

**Calendar No. 502**105TH CONGRESS }  
*2d Session* }

SENATE

{ REPORT  
105-269 }FEDERAL ACTIVITIES INVENTORY REFORM  
ACT OF 1998

## R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

together with

ADDITIONAL VIEWS

TO ACCOMPANY

S. 314

TO PROVIDE A PROCESS FOR IDENTIFYING THE FUNCTIONS OF  
THE FEDERAL GOVERNMENT THAT ARE NOT INHERENTLY GOV-  
ERNMENTAL FUNCTIONS, AND FOR OTHER PURPOSES

JULY 28, 1998.—Ordered to be printed

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### FEDERAL ACTIVITIES INVENTORY REFORM ACT OF 1998

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JULY 28, 1998.—Ordered to be printed

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Mr. THOMPSON, from the Committee on Governmental Affairs,  
submitted the following

### REPORT

together with

### ADDITIONAL VIEWS

[To accompany S. 314]

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof  
the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Federal Activities Inventory Reform Act of 1998”.

**SEC. 2. ANNUAL LISTS OF GOVERNMENT ACTIVITIES NOT INHERENTLY GOVERNMENTAL IN NATURE.**

(a) **LISTS REQUIRED.**—Not later than the end of the third quarter of each fiscal year, the head of each executive agency shall submit to the Director of the Office of Management and Budget a list of activities performed by Federal Government sources for the executive agency that, in the judgment of the head of the executive agency, are not inherently governmental functions. The entry for an activity on the list shall include the following:

(1) The fiscal year for which the activity first appeared on a list prepared under this section.

(2) The number of full-time employees (or its equivalent) that are necessary for the performance of the activity by a Federal Government source.

(3) The name of a Federal Government employee responsible for the activity from whom additional information about the activity may be obtained.

(b) **OMB REVIEW AND CONSULTATION.**—The Director of the Office of Management and Budget shall review the executive agency’s list for a fiscal year and consult with the head of the executive agency regarding the content of the final list for that fiscal year.

(c) **PUBLIC AVAILABILITY OF LISTS.**—

(1) **PUBLICATION.**—Upon the completion of the review and consultation regarding a list of an executive agency—

(A) the head of the executive agency shall promptly transmit a copy of the list to Congress and make the list available to the public; and

(B) the Director of the Office of Management and Budget shall promptly publish in the Federal Register a notice that the list is available to the public.

(2) CHANGES.—If the list changes after the publication of the notice as a result of the resolution of a challenge under section 3, the head of the executive agency shall promptly—

(A) make each such change available to the public and transmit a copy of the change to Congress; and

(B) publish in the Federal Register a notice that the change is available to the public.

(d) COMPETITION REQUIRED.—Within a reasonable time after the date on which a notice of the public availability of a list is published under subsection (c), the head of the executive agency concerned shall review the activities on the list. Each time that the head of the executive agency considers contracting with a private sector source for the performance of such an activity, the head of the executive agency shall use a competitive process to select the source (except as may otherwise be provided in a law other than this Act, an Executive order, regulations, or any Executive branch circular setting forth requirements or guidance that is issued by competent executive authority). The Director of the Office of Management and Budget shall issue guidance for the administration of this subsection.

(e) REALISTIC AND FAIR COST COMPARISONS.—For the purpose of determining whether to contract with a source in the private sector for the performance of an executive agency activity on the list on the basis of a comparison of the costs of procuring services from such a source with the costs of performing that activity by the executive agency, the head of the executive agency shall ensure that all costs (including the costs of quality assurance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs) are considered and that the costs considered are realistic and fair.

### SEC. 3. CHALLENGES TO THE LIST.

(a) CHALLENGE AUTHORIZED.—An interested party may submit to an executive agency a challenge of an omission of a particular activity from, or an inclusion of a particular activity on, a list for which a notice of public availability has been published under section 2.

(b) INTERESTED PARTY DEFINED.—For the purposes of this section, the term “interested party”, with respect to an activity referred to in subsection (a), means the following:

(1) A private sector source that—

(A) is an actual or prospective offeror for any contract, or other form of agreement, to perform the activity; and

(B) has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source.

(2) A representative of any business or professional association that includes within its membership private sector sources referred to in paragraph (1).

(3) An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity.

(4) The head of any labor organization referred to in section 7103(a)(4) of title 5, United States Code, that includes within its membership officers or employees of an organization referred to in paragraph (3).

(c) TIME FOR SUBMISSION.—A challenge to a list shall be submitted to the executive agency concerned within 30 days after the publication of the notice of the public availability of the list under section 2.

(d) INITIAL DECISION.—Within 28 days after an executive agency receives a challenge, an official designated by the head of the executive agency shall—

(1) decide the challenge; and

(2) transmit to the party submitting the challenge a written notification of the decision together with a discussion of the rationale for the decision and an explanation of the party’s right to appeal under subsection (e).

(e) APPEAL.—

(1) AUTHORIZATION OF APPEAL.—An interested party may appeal an adverse decision of the official to the head of the executive agency within 10 days after receiving a notification of the decision under subsection (d).

(2) DECISION ON APPEAL.—Within 10 days after the head of an executive agency receives an appeal of a decision under paragraph (1), the head of the execu-

tive agency shall decide the appeal and transmit to the party submitting the appeal a written notification of the decision together with a discussion of the rationale for the decision.

**SEC. 4. APPLICABILITY.**

(a) EXECUTIVE AGENCIES COVERED.—Except as provided in subsection (b), this Act applies to the following executive agencies:

(1) EXECUTIVE DEPARTMENT.—An executive department named in section 101 of title 5, United States Code.

(2) MILITARY DEPARTMENT.—A military department named in section 102 of title 5, United States Code.

(3) INDEPENDENT ESTABLISHMENT.—An independent establishment, as defined in section 104 of title 5, United States Code.

(b) EXCEPTIONS.—This Act does not apply to or with respect to the following:

(1) GENERAL ACCOUNTING OFFICE.—The General Accounting Office.

(2) GOVERNMENT CORPORATION.—A Government corporation or a Government controlled corporation, as those terms are defined in section 103 of title 5, United States Code.

(3) NONAPPROPRIATED FUNDS INSTRUMENTALITY.—A part of a department or agency if all of the employees of that part of the department or agency are employees referred to in section 2105(c) of title 5, United States Code.

(4) CERTAIN DEPOT-LEVEL MAINTENANCE AND REPAIR.—Depot-level maintenance and repair of the Department of Defense (as defined in section 2460 of title 10, United States Code).

**SEC. 5. DEFINITIONS.**

In this Act:

(1) FEDERAL GOVERNMENT SOURCE.—The term “Federal Government source”, with respect to performance of an activity, means any organization within an executive agency that uses Federal Government employees to perform the activity.

(2) INHERENTLY GOVERNMENTAL FUNCTION.—

(A) DEFINITION.—The term “inherently governmental function” means a function that is so intimately related to the public interest as to require performance by Federal Government employees.

(B) FUNCTIONS INCLUDED.—The term includes activities that require either the exercise of discretion in applying Federal Government authority or the making of value judgments in making decisions for the Federal Government, including judgments relating to monetary transactions and entitlements. An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as—

(i) to bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(ii) to determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(iii) to significantly affect the life, liberty, or property of private persons;

(iv) to commission, appoint, direct, or control officers or employees of the United States; or

(v) to exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

(C) FUNCTIONS EXCLUDED.—The term does not normally include—

(i) gathering information for or providing advice, opinions, recommendations, or ideas to Federal Government officials; or

(ii) any function that is primarily ministerial and internal in nature (such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services).

**SEC. 6. EFFECTIVE DATE.**

This Act shall take effect on October 1, 1998.

Amend the title so as to read: “A bill to provide a process for identifying the functions of the Federal Government that are not inherently governmental functions, and for other purposes.”.

### I. PURPOSE

The purpose of S. 314, the Federal Activities Inventory Reform Act of 1998, is to provide a process for executive agencies to identify activities that are not inherently governmental functions.

### II. BACKGROUND

The Office of Management and Budget Circular A-76 establishes administrative policy regarding the performance of activities that are not inherently governmental functions and sets forth procedures for determining whether such activities should be performed under contract with private sector sources or in-house using government facilities and personnel. The policy embodied in OMB Circular A-76, that the Federal government will rely on the private sector for goods and services that are not inherently governmental, is more than 40-years old. This policy first was promulgated through Bureau of the Budget Bulletins in 1955, 1957 and 1960. OMB Circular A-76 was issued in 1966 and revised in 1967, 1979 and 1983. In 1996, the Supplemental handbook to the circular was revised.

However, there continues to be activities which are not inherently governmental that the government performs for itself. The purpose of this legislation is to establish a process to evaluate those activities that remain in-house. This legislation does not affect the current Federal procurement system nor does it impair the ability of agencies to contract with the private sector for needed goods and services under that system.

Further, S. 314 is the result of a long and contentious debate, and all facets of the debate were considered in the development of this legislation. However, enactment of S. 314 represents only the first step. Its full implementation and vigorous congressional oversight are important next steps.

### III. LEGISLATIVE HISTORY

S. 314, the Freedom From Government Competition Act of 1997, was introduced on February 12, 1997 by Senator Craig Thomas (for himself and Senators Brownback, Hagel, Enzi and Kyl). Senators Burns, Shelby, Grams, Mack, Cochran, Hutchinson, Faircloth, Helms, Allard, Wyden and Abraham became additional co-sponsors. S. 314 was referred to the Committee on Governmental Affairs and subsequently was referred to the Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia.

#### *Hearings*

On June 18, 1997, the Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia held a hearing on S. 314 to investigate the opportunities for greater competitive contracting within the Federal government as well as other privatization projects at the national level. The following witnesses presented testimony on S. 314: The Honorable Craig Thomas, U.S. Senator from Wyoming; the Honorable John J. Duncan, Jr. U.S. Representative from Tennessee; the Honorable John A. Koskinen, Deputy Director of the Office of Management and Budg-

et; Mr. Samuel D. Kleinman, Director of the Center for Naval Analysis; Captain Burton Streicher, CEC, U.S. Navy, Director of Navy Outsourcing Support Office; Mr. Charles S. Davis III, of Chamberlain, Davis, Rutan and Volk, and former Associate Administrator for Operations, General Services Administration; Mr. L. Nye Stevens, Director of Federal Management and Workforce Issues, General Government Division, U.S. General Account Office; Mr. John Sturdivant, National President of the American Federation of Government Employees, AFL-CIO.

Senator Thomas emphasized that government ought to be as small and lean and efficient as possible. He stated that it ought to take advantage of private sector expertise whenever that is appropriate. He summarized that S. 314 would require agencies to identify those areas that are commercial in nature as options for contracting; and then, through a fair process, the best provider, either government or private industry, would be selected. Senator Thomas stated that the process currently is delineated in OMB Circular A-76, but unfortunately the circular is routinely ignored by the executive agencies.

Representative John Duncan of Tennessee, who introduced companion legislation (H.R. 716) in the House, testified CBO currently estimates that 1.4 million Federal employees perform activities that are commercial in nature. Congressman Duncan stated that, under the bill, if it is established that these commercial services can be provided in a more efficient and cost effective manner from private industry, the agency would be required to compete the activity.

Mr. Koskinen testified that any legislation needs to be viewed against the ongoing reinvention efforts. He stated that his concern with S. 314 was that it mandates a particular approach rather than letting agencies examine their contract mix to make the best management decision. He also expressed the concern that S. 314 will result in a significant level of litigation.

Mr. Kleinman testified that, between 1979 and 1990, the Navy competed 25,000 positions—80 percent civilian and 20 percent military. He stated that, overall, the savings were 30 percent, and the public sector won half of the competitions. He said when the in-house team won, there were 20 percent savings, and when the private firm won, savings were 40 percent. Mr. Kleinman pointed out that the in-house savings seemed low because when no bidder produced savings, the competition was decided in favor of the in-house team, and these “no-saving competitions” are included in the in-house average. He stressed that competitions produce the best value for the government. Captain Streicher also shared his experience in conducting OMB Circular A-76 competition studies within the Navy.

Mr. Davis testified that the private sector is utilizing outsourcing more and more and cited the automobile industry as an example. He said the reason for private sector outsourcing is not only for cost savings but a result of becoming more mission oriented. He recommended that, for government, outsourcing and competition should not be undertaken only because of cost effectiveness, but because it allows government executives to focus their attention on the mission and not be distracted with trying to manage all parts

of the process. Mr. Davis noted that GSA achieved great savings and efficiencies utilizing OMB's A-76 process.

Mr. Stevens testified that incorporating best value criteria substantially had improved the bill. He stated that the governments visited by GAO indicated that there was a need to establish a dedicated organizational and analytical structure to carry the privatization initiative, and S. 314 addressed this. He expressed that greater monitoring and oversight of the contracting process will be necessary as a result of contracting out.

Mr. John Sturdivant expressed his strong support of OMB Circular A-76 and contended that the revisions made to A-76 make it a fair process. He also testified that the unions must be part of any competition process. Mr. Sturdivant emphasized that S. 314 is not needed because it is based on the notion that work currently performed by government personnel can be provided more cheaply through outsourcing. He stated that this is false. Mr. Sturdivant said he is committed to work with the Subcommittee to address his concerns.

On March 24, 1998, the Subcommittee held a joint hearing with the House Government Reform and Oversight Subcommittee on Government Management, Information, and Technology to focus on the re-draft of S. 314, also known as the Fair Competition Act. The bill was re-drafted as a result of the testimony provided at the previous hearing. The following witnesses appeared to present testimony on the re-draft of S. 314: The Honorable Craig Thomas, U.S. Senator from Wyoming; the Honorable John Duncan, U.S. Representative from Tennessee; the Honorable G. Edward Deseve, Acting Deputy Director for Management of the U.S. Office of Management and Budget; Mr. Skip Stitt, former Deputy Mayor of the City of Indianapolis; Mr. Bryan Logan, Chief Executive Officer of EarthData International on behalf of the Management Association for Private Photogrammetric Surveyors; Mr. Lawrence Trammell, Corporate Vice president and General Manager of Science Applications International Corporation on behalf of the Coalition for Taxpayer Value; Mr. Douglas K. Stevens, Jr., partner of Information Technology Services Group, Grant Thornton, LLP, representing the U.S. Chamber of Commerce; Dr. Steve Kelman, Weatherhead Professor of Public Management of Harvard University; Mr. Robert Tobias, National President of the National Treasury Employees Union; Mr. Bobby Harnage, President of the American Federation of Government Employees; and Mr. Michael Styles, National President of the Federal Managers Association.

Senator Thomas testified about the need for legislation because current policy, also known as OMB Circular A-76, routinely is ignored. He stressed that the legislation was re-drafted significantly based on input from OMB, GAO, private industry and labor unions to establish a simple and fair competitive process. Finally, Senator Thomas expressed his commitment to working with all interested parties on the legislation.

Congressman Duncan reiterated the need for a statutory requirement for an inventory of noninherently governmental functions in the Federal government and a level playing field for competition. He also expressed his concern that agencies are ignoring the current OMB A-76 guidelines.

Mr. DeSeve outlined OMB's fundamental principles that he hoped would be included in the final product of S. 314 and testified that the re-draft did not address these principles. In his testimony, Mr. DeSeve listed OMB's principles as follows:

1. The Administration's policy is to promote competition to achieve the best deal for the taxpayer -not simply to outsource.
2. Legislation must not increase the level of judicial involvement in the government's management decision as to whether or not to outsource.
3. Current guidance to promote competition is in place.
4. The complexities of public-public and public-private competitions must be reflected in any legislation.
5. Legislation needs to be fair and equitable to all interested parties.
6. Outsourcing must be viewed in the context of the larger reinvention effort.
7. Legislation must not require the head of each agency to undertake competition in accordance with a schedule mandated in law.

Mr. Stitt expressed the support of the City of Indianapolis for the focus of the S. 314 re-draft. He emphasized that, in Indianapolis, competition is the most powerful and productive tool in improving government services for citizens. Mr. Stitt also stressed the significant role strong leadership and employee participation plays in pursuing opportunities to improve government services.

Dr. Kelman testified about the importance of looking at outsourcing as an issue of good management and not as an ideological issue. In addition, he suggested that good management practice in a government agency or private business is to focus on the core competency as an organization. The non-core responsibilities in an agency should be done by other organizations which have a core responsibility in that area. He added his support for allowing Federal workers to compete under the re-draft of S. 314, but expressed the need to include proper accounting for indirect costs, as well as past performance. Finally, he testified that every effort should be made to hold Federal employees harmless in the transportation to outsource.

Industry representatives, including Mr. Logan, Mr. Trammel, and Mr. Stevens, testified that the current competition policy of OMB Circular A-76 does not work and that the re-draft of S. 314 addresses this issue. Specifically, they added their support for a list of non-inherently governmental activities performed by the Federal government. They expressed, however, some concern about the public-private competition provisions in the re-draft.

Federal employee representatives, including Mr. Tobias, Mr. Harnage, and Mr. Styles, objected to the re-draft of S. 314 and expressed their specific concerns regarding the bill. A suggestion was made to require agencies to use a competitive process when a function is reviewed for outsourcing. They also expressed concern with prohibiting the conversion of contracted functions to in-house performance. Finally, they recommended that cost comparisons should be done for all service contracting.

*Committee action*

On July 15, 1998, the Subcommittee on Government Management, Restructuring, and the District of Columbia returned S. 314 to the full Committee on Governmental Affairs for further action. The Committee considered a substitute amendment to S. 314 offered by Chairman Thompson at a business meeting on July 15, 1998. Chairman Thompson's substitute amendment represented an agreement reached among members of the Committee. The amendment requires Federal agencies to prepare a list of activities that are not inherently governmental functions that are being performed by Federal employees, submit that list to OMB for review, and make the list publicly available. It also establishes an "appeals" process within each agency to challenge what is on the list or what is not included on the list. It also creates a statutory definition—identical to current regulation—for what is an "inherently governmental function" that must be performed by the government and not the private sector.

The Committee passed the Chairman's substitute amendment by voice vote and voted to report it to the full Senate. Senators voting and present were: Thompson, Stevens, Collins, Domenici, Nickles, Levin, Lieberman, Akaka, and Cleland. Senators Roth, Brownback, and Cochran indicated their "yea" by proxy.

## IV. SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

This section states the short title of the bill.

*Section 2. Annual publication of lists of Government activities not inherently governmental in nature*

*Lists Required.*—This section would require, on an annual basis, an agency to submit to OMB a list of activities that, in the judgment of the agency head, are not inherently governmental and are performed by Federal employees. After consultation with the review by OMB, OMB would make the list publicly available and publish a notice of that availability in the Federal Register. The section also would require the list to be transmitted to Congress and updated whenever there are changes.

*Competition Required.*—Further, the section would require an agency, within a reasonable time, to review each activity on the list and, when competing activities, to use a competitive process to select the source to perform the activity. It is the Committee's expectation that OMB will work with Federal agencies to ensure that they proceed in a reasonable time frame with a competitive process for activities that are appropriate for competition. The Committee believes that there are many opportunities for competition and expects agencies to prioritize functions that are most likely to have a high payback from such competition. The Committee anticipates that OMB will review agency plans and schedules for competition under this section to ensure that such plans and schedules are reasonable and conform with Administration policy and with the requirements of this Act.

*Section 3. Challenges to the list*

Subsection (a) of this section would provide authority for an interested party to challenge a particular activity omitted from or included on the list of activities which are not inherently governmental. Subsection (b) would define an interested party. Subsection (c) would provide that a challenge must be submitted to the agency within 30 days after the list has been published.

Subsection (d) would require an agency to act within 28 days after receiving such a challenge and to inform the challenger of its decision and its rationale for the decision. Subsection (e) would authorize an appeal to the head of the agency for an interested party receiving an adverse decision.

The Committee intends for any challenges to the inventory list to be resolved solely at the agency level by the agency.

*Section 4. Applicability*

This section would provide the applicability of this Act to executive departments, military departments and independent agencies. Further, the section would specify that this Act not apply to government corporations, the General Accounting Office, and non-appropriated funds instrumentalities and would make explicit that depot-level activities of the Department of Defense are not affected in any respect by this Act.

*Section 5. Definitions*

This section would define:

(1) "Federal Government source" as an organization within an agency using Federal government employees. It is the Committee's intent to encompass Federal employees who are responsible for the technical execution of an activity or the preparation and delivery of the required goods or services. It is not the intent of the Committee to encompass in this definition Federal employees who are responsible for administrative, financial or program management oversight of a particular activity.

(2) "depot-level maintenance and repair" as it is defined in 10 U.S.C. 2460.

(3) "inherently Governmental function" as it currently is defined in FAR Part 7. The FAR currently includes a nonexclusive list of examples of functions considered to be inherently governmental or which are treated as such and a nonexclusive list of examples of functions generally not considered to be inherently governmental functions. It is the Committee's intent that both these lists be included as part of the definition of inherently governmental function in the implementing regulations for this Act.

*Section 6. Effective date*

This section would provide for an effective date of October 1, 1998.

V. REGULATORY IMPACT STATEMENT

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate "the

regulatory impact which would be incurred in carrying out the bill.”

The enactment of this legislation would not have a significant regulatory impact on the public, nor would it constitute an undue regulatory burden on any government agency.

VI. CBO COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 23, 1998.*

Hon. FRED D. THOMPSON,  
*Chairman, Committee on Governmental Affairs,  
U.S. Senate, Washington, DC*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 314, the Federal Activities Inventory Reform Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

*S. 314—Federal Activities Inventory Reform Act of 1998*

S. 314 would require federal agencies to identify and list agency activities that could be performed by the private sector. The bill would require that the lists be made available to the public for inspection, and it would allow private-sector entities, agency employees and certain labor organizations to challenge the lists. CBO estimates that the enacting S. 314 would result in no significant annual cost to the federal government. Under OMB Circular No. A-76, agencies are already required to maintain and annually update a baseline inventory of all in-house activities that could be performed by the private sector. In addition the circular requires them to make the lists available to the public upon request. This S. 314 would largely codify current administrative policy.

Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. In addition, S. 314 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, and tribal governments.

The CBO contact for this estimate is John R. Righter. The estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

## VII. ADDITIONAL VIEWS

S. 314, now known as the Federal Activities Inventory Act of 1998, is legislation that both the Federal government and private industry in America have needed for a long time. Put simply, this bill would require agencies to assemble a list of noninherently governmental—or commercial—functions performed in-house and subject some of them to competition.

There is a systems failure within the Federal agencies using the current competition process, also known as Office of Management and Budget (OMB) Circular A-76. When the Senate Oversight Subcommittee on Government Management, Restructuring, and the District of Columbia held two hearings on S. 314, witnesses from all sides of the issue testified about how Federal agencies ignore the competition process set forth by OMB A-76. The Subcommittee also held a third hearing focusing on this issue and why the OMB A-76 is not working.

When J. Christopher Mihm, Associate Director of Federal Management and Workforce Issues, General Government Division for the General Accounting Office testified before the Subcommittee on June 4, 1998, he explained that OMB A-76, when followed, has had a proven success record in increasing efficiency and producing savings. However, its use does not appear to be a high priority within OMB or Federal agencies as illustrated in the attached chart. As a result, agencies such as the Departments of Education, Housing and Urban Development, and Justice have ignored the requirements under OMB A-76 for the last 11 years. These agencies have not studied any potential commercial activity in their agency in that time. In addition, Mr. Mihm testified that OMB has not provided the leadership needed for a successful competition policy.

At the same hearing, Mr. G. Edward DeSeve, Acting Deputy Director for Management of the U.S. Office of Management and Budget expressed OMB's commitment to work with Federal agencies and explained OMB's recent call to agencies for an updated commercial inventory. He also acknowledged the inaccuracies in the agencies' most recent A-76 inventories of commercial functions.

S. 314, as passed by the Senate Governmental Affairs Committee, addresses some of the flaws that both Mr. Mihm and Mr. DeSeve included in their testimony. First, Federal agencies will be required to make available to the public a list of noninherently governmental activities performed by the in-house. Second, the bill includes a process within each agency that would allow all interested parties to challenge items which are included or not included on the list. Third, under this legislation, OMB must take an active leadership role in implementing the requirements of this bill.

I am concerned, however, that S. 314 as reported by the Senate Governmental Affairs Committee does not fully address whether the activities on the list should be subject to competition. Through-

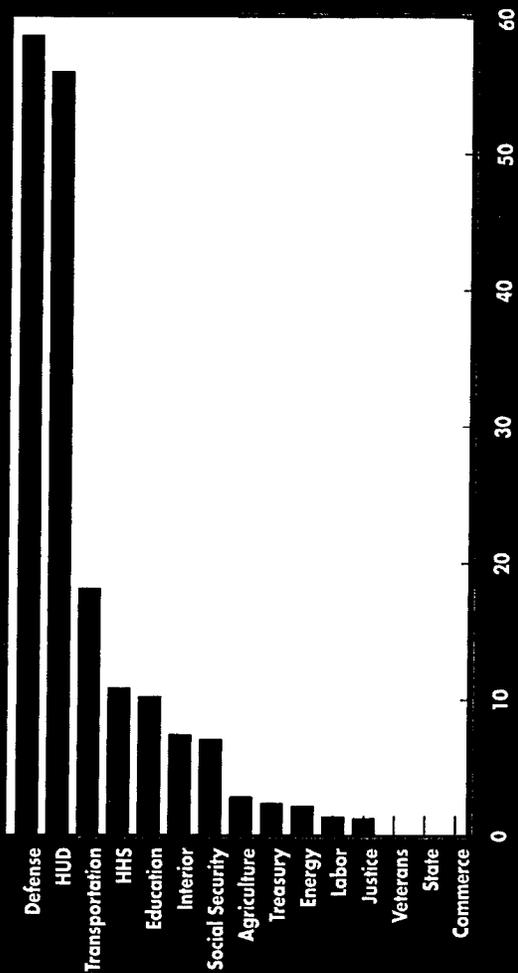
out the hearings on this bill, witnesses from all sides on this issue repeated the need for a level playing field in any competition policy of commercial activities performed by the Federal government. S. 314, however, requires a competition on commercial activities only when an agency considers contracting with the private sector. In other words, like OMB A-76, an agency has the option to ignore the competition policy under S. 314 by simply refusing to consider outsourcing a commercial function. I consider this bill a first step toward ensuring that commercial activities performed by the government will be competed in a timely manner. The original intent of this legislation was to create a fair competition process but this provision maintains one of the fundamental flaws of OMB A-76. It is my hope that agencies, in consultation with OMB, will consider contracting with the private sector with any commercial activity which meets the criteria set forth in the bill.

As chairman of the Senate Oversight Subcommittee on Government Management, Restructuring, and the District of Columbia, I am committed to having thorough Congressional oversight on the implementation of this bill. I congratulate the sponsor of this legislation, Senator Craig Thomas, for bringing everyone together to reach an agreement with all parties involved. I look forward to continue working with him and my colleagues on the Committee and Subcommittee in our oversight efforts.

SAM BROWNBACK.

# Agencies Ignore Potential Cost Savings of Competition

Percentage of FTEs Performing Commercial Activities



VIII. CHANGES TO EXISTING LAW

There are no modifications of existing law.

