

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20246

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DRAFT
ADVANCE
TO OMB 11/24,

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Honorable Thomas P. O'Neill
Speaker of the House of
Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed is a draft bill "to amend section 106 of the Act of October 15, 1977, as amended, concerning health care in the Marshall Islands, and for other purposes."

We recommend that the bill be introduced and enacted.

The draft bill results from the nuclear testing program conducted by the United States in the Marshall Islands, Trust Territory of the Pacific Islands, from 1946 to 1958. Atmospheric tests were then performed in the Marshalls, 42 at the Enewetak Atoll and 25 at the Bikini Atoll, with consequences that have become well-known:

-- The Bikini people who were moved off their island in 1946 cannot now be permitted to return, because it has been concluded that Bikini Island remains unsafe for human habitation;

--The Enewetak people, as a result of a major rehabilitation program recently completed by the United States, are now able to return and reside on the southern islands of Enewetak atoll;

--The people of Rongelap and Utirik, who were subject to a particularly serious and unexpected exposure that occurred on March 1, 1954, have received some monetary compensation from the United States and are receiving continued medical care provided by the United States.

Public Law 96-205 provides, in section 102, for a program of medical care and treatment for such people of the Marshalls "as may be found to be or to have been exposed to radiation from the nuclear weapons testing program." That statute directed the Secretary of the Interior to submit to the Congress by January 1, 1981, a plan for doing so. The former Secretary of the Interior submitted on January 7, 1981, a preliminary report on the subject. He acknowledged that the preliminary report did not constitute the "plan" contemplated by the statute, but he described some of the difficulties created by the statute and encountered by the interested Federal agencies and by the interested Marshallese people as they worked with it. Chief among those difficulties was and is the uncertainty as to who was intended by the Congress to be the beneficiaries of the special medical program.

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Section 1 of the proposed bill is intended to eliminate those difficulties. The pertinent section would be amended to achieve the following principal results:

1. Geographical Coverage. Section 102 as it stands has received from the interested parties and Federal agencies a variety of interpretations. One non-Federal party contends that the statute and the foreseen program of comprehensive medical care must extend to all of the people of the Marshall Islands, on the ground that all islands and atolls in the Marshall Islands have received at least some radioactive fallout as a result of the nuclear testing program. It seems to us probable that the Congress did not intend this result. The bulk of the Marshalls sustained no fallout exceeding that experienced by the rest of the world's population.

The report submitted to the Congress on January 7, 1981, indicates that Interior's contractor for the medical plan concluded that a program covering all of the Marshalls would cost \$10.9 million the first year, and \$77 million for the first five-year period. In addition to this large expense, such a program would, further, raise fundamental questions of fairness. It would seem inequitable for the United States to provide full medical care for all of the people of the Marshalls, most of whom have suffered from no more than the same fallout as have the people elsewhere in the Trust Territory as well as elsewhere throughout the world, and not provide the same program for other entities of the Trust Territory, i.e., the Federated States of Micronesia and the Republic of Palau. Furthermore, had Congress intended application to all of the Marshalls, it could have easily and clearly said so in the statute.

A further difficulty with respect to geographic coverage in section 102 arises from the statute's reference to "other atolls." The statute states that the beneficiaries of the program are to be "the people of the atolls of Bikini, Enewetak, Rongelap, and Utirik and...the people of such other atolls as may be found to be or to have been exposed to radiation from the nuclear weapons testing program." The "other atolls" phrase was added to give the administering agency flexibility to expand the program, in the event that it is learned that other atolls were also affected by the testing program.

Determining which "other atolls," if any, have been affected by exposure to radiation from the testing program would be an extraordinarily complex task. It could not be accomplished without the expenditure of many millions of dollars, nor, given the uncertainties that continue to surround this mysterious subject, could it be accomplished to the satisfaction of all of the legitimately interested people. In order to develop and apply rational standards for making such determinations, extensive scientific studies would be necessary so as to establish the relationship between health effects and radiation exposure. These standards would then have to be applied to each of the "other atolls" in the Marshalls, a task complicated by the fact that radiation exposure occurred decades ago. Thus, the necessary cost of making rational determinations as to what other atolls should be included in the program would be disproportionate to

the size of the program and to the number of people potentially benefitted. The proposed bill would ease the implementation of the program and substantially reduce its cost by limiting the program to the people and atolls specifically identified in it.

Section 1 of the bill meets the foregoing problems by stating precisely who the beneficiaries of the legislation would be at this time:

- (a) the residents of Enewetak, Rongelap, and Utirik who are actually living on the atolls;
- (b) the residents of Kili (where about 600 of the 900 Bikinians now live) who are actually living on the island;
- (c) the residents of Ujelang (where about 90 of the 600 Enewetak people now live, with almost all of the remaining Enewetakese living on Enewetak Atoll) who are actually living on the atoll; and
- (c) the 174 residents of Rongelap and Utirik on March 1, 1954, regardless of where they now live, so long as it is within the Marshall Islands.

Those in the first three categories would receive medical care and treatment through fiscal year 2002; those in the last category, people who were on Rongelap and Utirik on March 1, 1954, would receive medical care and treatment for life.

Lawyers for the interested Marshallese groups have contended that section 102 as it now stands should be construed to apply to the "peoples" of the atolls, regardless of where in the Marshalls they now reside, given the meaning customarily accorded to that term in Marshallese and Pacific Islands usage. If that were done, a further problem of large dimensions arises: many of the "peoples" of Bikini, Rongelap, and Utirik, and to a limited extent of Enewetak, have migrated to other atolls and islands of the Marshalls. They currently live on at least 50% of the atolls and islands of the Marshalls -- which has 26 atolls and hundreds of islands. On most such islands or atolls they live among people who were not substantially affected by the testing program.

There are ethical and practical problems that arise in any program that provides one kind of medical care for one individual of one group (e.g., the nuclear-affected people), while providing a different level of medical care to all others of the community. For that reason, Interior's contractor devised an alternative plan that would provide medical care for the peoples of the four named atolls, wherever they now reside in the Marshalls. That plan also calls for providing the same medical care for other residents on those atolls or islands. That program was estimated to cost almost as much as the program for all of the Marshalls, i.e., \$10.6 million for the first year (compared to \$10.9 million), and \$75.6 million for the first five years (compared to \$77 million).

The proposed bill avoids the foregoing results. It generally applies not to "peoples" but to current residents of particular atolls and islands, thereby permitting the program to be confined to a limited number of named islands. The exception is the people who lived on Rongelap and Utirik on March 1, 1954, who, in our view, should be permitted to benefit from the program regardless of where they now reside, so long as it is in the Marshalls. It is these two groups, i.e., Rongelap and Utirik residents on that 1954 date, who have

sustained the only known adverse medical effect up to this time. We intend that the phrase "such people as resided on Rongelap and Utirik on March 1, 1954" to include those then in utero. The restriction to residence in the Marshalls is a practical one. We know of no Rongelapese or Utirikese permanently residing beyond the Marshalls, but if any chose to do so, we believe it would be almost impossible as a practical matter to extend the program to them. The Secretary of the Interior would provide an identification system that would permit the people of Rongelap and Utirik to receive the special medical care while within the Marshalls but away from their home islands.

2. Medical conditions covered. Section 102 currently requires that the program provide medical care "for any injury, illness, or condition which may be the result directly or indirectly of such nuclear weapons testing program." While there is no unanimity on the point, most of the advice received by the Interior Department is that it is usually impossible to know whether a given injury results from the testing program or from some other cause. Moreover, even if cause could be established, there remains the ethical and practical problem referred to above: can or should a doctor refuse to treat an illness, when he is otherwise equipped to do so, if he concludes that it is not nuclear-related?

Our conclusion, reflected in section 1 of the proposed bill, is that the distinction should not be attempted. Accordingly, the bill provides for medical care and treatment to meet any health problem, not just nuclear-related problems.

3. "Integrated". Section 102 requires that the health program be "an integrated, comprehensive health care program." We construe the term to mean that the special health care program contemplated would be "integrated" to the maximum extent feasible with the programs provided elsewhere in the Marshall Islands Government. That construction would continue under the proposed bill. As an example, treatment of a Rongelapese with a broken arm could be provided at local medical facilities, for example at the Majuro Hospital, which is and would remain the responsibility of the Marshall Islands Government, but the cost of the treatment would be met by the United States.

* * *

We recognize that if our proposed bill is enacted, the benefits of the special medical program, as visualized by the law, would be confined to those explicitly named in it. We also recognize, however, that there have been contentions from the Government of the Marshall Islands and others that radiation effects have been experienced by Marshallese people not associated with the four atolls specified in the current law. Allegations have been made that there have been thyroid illnesses, birth abnormalities, and other medical irregularities on certain islands and atolls -- particularly Likiep -- that may be the result of the testing program. Although the Department of Energy has been willing to perform studies on Likiep, it has been unable to outline a study program that is satisfactory to the Marshall Islands Government, and Likiep and its people are thus far unexamined.

It is the intention of the Executive Branch, however, to investigate any area of the Marshalls about which genuine questions are raised concerning radiation exposure; and accordingly Likiep, and other atolls or islands similarly in question, will be explored. If those explorations result in conclusions that the people of those areas ought also to be among the beneficiaries of the special medical program, a legislative proposal to expand the coverage of the law, as we herein propose to amend it, will be submitted to Congress. If a significant need were to arise prior to the enactment of such legislation, the Secretary of the Interior would have authority under his existing powers to provide medical care.

Section 2 of the proposed bill would provide 6 months to the Secretary of the Interior for the submission of the plan required by section 106 (b)(1) of Public Law 95-134, as set forth in section 102 of Public Law 96-205.

Finally, the proposed legislation would not disturb the unusual arrangement provided for in the existing law, by which the Secretary of the Interior is responsible for devising and implementing the special health care program, while the Secretary of Energy is responsible for providing funds for it. It is obvious that as a general rule, such a division of responsibility is inefficient and undesirable. The Executive Branch therefore, recommended, prior to the enactment of P.L. 96-205, that total authority for this program for the Marshalls be placed in the Secretary of Energy. Inasmuch as the Congress chose to proceed otherwise, we are not now seeking to disturb the arrangement. We understand that the rationale is that costs of the nuclear testing program should be reflected in the budget of the agency responsible for it, and not in the costs of civil administration of the Trust Territory. That is a reasonable rationale.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely,

SECRETARY

Enclosure

A B I L L

To amend section 106 of the Act of October 15, 1977, as amended, concerning health care in the Marshall Islands, and for other purposes.

Be it enacted by the Senate and House of Representatives in Congress assembled, That the first sentence of Section 106(a) of Public Law 95-134, as added by section 102 of Public Law 96-205, is amended to read as follows:

"In addition to any other payments or benefits provided by law to compensate inhabitants of the atolls of Bikini, Enewetak, Rongelap, and Utirik, in the Marshall Islands, for radiation exposure or other losses sustained by them as a result of the United States nuclear weapons testing program at or near their atolls during the period 1946 to 1958, the Secretary of the Interior (hereinafter in this section referred to as the "Secretary") shall provide for the people of the atolls of Bikini, Enewetak, Rongelap, Utirik, and Ujelang, and the island of Kili, who now or hereafter reside on such atolls or island, and for such people as resided on Rongelap and Utirik on March 1, 1954, who now reside elsewhere in the Marshalls, a program of medical care and treatment and environmental research and monitoring; Provided, That the program of medical care and

treatment is authorized through fiscal year 2002 for those people residing on the above named atolls and island, and is authorized for life for those people who resided on Rongelap and Utirik on March 1, 1954.

SEC. 2. Within 180 days from the date of enactment of this Act, the Secretary of the Interior shall submit a plan to Congress, consistent with the provisions of section 102 of Public Law 96-205, as amended by section 2 hereof.