



The Honorable Jim DeMint
Chairman
Subcommittee on Disaster Prevention and Prediction
Committee on Commerce, Science and Transportation
SD-508
Dirksen Senate Office Building
Washington, D.C. 20510-6125

RE: S 786-National Weather Services Duties Act of 2005

Dear Senator DeMint:

We have seen the letter of May 2, 2005 that the National Weather Service Employees Organization (NWSEO) sent to you.

The Commercial Weather Services Association (CWSA) is the trade Association for America's weather industry. America's weather industry is the only private sector enterprise that produces weather information, services and systems for industry, government and the public and as such occupies a unique position in the American weather enterprise. Its companies provide information, services and systems to tens of thousands of business, industry and media companies and reach much of the American population and a large international audience with their information.

Unfortunately, the National Weather Employees Union letter is based on inaccuracy concerning the spirit, intent and language of the bill. It's a five page litany of:

- Misrepresentations about the bill,
- Selective memory about the National Research Council report,
- Incorrect statements of facts and false statements about the wording,
- Implicit assumptions that whatever the National Weather Service has done in the past is legitimate, and it should be allowed to do it in the future without challenge,
- Hostility towards the private sector and arguments based on conclusions of what the Secretary of Commerce and Congress might do in the future in conducting a fair evaluation of the use of government funding to run the agency.

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On the other hand, the Union's letter completely ignores:

- Endangered public safety because of static or deteriorating warning functions of the National Weather Service, which the Union itself has objected to,
- The fact that less than 5% of NWS warnings and critical information is accessed by the public through NOAA Weather Radio and National Weather Service websites,
- That independent studies both in the United States and in Canada recommend strong government policies of non-competition in the weather field, and that the National Weather Service itself for 55 years had such a policy until unilaterally rescinding it in December of 2004.
- The Union's very own comments on its website and to the *Dallas Morning News*, where they tell us they have uncovered internal National Weather Service documents that indicate budget constraints in 2005 are causing the NWS to cut back on critical life saving activities including tornado warnings; while at the same time objecting to this bill that would prevent the use of government funding to compete with and duplicate what it already available to the citizens of the United States, usually for free, from America's weather industry.

The balance which was struck between the government and America's weather industry for 55 years under the past NWS non-competition policy, was destroyed by NOAA and the NWS in December 2004.

The inconsistent and conflicting positions, when strung together in five pages of text, may seem to lull one into a state of agreement. But when looked at clearly, they are just plain wrong.

General Points About the NWSEO Letter

1. Virtually nothing that the Union has said is supportable in reality. Many recent news stories, perhaps for the lack of understanding the issues and not digging into the facts, have come away with incorrect conclusions about this bill.
2. The bill will bring the National Weather Service into line with national policy that other government agencies follow and restore the balance between government and the private sector that has existed for 55 years.
3. It will provide the Secretary of Commerce the ability to review resources and how they are being deployed within the agency, to focus those resources on the protection of life and property, and to allow the America's weather industry and private sector to grow, assisting the national economy, preserving jobs, and benefiting the nation.

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4. The letter from the Union points out the very reasons why the bill is appropriate and necessary. When you think through the Union's points and measure them by the facts, there are many conflicts that require the intervention by the Secretary at this stage to unravel. That is one of the things that this bill will do.
5. The Union letter would have us believe that the same persons producing routine forecasts and the specialized forecasts to school districts, road crews, businesses and others are, at the same time handling the severe weather needs of the local office and that part of the nation. At the same time, these employees are trying to provide radio, television, newspapers, and other press inquiries with information concerning these unfolding weather events. The letter would have us believe that all of those competing demands, at a time of intense weather, are being handled fully, completely, competently and that as to all the school districts, all road crews, and all other special interests, services being provided, that those services are all being provided uniformly and in real time across the board in every part of the country. And, at the same time, we are to believe all media inquiries are not being stacked on the phone, but are being handled simultaneously, so that all reporters have fair and equal access to both the story and the information. This is just not true.

If it were true, one might ask how, on calm weather days, which reign across most of the nation most of the time, "What are these employees actually doing?"

6. The Union suggests that there is no money to be saved by looking into these issues. If they are right, then the only thing wasted will be the cost of the inquiry of how to better allocate the billions of dollars allocated for government weather activities in the nation.

If however, there are better ways, and on the face of it there appear to be great inconsistencies and incongruities in the Union's position as mentioned above, then potentially hundreds of millions of dollars can be saved in the federal budgets.

7. The National Weather Service has a single line item of forecasts and warnings in the amount of about \$450 Million dollars that is not broken down to tell us how much is spent on all these various activities. Even the Union would have to admit that many of these activities are not conducted in each office.
 - Some offices will spend a lot of time, effort, and money in providing local road crews and school districts with specialized forecasts. Others will not.
 - Some offices will spend time and money providing specialized forecasts to local agri-businesses. Others will not.

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- Some local offices will respond to certain media requests and it has been reported, even favor one television station in a market over others. Other will not.
 - Fairness and uniformity is a necessity for a government agency. That is not how this agency is operated.
8. One of the main supporting factors for much of the NWS work, including the routine daily forecasts of “warm and sunny,” is that it provides visibility to the National Weather Service to ensure continuing funding. The Union quotes that conclusion from the NRC Report. It seems to be telling us that hundreds of millions of dollars are being spent on a national PR campaign to keep the name of the government weather service in front of the public. Is this a good way to operate? The bill does not mandate a change in this but does ask the Secretary to examine all issues.
 9. Nowhere in this bill is there the favoritism toward America’s weather industry that the Union asserts. In fact, this bill puts into place a non-competition policy that Congress has been concerned with since 1954. It has been the policy of the National Weather Service for 55 years, and it matches with other non-competition, non-duplication policies the government has, as a general principle, including the new Space Transportation Policy.
 10. There is no question there is a complex interrelationship between America’s weather industry and the National Weather Service and the public. But, the Union position that “things are fine” and should be left alone, does not stand up to scrutiny.

The NRC report referred to by the Union recognized the conflict, and did not solve it.

It had eleven recommendations, but the only one acted upon by NWS was the one concerning competition and it did not follow the recommendation of the NRC. The NRC recommended that the 1991 Public-Private Partnership Policy be replaced with a new policy that defined a process for making decisions on products, technologies, and services. This was not done.

NOAA in fact, repealed the policy and did not replace it with a defined process for making decisions on what products, technologies, and services it should produce, use, and provide to the public. It simply accorded unto itself the right to do as it pleased in that arena. S. 768 replaces the policy the NWS used to have, basically word for word.

The NRC second recommendation told the NWS to create a committee that would review the creation and discontinuance of products. It has not done that. The Santorum bill assigns this task to the Secretary of Commerce.

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The NRC recommended that NWS should have a policy of providing unrestricted access to publicly funded information. The Santorum bill does that.

The NRC's sixth recommendation was rather pointed, that the NWS needed to improve its process for evaluating new weather and climate products and to develop a process for discontinuing products and services specific to particular individuals or organizations or not essential to the public. This it has also not done. The Santorum bill would cause the Secretary of Commerce to do so.

Its seventh recommendation was critical of the management of NWS forecast offices and the creation of new NWS products. The NWS has not addressed this concern.

And, the NRC's tenth recommendation was that the Commercial Weather Sector should work with the government to improve the enterprise as a whole. In an attempt to do this by providing extensive comments to NOAA last year, opposing the repeal of the 1991 policy, the Commercial Weather Industry was ignored by NOAA, which unilaterally rescinded this policy despite nearly uniform opposition from the America's commercial weather industry respondents.

Specific Points Related to The Hirn Letter

The following is a review, on a point-by-point basis, of Richard Hirn's letter to you so that there are specific alternative points of view for you with regard to each item. I will refer to the page number and the paragraph of each for reference.

Page 1, Paragraph 2 – The Union asserts that S786 would prohibit the NWS from providing any service if the private sector weather companies are or could provide a similar service for a fee.

The Senate bill does not say this.

It makes no references to whether private sector products are provided "for a fee" or free. This is a misrepresentation of the language.

The language in fact is in line with the NWS policy published in the Federal Register in 1991 and in effect through December 2004 until it was repealed by NOAA, which stated:

"The NWS will not compete with the private sector when a service is currently provided or can be provided by commercial enterprises, unless otherwise directed by applicable law."

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In fact, the Santorum language is more favorable to the NWS than its own prior policy, in that it specifically saves from being considered for exclusion the preparation and issuance of severe weather forecasts and warnings designed for the protection of life and property to the general public.

And, it delegates to the Secretary of Commerce the responsibility to make these investigations, analyses, and determinations and to then report them to Congress for oversight.

The Santorum bill and the 1991 policy were in line with the 55-year history of various policies originating with an AMS conference in 1948 designed to prevent the government from competing with the private sector. Congressional oversight of this began in 1954 when the union representing television and network personnel (AFTRA) complained to Congress that the NWS was competing with AFTRA union members by providing free television services to television networks. Under pressure, the practice was stopped by NWS.

S 786 is in line with numerous other federal policies restricting competition by the government. Even the new US Space Transportation policy provides that "the United States government is committed to encouraging and facilitating a viable US commercial space transportation industry . . . toward that end the United States government departments and agencies shall: . . . refrain from conducting activities with commercial applications that preclude, deter, or compete with US commercial space transportation activities, unless required by national security."

This non-competition language is also in accord with a comprehensive study of the weather industry conducted by the State of Oklahoma and the University of Oklahoma, Recommendation 3 of which stated:

"Allow private companies . . . to provide commercial [weather] services without having to compete with taxpayer sponsored services."

And, it is in accord with the Canadian study conducted under funding from Canada's national meteorological service, in November 2001, which found that competition by the government in Canada was detrimental to the public, the government, the private sector, and the nation as a whole.

It concluded that the Canadian government meteorological service should stop competing with the Canadian weather industry and instead support the Canadian weather industry and specifically adopt a non-competition policy.

It identified the government as the main impediment to growth in the weather area and advocated formal boundaries for the government meteorological service that would focus the government on a core mission.

The second paragraph of the Union letter on page one also asserts that the NWS would be required to disseminate its data through a set of data portals designed for volume access by commercial providers.

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And, it suggests later in that paragraph and elsewhere in the write up that this would be the only way that this data could be provided.

This is false.

The Santorum bill in fact reflects the current methodology that is used by the NWS to disseminate its data through both volume data portals designed for volume access *and* by such other mechanisms as the Secretary of Commerce considers appropriate for the purposes of carrying out the mandate of insuring full public access required in Section 2 (C)(1) of the bill.

The connection between the mode of issuance requirement in S786 and the general purpose requirement, is critical in reading the bill, because the Secretary is directed that all NOAA and NWS information, to the maximum extent practicable, be issued in real time and without delay in a manner that insures that all members of the public have the opportunity for simultaneous and equal access to such data and information. The Union has clearly taken portions of one sentence within the bill, and presented it out of context.

Indeed, what the bill is really requiring is that the Secretary of Commerce determine the best way to make all the data available in real time and without delay. This is a requirement that does not currently exist in federal law. There is no specific requirement as to weather data in this respect and this bill language would in fact carry out the very desires that the Union expressed in its letter.

Page 1, Paragraph 2 – The Union also asserts that the bill prohibits the NWS from “directly giving interviews or briefings to the news media, law enforcement or emergency management personnel during severe weather events.”

Nowhere does the bill provide for this.

The bill does provide that the agency must determine a methodology to impart this information to the news media, law enforcement, emergency management and others similarly situated, including the general public, in a manner that insures that all members of the public have access.

This prevents favoritism in the selection of media outlets, discrimination against smaller law enforcement or emergency management agencies versus larger ones, or simply either playing favorites or not having a system capable in real time to get the information out in the widest possible dissemination method, getting it to some and not others.

It should also be recognized that weather information moves money and markets, allows people access to supplies and materials to prepare for land falling hurricanes, floods, and other potentially catastrophic events and the government must ensure that the public receives the information no later than companies specializing in storm preparation materials, insurance, plywood, sandbags, pumps, etc.

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These requirements are similar to and follow the same concerns and issues that surround other critical government information such as crop reports and economic indicators, all of which can have the same impact and effect on individual citizens, commodity traders, business operations and the like.

Up until now the NWS has operated under a "free wheeling" system without uniform policies as to how to release this information in fairness to the public.

Because of this concern the Office of the General Counsel of DOC issued a prohibition against NWS employees from trading weather futures. This only touched one small aspect of the problem.

The Santorum bill would correct that and bring it in line with other types of critical government information releases.

Page 1, Paragraph 2 – Also asserts that the bill would require the NWS to maintain a set of data portals solely for the benefit and access of commercial providers.

This is not correct.

The data portals would be available for any large volume user, be it a private sector company, a university, a research foundation or others who needed that kind of access.

As the letter notes on page 3, when it talks about the current data portals and the Family of Services, the Santorum bill only restates what already exists and has been NWS practice for decades. This volume need has been recognized by the NWS and their own current and past practices are therefore supported in this bill.

Page 2, Paragraph 1 – The Union asserts that the NWS will no longer be allowed to advise local school districts and road crews or other special need activities at the state or local level.

This is an interesting comment because the NWS does not have a mandate to do this now and does not uniformly provide such services across the nation now and never has.

In fact, some offices provide them in some cases and not in others.

Some offices provide them to a larger or lesser extent than other offices, and some offices do not provide them all.

This is part of the very issue that is assigned by S.786 to the Secretary of Commerce to explore. Are these services necessary for the protection of life and property? Does the government have to provide them or are they sufficiently provided by the private sector. If they need to be provided by government, how can they be provided in a uniform and effective way rather than in the patchwork quilt that currently exists?

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Also in this paragraph is the suggestion that somehow the Commercial Weather Industry would have control of this process. But it does not. The bill specifically delegates to the Secretary of Commerce, who after all is the Cabinet level officer under which NOAA and NWS fall, to do these evaluations and make these determinations.

Page 2, Paragraph 2 – This makes reference to and assertions about the National Academy of Science (NRC Report) study.

The study was over 160 pages long and had numerous sound bites. One could pull out and quote a variety of positions.

Many in America's weather industry felt that the study was unduly influenced by the NWS and did not fairly consider weather industry activities in the private sector. The allegations include the fact that the study was defined by the NWS, paid for by the NWS, and that the study group consulted frequently with the NWS as it progressed. The panel did not contain a significant representation from the weather industry.

Some issues in the Santorum bill, such as the one concerning uniformity of releasing data and information, were not addressed in the study and most of the recommendations made by the NRC have been ignored by the NWS.

In 2004 when NOAA and NWS were considering repealing the 1991 policy, an overwhelming majority of comments from America's weather industry opposed this change.

Furthermore, on Page 2 in the last quote from the NRC study, it is clear that NOAA did not replace its policy with a process for making decisions on what products, technologies and services to keep and which ones to exit. The NRC's premise was that the NWS should not compete with America's weather industry, but it advocated a more flexible process be put in place to determine how to do this. NOAA and the NWS did not follow that NRC recommendation and guideline.

Page 3, Second Full Paragraph – Here the Union addresses the existing data portals and the related access fees.

There is a suggestion that because of the high dollar cost placed on these data sources by NWS there is a disadvantage to smaller companies in the weather industry. If this is true, then the NWS has only itself to blame, since it has determined what those fees should be. And, if by having fees that may seem too high to smaller companies, should NWS spend millions of dollars to develop other dissemination methods for these companies that can be offered for free as the Union suggests, or just reduce the fees. One must question the wisdom of the entire portal access fee policy.

Page 3, Paragraph 3 – The Union asserts that under the bill NWS internet sites would be shut down.

This is false.

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There is no provision within the bill that states this or even suggests it.

In fact, if the Secretary of Commerce were to determine that the best way to have the information issued in real time without delay in a manner that insures all members of the public have an opportunity for simultaneous and equal access, as S. 786 requires, is through the internet, as one would expect, then the bill reinforces the fact that modern technology should be utilized as a method of carrying out and meeting this requirement.

In this same paragraph is reference to creating a monopoly in American weather industry, but there appears to be little danger of that in an industry that already has over 400 firms that are highly competitive in a price competitive, product competitive environment. The NWS is working to monopolize and control the weather data and it's biggest and most knowledgeable critic, America's weather industry.

Page 3, Last Paragraph – The Union's letter is citing old information.

They mention that the NRC committee noted that some private sector companies such as The Weather Channel make their profit by redistributing NWS final forecast products. It is true that for a time The Weather Channel did this, but they no longer do. They have their own forecast database which generates the information and it has been estimated that 95% of all the weather information reaching the public today now comes from America's Weather Industry, including most of the forecasts that the public sees or hears on radio, television or the internet.

Page 4, Paragraph 1 – This goes into a long explanation of the Paperwork Reduction Act of 1995.

Unfortunately, the Paperwork Reduction Act expired in 2001. There are current Congressional initiatives to attempt to reconsider its reenactment. OMB Circular A-130, based on it, is still in effect

It is particularly interesting that the Union believes that somehow or other America's weather industry is opposed to the Paperwork Reduction Act of 1995 and/or to A-130. Nothing could be further from the truth.

In fact, in virtually every expression of concern or complaint under the 1991 policy when submitted to the NWS, the Paperwork Reduction Act and A-130 was cited as a basis for the need for the NWS to make it data and information available in real time to the public including America's weather industry.

Also apparently the Union does not realize that it was America's weather industry which worked with Congressman William Clinger (the congressman from AccuWeather's home district) to sponsor the Paperwork Reduction Act and to make sure it contained language that the Union now thinks the industry would be opposed to.

We helped support the enactment of that language and the Santorum bill contains similar language with regard to weather service information.

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Page 4, Last Paragraph – This talks about visitors to the NWS websites and the cost.

This information is false.

The assertion that there is no cost to specifically prepare these forecasts for the Internet is also not correct and the fact that the websites only cost \$3.7 million of taxpayer money is not correct either. In fact, under questioning about that number, during the National Academy study, the NWS admitted that was a price only for its servers. It did not include bandwidth and it did not include personnel to support the servers or the products created. It could easily be determined that tens of millions of dollars and possibly upwards of a hundred million dollars a year are being spent on NWS websites. The exact number is not known and there is no cost accounting information that has been available or released by the NWS on this issue.

Page 5, First Paragraph – The NWSEO asserts that the government cannot develop severe weather warnings unless it is making daily, ongoing forecasts.

Most of the time across most of the nation, and in some parts of the country for weeks and months at a time, there is no severe weather. The real desire to make and publish daily routine forecasts is a public relations campaign by the NWS to keep its name in front of the public, and not a necessity for developing warnings. The National Academy of Sciences came to the conclusion that routine daily forecasts are made for two reasons and, in fact, the Union cites this on page 2 of its letter. One is that there is infrastructure already in place that could allow the NWS to create a routine daily forecast. Secondly, it helps insure continued funding support for the infrastructure by showing that the infrastructure is being used and getting the name out to the public.

Whether the NWS could be organized to more effectively carry out its mission and how all these activities all fit together is not an issue for either America's Weather Industry or the Union to determine, but under the bill these issues are for the Secretary of Commerce to determine.

Given conflicting needs and tight budgets the Union has made it clear that "according to an internal NWS document that it obtained reductions in the FY 2005 budget will have critical impact on its vital life saving mission."

The Union asserts that the document states that these impacts will be felt throughout the nation by deterioration of NWS performance measures and especially with regard to tornado warning lead times and detection.

If the NWS is spending tens of millions, and potentially hundreds of millions of dollars on less critical activities, and in duplicating and competing with America's weather industry in the private sector, but yet critical activities involving the saving of lives (such as warning of tornadoes) are suffering, then there is a clear mission issue question that needs to be addressed. The Santorum bill takes that step.

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The past year's hurricane season brought a significant number of problems to light, from:

- Failure to adequately warn the Outer Banks of the first hurricane, Hurricane Alex,
- To not having the best hurricane hunter planes appropriately deployed to track Hurricane Charlie,
- To not seeing Hurricane Charlie's rapid intensification as it turned inland, in a timely way,
- To not getting information out about this rapid intensification in a timely way,
- To initially determining Hurricane Jeanne was heading out to sea and then watching it do a loop and strike Florida,
- To not understanding the devastating flooding effects that Gaston would have on Richmond, Virginia, and,
- To not seeing Hurricane Ivan split in the Atlantic and return and cross Florida a second time,

Additional recent issues include:

- Failing to issue a flood warning for the area of the Kansas Turnpike, which flood resulted in six deaths,
- Being unable to provide critical real-time snow fall accumulation reports during a blizzard in New York in the end of January,
- Not knowing what to do when a major earthquake generated one of the world's greatest natural disasters, a tsunami that hit the Indian Ocean, killing hundreds of thousands.

These issues call into question the issue of prioritization of tasks and the use of government funding.

These issues point out the public safety of the nation is at risk by a government weather service that has destroyed the balance between itself and the private sector.

The Union agrees in its last paragraph, that the highest priority is to issue severe weather warnings to protect lives and property. They also agree that it is neither economical nor necessary to duplicate certain services that can be obtained from the private sector. That is what this S 786 does. The Union agrees with the Senator on this.

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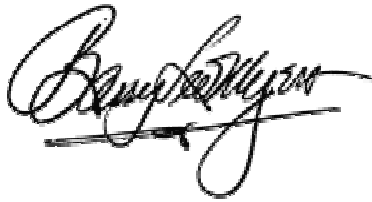
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Their closing paragraph indicates that the agency itself should be allowed to continue to decide these tradeoffs because it has an "administrative expertise." This is not an expertise question; this is a policy question.

The Senate bill suggests it is not a good policy for the wolf to guard the hen house, and that rather the Secretary of Commerce should have this authority over the agency. The agency's approach of self-governance has not worked.

The bill is fair and reasonable when examined in the light of America's weather industry and the NWS failures and commercial interference with private industry.

Very truly yours,



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