities made available by VERA and to stimulate business, union, and