Mr. HATCH. Mr. President, I rise today to introduce legislation with Senators CONRAD, PRESSLER, PHYOR, NICKLES, and Baucus that would make the Committee on Finance.

Nondiscrimination Rules for Government Pension Plans Legislation

Mr. HATCH. Mr. President, I rise today to introduce legislation with Senators CONRAD, PRESSLER, PHYOR, NICKLES, and Baucus that would make permanent the current moratorium on the application of the pension nondiscrimination rules to governmental plans, to the Committee on Finance.

For nearly 20 years, State and local government pension plans have been deemed to satisfy the complex nondiscrimination rules of the Internal Revenue Code for qualified retirement plans until Treasury can figure out how or if these rules are applicable to unique government pension plans. This bill simply puts an end to this stalled process and dispels over 20 years of uncertainty for administrators of State and local retirement plans. Let me summarize the evolution of this issue and why this bill is being introduced today.

Mr. President, the Federal Government has a long-established policy of encouraging tax deferred retirement savings. Most retirement plans that benefit employees are employer-sponsored tax deferred retirement plans. Over the years, Congress has required that these plans meet strict nondiscrimination standards designed to ensure that they do not provide disproportionate benefits to business owners, officers, or highly compensated individuals.

In response to the growing popularity of employer-sponsored tax deferred pension plans, Congress passed the Employee Retirement Income Security Act [ERISA] in 1974 to enhance the rules governing pension plans. However, during consideration of ERISA, Congress recognized that nondiscrimination rules for private pension plans were not readily applicable to public pension plans because of the unique nature of governmental employees. Former Representative Ullman, during Ways and Means Committee consideration of ERISA, stated: "The committee exempted Government plans from the new higher requirements because adequate information is not now available to permit a full understanding of the impact these new requirements would have on Governmental plans. Thus, Congress was not prepared at that time to apply the complex nondiscrimination rules to public plans. After studying the issue, the Internal Revenue Service on August 10, 1977, issued News Release IR-1889, which stated that issues concerning discrimination under State and local government pension plans would not be raised until further notice. Thus, an indefinite moratorium was placed on the application of the new rules to government plans.

In 1986, Congress passed the Tax Reform Act of 1986, which made further changes to pension laws and the general nondiscrimination rules. On May 18, 1988, the Department of the Treasury, in proposed regulations, lifted the 12-year public sector moratorium and required that certain plans comply with the new rules immediately. However, further examination revealed, and Treasury and the IRS recognized, that a separate set of rules was required for State and local government plans because of their unique features. Consequently, through final rules issued in September 1991, the Treasury reestablished the moratorium on a temporary basis until January 1, 1993, and solicited comments for consideration. In addition, government pension plans are required to satisfy the statutory nondiscrimination requirements for years prior to 1993. Since then, the moratorium has been extended three more times, the latest of which began this year and is in effect until 1999.

Mr. President, here we are, in August 1996, 22 years since the passage of ERISA and State and local government pension plans are still living under the shadow of having to comply with the long and complex nondiscrimination rules. Experience over the past 20 years has shown that the existing nondiscrimination rules have limited utility in the public sector. Furthermore, the long delay in action illustrates the seriousness of the problem and the doubtful issuance of nondiscrimination regulations by the Department of the Treasury.

Mr. President, last year during consideration of another extension of the moratorium, a coalition of associations representative of State and local government plans summarized their current position in a letter to IRS Commissioner Margaret Richardson dated October 13, 1995.

In our discussions with Treasury over the past two years, there have been no abuses or even significant concerns identified that would warrant the imposition of such a cumbersome testing of actual rules on plans that already are the subject of State and local government regulation.

Accordingly, while we always remain open to further discussions, the Ways and Means statement indicates the experience of the past two years in working with Treasury to develop a sensible and workable set of nondiscrimination rules for governmental plans has convinced us that the task ultimately is a futile one—portending tremendous cost, delay, and disruption of a foreign State operations in the absence of any identifiable problem.

Mr. President, the sensible conclusion of this 20-year exercise is to admit that Treasury is unable to issue regulations for State and local pension plans and Congress should make the temporary moratorium permanent.

Furthermore, there are examples to support this legislation. Relief from the application of nondiscrimination rules is not a new concept. Multiemployer plans are currently not covered by the nondiscrimination rules under the theory that labor-management collective bargaining will ensure nondiscrimination treaties applicable to the Federal Thrift Fund. In reality, Mr. President, State and local government pension plans face an even higher level of scrutiny. State law generally requires public officers to amend the provisions of a public plan. Because accountability to the voters and media scrutiny serve as protections against abusive and discriminatory benefits.

Moreover, further precedent exists for the legal resolution of the nonapplicability of nondiscrimination rules. In 1986, the Congress established the Thrift Savings Fund for Federal Employees. As originally enacted, the Fund was required to comply with the 401(k) nondiscrimination rules. The Plan was eventually modified to remove contributions and matching contributions to the fund. However, in 1987, as part of a Continuing Appropriations Act for 1988, the Congress passed a provision that made these nondiscrimination rules inapplicable to the Federal Thrift Savings Fund. Thus, Congress has re-affirmed the need to treat Governmental pension plans as unique.

Mr. President, this legislation is not sweeping nor does it grant any new relief but to these plans that face an even higher level of scrutiny. For example, the permanent moratorium, governmental plans are currently treated as satisfying the nondiscrimination rules. Lifting the moratorium would impose on governmental pension plans the costly task of testing for discrimination when no significant abuses or concerns exist. In fact, finally imposing these rules may require benefits to be reduced for State and local government employees and force costly modifications to these retirement plans. This bill agrees with the principle of allowing a State to enjoy the right to determine the compensation of its employees.

Mr. President, with another expiration of the moratorium looming in the future, I believe it is time to address this issue. I am under no delusion that it will be resolved quickly. The complexities of these rules and the uniqueness of governmental plans have brought us to where we are today. I believe that as members better understand the history that has led us here, we will agree with us that the appropriate step is to end this uncertainty and make the temporary moratorium permanent.
Mr. President, I ask unanimous consent that the text of the bill be printed following my remarks.

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

S. 2047

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MODIFICATIONS TO NONDISCRIMINATION AND PARTICIPATION RULES WITH RESPECT TO GOVERNMENTAL PLANS.

(a) General Nondiscrimination and Participation Rules.—

(1) Nondiscrimination requirements.—

Paraphrase (e) (section 401(a)(1) of the Internal Revenue Code of 1986 (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by adding at the end the following new subparagraph:

"(F) Governmental plans.—Paragraphs (3) and (4) shall not apply to a governmental plan (within the meaning of section 414(d))."

(2) Additional participation requirements.—Subparagraphs (i) and (ii) of section 401(a)(26) of such Code is amended to read as follows:

"(H) Exception for governmental plans.—This paragraph shall not apply to a governmental plan (within the meaning of section 414(d))."

(3) Minimum participation standards.—

Paraphrase (2) of section 410(c) of such Code is amended to read as follows:

"(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section for purposes of section 401(a), except that in the case of a plan described in subparagraph (B), (C), or (D) of paragraph (1), this plan shall only apply if such plan meets the requirements of section 401(a)(3) (as in effect on September 1, 1974)."

(b) Participation Standards for Qualified Cash or Deferred Arrangements.—

Paraphrase (3) of section 401(k) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(E)(i) The requirements of subparagraph (A)(i) and (C) shall not apply to a governmental plan (within the meaning of section 414(d)).

(ii) The requirements of subsection (m)(2) (without regard to subsection (a)(4)) shall apply to any matching contribution of a governmental plan (as so defined)."

(c) Nondiscrimination Rules for Section 403(b) Plans.—

Paraphrase (12) of section 403(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(C) Governmental plans.—For purposes of paragraph (12), the requirements of subparagraph (A)(i) shall not apply to a governmental plan (within the meaning of section 414(d))."

(d) Effective Date.—

(1) In General.—The amendments made by this section shall apply to taxable years beginning on or after the date of enactment of this Act.

(2) Treatment for Years Beginning Before Date of Enactment.—A governmental plan (within the meaning of section 414(d)) of the Internal Revenue Code of 1986 shall be treated as satisfying the requirements of sections 401(a)(3), 401(a)(4), 401(a)(26), 401(k), 401(m), and (b) of such Code for all taxable years beginning before the date of enactment of this Act.

By Mr. MOYNIHAN (for himself, Mr. D’AMATO, and Mr. DODD):

S. 2048. A bill to amend section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), to provide for disclosure of information relating to individuals who committed Nazi war crimes, and for other purposes; to the Committee on the Judiciary.

The measure is a simple one. It requires the disclosure of information under the Freedom of Information Act regarding individuals who participated in Nazi war crimes.

Ideally, such documents would be made available to the public without further legislation and without having to go through the slow process involved in getting information through the Freedom of Information Act (FOIA). Unfortunately this is not the case. Researchers seeking information on Nazi war crimes are denied access to relevant materials in the possession of the United States Government, even when the disclosure of these documents no longer pose a threat to national security—if indeed they ever did.

With the passing of time it becomes ever more important to document Nazi war crimes, lest the enormity of those crimes be lost to history. The greater access which this legislation will provide will add clarity of this important effort. I applaud those researchers who continue to pursue this important work.

I would also like to call the attention of my colleagues the excellent work of the Office of Special Investigations. To that end, I would note that to further this effort. I applaud those researchers who continue to pursue this important work.

I would also like to call the attention of my colleagues the excellent work of the Office of Special Investigations. To that end, I would note that to further this important effort.

I would like to thank Representative MALONEY for her original work on this subject in the House of Representatives. I would also thank Senators D’AMATO and DODD for joining me in this effort here in the Senate. Finally, I would express my thanks to the President for not paying special tribute to A.M. Rosenthal, whose indefatigable efforts on this subject are as admirable as they are effective.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2048

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "War Crimes Disclosure Act".

SEC. 2. REQUIREMENT FOR DISCLOSURE UNDER FOIA OF INFORMATION RELATING TO INDIVIDUALS WHO COMMITTED NAZI WAR CRIMES.

(a) In General.—Section 552 of title 5, United States Code, is amended—

(1) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively; and

(2) by inserting after subsection (c) the following new subsection:

"(d)(1)(A) Notwithstanding subsection (b), this section shall apply to any matter in the possession of a specified agency, that relates to any individual as to whom there exists reasonable grounds to believe that such individual, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of or in association with—

"(i) the Nazi Government of Germany,

"(ii) any government in all area occupied by the military forces of the Nazi Government of Germany,

"(iii) any government established with the assistance or cooperation of the Nazi government of Germany, or

"(iv) any government that was an ally of the Nazi government of Germany, ordered, incited, assisted or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion.

(b) For purposes of subparagraph (a), the term "specified agency" means the following entities, any predecessors of such an entity, and any component of such an entity (or of such a predecessor):

"(i) The Central Intelligence Agency.

"(ii) The Department of Defense.

"(iii) The National Security Agency.


"(v) The Department of State.


"(vii) The United States Information Agency.

"(viii) (A) Except as provided in subparagraph (B), Paragraph (1) shall not apply to the disclosure of any matter when there is clear and convincing evidence that such disclosure would—

"(i) reasonably be expected to constitute an imminent invasion of personal privacy;

"(ii) pose a current threat to military defense, intelligence operations, or the conduct of foreign relations of the United States;

"(iii) reveal an intelligence agent whose identity currently requires protection;

"(iv) compromise an understanding of confidentiality currently requiring protection between an agent of the Government and a cooperating individual or a foreign government;

"(v) constitute a substantial risk of physical harm to a living person who provided confidential information to the United States; or

"(vi) compromise an enforcement investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice.

"(B) Subparagraph (A) shall only apply to matters the public interest in disclosure.

"(2) Any reasonably segregable portion of a matter referred to in paragraph (2) shall be made public after deletion of the material that are referred to in such subparagraph, to any person requesting the matter.
under this section if the reasonably seg-
regable portion of the matter would other-
wise be required to be disclosed under this
section.

"(d) In the case of a request under this sec-
tion for any matter required to be disclosed
under this subsection, if the agency receiv-
ing such request is unable to locate the
records so requested, such agency shall
promptly supply, to the person making such
request, a description of the steps which
were taken by such agency to search the in-
dices and other locators systems of the agen-
cy to determine whether such records are in
the possession or control of the agency.
"

(2) by inserting after subsection (d) the fol-
lowing new subsection:

"(e) Subsection (a) shall not apply to any
operational file, or any portion of any oper-
aional file, described under section 552(d) of
title 5, United States Code (Freedom of In-
formation Act).
"

SEC. 3. EFFECTIVE DATE.
The amendments made by this Act shall
apply to requests made after the expiration
of the 180-day period beginning on the date
of the enactment of this Act.

ADDITIONAL COSPONSORS
S. 607
At the request of Mr. AKAKA, his name
was added as a cosponsor of S. 607 a bill
to amend the Comprehensive En-
vironmental Response, Compensation,
and Liability Act of 1980 to clarify the
liability of certain recycling trans-
actions, and for other purposes.
S. 1497
At the request of Mr. GRAMM, the
name of the Senator from Washington
[Mr. GORTON] was added as a cosponsor
of S. 1497 a bill to establish a dem-
cratic change in physical or mental con-
tions regarding domestic commerce in
the beef and cattle markets (including
exports and imports), and for other
purposes.

SENATE CONCURRENT RESOLU-
TION 68—TO CONCUR IN THE EN-
ROLLMENT OF H.R. 3103
Mr. WELLSTONE (for himself, Mr.
KENNEDY, and Mr. WYDEN) submitted
the following resolution; which was
considered and agreed to:
S. CON. RES. 68
Resolved by the Senate (the House of Rep-
resentatives concurring) that in the enroll-
ment of the bill (H.R. 3103) entitled "An Act
to amend the Internal Revenue Code of 1986
which was referred to:
S. CON. RES. 69
Whereas Dr. Hans Joachim Sewering
was a member of the Nazi party beginning on
November 11, 1933, as well as a member of the
SS;
Whereas Dr. Sewering served as staff phy-
sician and medical director of the Schoenbru-
nan Sanitarium in 1942;
Whereas, between 1943 and 1945, under Dr.
Sewing's supervision, 809 German Catholic
mentally and physically disabled patients,
mainly children, were transferred from the
sanitarium to a "Healing Center" at Egling-
Haus;
Whereas, subsequently, these patients were
killed by starvation and an overdose of a
sleeping drug, Luminal;
Whereas there is documentation with Dr.
Sewing's signature on its that transfers a
14-year-old epileptic girl named Babelle
Frowis from the sanitarium to the healing
center on October 26, 1943;
Whereas Babelle Frowis was pronounced
dead on November 16, 1943, just 15 days after
being transferred there by Dr. Sewering;
Whereas Dr. Sewering has enjoyed a suc-
cessful and lengthy medical career after the
war, most recently acting as the President of
the Federal Physicians Chamber in Ger-
many;
Whereas 4 Franciscan nuns, who worked in
the sanitarium at the time these acts oc-
curred, came forward in January of 1993 to
corrobore the accusations against Dr.
Sewing made by physicians in Germany;

SENATE RESOLUTION 277
At the request of Mr. CRAIG, the name of the Senator from Kansas [Mrs.
FRAHM] was added as a cosponsor of
Senate Resolution 277, a resolution to
express the sense of the Senate that, to
ensure continuation of a competitive
free-market system in the cattle and
beef markets, the Secretary of Agri-
culture and Attorney General should
use existing legal authorities to mon-
itor commerce and practices in the
cattle and beef markets for potential
anti-trust violations, as the Secretary of Agri-
culture should increase reporting prac-
tices regarding domestic commerce in
the beef and cattle markets (including
exports and imports), and for other
purposes.

SENATE RESOLUTION 69—RELATIVE TO EUTHA-
NASIA DURING WORLD WAR II
Mr. SANTORUM (for himself and
Mrs. PENNISTEIN) submitted the fol-
lowing resolution; which was referred to:
S. CON. RES. 68
Whereas Dr. Hans Joachim Sewering was a
member of the Nazi party beginning on No-
ember 11, 1933, as well as a member of the
SS;
Whereas Dr. Sewering served as staff phy-
sician and medical director of the Schoenbru-
nan Sanitarium in 1942;
Whereas, between 1943 and 1945, under Dr.
Sewing's supervision, 809 German Catholic
mentally and physically disabled patients,
mainly children, were transferred from the
sanitarium to a "Healing Center" at Egling-
Haus;
Whereas, subsequently, these patients were
killed by starvation and an overdose of a
sleeping drug, Luminal;
Whereas there is documentation with Dr.
Sewing's signature on its that transfers a
14-year-old epileptic girl named Babelle
Frowis from the sanitarium to the healing
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Whereas Babelle Frowis was pronounced
dead on November 16, 1943, just 15 days after
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cessful and lengthy medical career after the
war, most recently acting as the President of
the Federal Physicians Chamber in Ger-
many;
Whereas 4 Franciscan nuns, who worked in
the sanitarium at the time these acts oc-
curred, came forward in January of 1993 to
corrobore the accusations against Dr.
Sewing made by physicians in Germany;