the hospitals were able to conceal from public view the amounts spent for anti-union legal, public relations and security expenses.

A more recent example of hospital extravagance in anti-union activity came in the 159-day National Hospital Union strike that ended this April at Massachusetts Rehabilitation Hospital in Boston. The hospital told the Boston Globe last month that the strike cost it $900,000 worth of business lost plus another $200,000 spent for security and police. National Hospital Union Exec. Vice Pres. Elliott Godoff estimates another $100,000 was spent by the hospital for public relations and legal fees. The hospital claims the eventual contract settlement costs it about $60,000 per year.

The more than one million dollars spent by the hospital in fighting the union eventually comes from the public pocket.

It is this aspect of hospital financing that has drawn fire from such officials as Pennsylvania Insurance Commissioner Herbert S. Denenberg. "There is no policing of hospitals or health care. It's really incredible," says Denenberg. "Probably the area where the consumer gets the biggest screwing is health delivery."

This is made possible because of the cost-plus basis on which most hospitals are run. Nine out of ten consumers pass their health care costs on to a third party such as Blue Cross, Medicaid or Medicare.

"The doctors and hospital people . . . want everybody to behave like a patient and to roll over and play dead and do what they're told," says Denenberg.

In line with this attitude has been the position of voluntary hospitals on disclosure.

"There is a deliberate conspiratorial effort by hospitals to refuse to disclose their finances to the public," charges 1199 Pres. Davis.

A side effect of financial secrecy by the hospitals is public misconceptions that hospital workers are responsible for rising hospital rates.

In fact, a 1969–1972 study by Humanic Designs Corporation of New York hospitals reveals that the major component of increasing personnel costs is in supervisory and administrative salaries. Non-supervisory workers accounted for only 28 percent of the increased personnel costs during the period studied. Supervisory non-union personnel accounted for about 40 percent of total hospital employment in the institutions studied, and yearly earnings in this category clustered between $19,325 and $23,950.

Hospital costs have also been driven upward by the increasingly intensive and technical nature of hospital care.

Another major component of rising health personnel costs is simply numbers. America's hospitals now employ 2.5 million workers and the figure is growing rapidly. The number of hospital workers increased at a rate of 24 percent between 1955 and 1968.

During the same period, reports Harvard economist Martin S. Feldstein, labor's share of total U.S. hospital costs dropped from 61.7 percent to 59.6 percent.

While labor costs were dropping, the public may well wonder what kind of hospital costs were increasing. In the absence of financial disclosure by the hospitals, no one can be blamed for suspecting the worst.

SENATE—*Monday, July 23, 1973*

The Senate met at 10 a.m. and was called to order by Hon. QUENTIN N. BURDICK, a Senator from the State of North Dakota.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Dear Lord and Father of mankind, we lay before Thee the solemn duties committed to our hands by the will of people. In the light of Thy presence keep our hands clean and our hearts pure. Above all lesser loyalties may our highest loyalty be to Thee and to Thy law. Hour by hour may our ruling passion be to do justly, to love mercy, and to walk humbly with our God. In these days of trouble and confusion grant us serene and confident spirits to do well the work we have to do for the good of all.

We pray in the name of Him who walked before us with a loving heart. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., July 23, 1973.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. QUENTIN N. BURDICK, a Senator from the State of North Dakota, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

Mr. BURDICK thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, July 20, 1973, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so orderd.

WAIVER OF THE CALL OF THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the call of the legislative calendar, under rule VIII, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees may be authorized to meet during the session of the Senate today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AN OBSERVATION

Mr. SCOTT of Pennsylvania. Mr. President, I merely observe that this week is a clean slate for the Senate and I hope that what we inscribe upon it will not only be legible but will also make sense, that it will serve to advance the interests of the Nation, that it will increase respect for the Senate, that it will magnify our works before the people, and that we will be granted forgiveness for any errors we may commit during this 7-day period.

I also hope that all of us may proceed with amity and brotherhood in a constructive approach to the betterment of those whom we are designated, through the franchise of the people, to serve.

May our service be worthy. May we deserve well of the Republic.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the distinguished Senator from Iowa (Mr. HUGHES) is now recognized for not to exceed 15 minutes.

INVESTIGATION OF SECRET CAMBODIAN BOMBING—A PRELIMINARY REPORT

Mr. HUGHES. Mr. President, a number of my colleagues have asked me for information on various points relating to the recent disclosure of secret airstrikes in Cambodia and the falsification of reports to conceal them.

While controversial in its aspects, this is a subject that cuts across political administrations, party lines, and positions of personal bias relating to our national security. It raises profound questions concerning the future of our country and its civilian, democratic rule as set forth in the Constitution. In this, whatever our other differences of opinion, we share common concern.

Since coming to the Senate, I have consistently pressed for maximum disclosure, consistent with the safety of our troops in the field and the security of delicate diplomatic negotiations, of the facts of the conflict in Southeast Asia. This is born of the conviction that if we are to pursue peace or prosecute continuing war, the people and the Congress should have a clear vision of the direction in which the Nation is moving.

If the military and/or its civilian command obscures this clear vision of Congress and the public, we encounter the danger of private or secret warfare that, however well intentioned, is subversive of the constitutional processes.

This, as I see it, is the basic point at issue in the current investigation by the Senate Armed Services Committee into secret bombings and falsification of official reports in Indochina.

You will recall the shock of the American people a few years ago when they learned, from American newsmen, that we had been conducting a secret war in Laos. Now we have learned that we were waging a secret war in Cambodia before the invasion of that country and at a time when we were officially proclaiming its neutrality.

In March of 1969, the United States began sending B–52's to bomb inside

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Cambodia. According to Defense Secretary Schlesinger:

> These air operations across the border . . . were fully authorized. The authorization was made after careful consideration and upon determining that the air operations were in the interest of United States objectives in South Vietnam, particularly for the protection of lives of Americans serving in our forces there.

No public announcement was made of this extension of the war into Cambodia. Congress was not asked to approve or authorize this escalation and not officially informed of it even through classified channels, although it is now reported that a few Members of Congress were privately told that the bombing had begun.

On April 16, 1969, President Nixon pledged to recognize and respect the sovereignty, independence, neutrality, and territorial integrity of Cambodia.

This same month, U.S. B–52 strikes in Cambodia were double what they had been in March. The same level of bombing was maintained in May and then doubled again in June.

On May 9, 1969, the New York Times carried a story reporting that the United States had been conducting B–52 strikes in Cambodia. One reason for these strikes, according to the Times, was "a desire by high Washington officials to signal Hanoi that the Nixon administration, while pressing for peace in Paris, is willing to take some military risks avoided by the previous administration."

During 1969, U.S. planes conducted 2,406 sorties against targets in Cambodia, dropping 68,881 tons of munitions.

In the first months of 1970, the United States sent over 300 B–52 sorties into Cambodia each month.

On March 18, Prince Sihanouk was removed as chief of state by unanimous vote of the Cambodian Parliament.

On March 20, according to the New York Times, Vietnamese representatives at the Paris peace talks accused the United States of seeking to widen the Vietnam war.

On April 5, according to a Foreign Relations Committee staff report—

> Two South Vietnamese battalions penetrated 10 miles into Cambodian territory. An American spokesman said there had been no U.S. support for the operation.

During the month of April, U.S. B–52's flew 334 sorties into Cambodia.

On April 30, President Nixon announced the American invasion of Cambodia. In that nationwide broadcast, he said:

> American policy since then (1954) has been to scrupulously respect the neutrality of the Cambodian people.
>
> North Vietnam, however, has not respected that neutrality.
>
> For five years, neither the United States nor South Vietnam has moved against these enemy sanctuaries becasue we did not wish to violate the territory of a neutral nation.

In May, the United States flew 350 B–52 sorties into Cambodia, only 16 more than in the month just prior to the President's April 30 speech.

Mr. President, in January of 1971 I was honored to be appointed to membership on the Committee on Armed Services.

Because of my deep, continuing concern about the course of the war, I began, as a member of that Committee, to assemble information on the war that had not previously been generally known.

I have previously reported to the Senate on matters such as protective reaction strikes over North Vietnam, efforts to obtain declassification of bombing statistics no longer within the rational confines of security information, and the many issues involved in the unauthorized bombing of North Vietnam by forces under the command of Gen. John Lavelle.

My interest focused primarily on the air war—that part of our military operations that was devastating the countryside and maiming and killing civilians, while seemingly having limited effect on the capability of the other side to rally its forces and supply them with war materiel.

On March 31, 1971, when Air Force Secretary Seamans came before the committee to testify, I submitted for written response for the committee record a question about the bombing sorties and tonnages for fighter-bombers and B–52's, by month and by country.

As to B–52 sorties and bomb tonnages in Cambodia, the classified Air Force report to the committee listed a series of zeroes in both columns, from the beginning of the table of statistics through April of 1970, indicating no raids had been made.

As Senators know, the Defense Department has now admitted that those figures were false—that, in fact, there were 3,630 B–52 sorties which dropped nearly 104,000 tons of bombs on Cambodia in the 14 months prior to May of 1970.

In 1973, with a "cease-fire" signed and the last of our ground troops coming home. I asked for a full recapitulation of the figures on the air war, by month and by country.

In mid-May, the Defense Department forwarded to the Armed Services Committee a classified 83-page table of statistics, dating from January 1965 through March of 1973.

For B–52 sorties and bomb tonnage in Cambodia, there was another long string of zeroes from the beginning of the table through April of 1970—another falsified report for the record and files of the Senate Armed Services Commitee.

Pressed to declassify the tables, Secretary of Defense Richardson agreed, and, on July 19, a declassified table was provided the committee and printed in the committee hearings on the Nation's defense posture. In this version, the spaces occupied by zeroes in the classified versions to which I have alluded were left blank.

On July 12, the committee received the nomination of Gen. George S. Brown as Air Force Chief of Staff. On reviewing his biography, I noted that he had been commander of the 7th Air Force and General Abrams' Deputy for Air Operations at MACV headquarters, from August of 1968 to August of 1970.

In my possession was a letter from Maj. Hal M. Knight, Jr., referred to me by Senator PROXMIRE, to whom it was originally addressed, alleging that during the time of General Brown's service in Vietnam, official poststrike reports on B–52 raids in Cambodia had been falsified.

I instructed my staff to locate Major Knight, to determine whether any of his information would bear upon General Brown's qualifications to be Chief of Staff, and apprised Senator SYMINGTON, acting chairman of the committee, of this new development.

On the basis of Major Knight's story, related to my staff by phone the evening of July 12, and on the basis of a White House statement that a leak to the New York Times about B–52 raids on Cambodia in 1969 led to the secret surveillance of certain newsmen and White House staff members, I asked General Brown in open hearing of the Armed Services Committee on July 13 whether, in fact, the United States had bombed Cambodia prior to May 1970. He declined to answer in open session and the committee heard his testimony in private.

The substance of his testimony was, as acknowledged later in letters from General Brown and Defense Secretary Schlesinger, that such raids were conducted in the 14 months prior to May 1970. He stated that he knew of the raids but had no role in the B–52 operations and, therefore, no knowledge that operational reports had been falsified. On the basis of his sworn testimony, I supported his nomination which was confirmed by the Senate on July 14.

Major Knight was called to testify before the committee on July 16. He told of being the operations officer of one of our highly specialized radar sites that guided B–52's to their targets and timed the release of their bombs.

On 20 to 24 occasions between February and May of 1970, Major Knight said, an Air Force officer flew to his radar site in an Army aircraft and delivered a sealed envelope of targeting orders for raids in Cambodia. Using these target coordinates, his radar crew guided the B–52's to their Cambodian targets.

Afterward, Major Knight testified, he and his men prepared poststrike reports, inserting target coordinates for sites in South Vietnam. The written reports, containing the false target coordinates, were sent by secure mail to a Strategic Air Command unit in Saigon. Major Knight then phoned the SAC unit, reported mission accomplished, and, in accordance with orders, burned all of the computer tapes and records that contained the true information about the targets hit by the B–52's.

In rapid succession last week, administration spokesmen made the following admissions: That there had been 3,630 B–52 sorties into Cambodia in these 14 months; that false reports on those bombings had been submitted to the Senate Armed Services Committee; that the decision to deceive the committee had been made by Deputy Secretary Clements and Admiral Moorer, Chairman of the Joint Chiefs of Staff; that in an effort to conceal the Cambodian bombing, at least two reporting channels were established: one to convey accurate information on the targets hit, and another to convey the notion that the targets were in South Vietnam; that the

order to falsify the more widely distributed reports originated in the Strategic Air Command, but this was later corrected by the Pentagon spokesman to fix the responsibility on some official in Washington; and that the Cambodian B–52 raids were discussed by the National Security Council, authorized by the then Secretary of Defense Melvin Laird, and approved by the President.

Since then, there have been other public statements from the Pentagon, including one expressing regret over the falsification of reports to the Armed Services Committee.

Former Defense Secretary Laird, General Wheeler, and Mr. Kissinger have publicly disavowed knowledge of the falsification of official reports and have deplored the practice.

Mr. President, in this report to my colleagues, it is not my intention to pass judgment on any individuals or agencies of our Government, but, rather, to lay out the facts now on record in proper sequence and to point out the profound danger which this pervasive pattern of official secrecy and deceit poses to the survival of our constitutional, civilian-controlled system of government.

The fact that these massive military operations and widespread falsifications of official reports could be kept secret so long convinces me that in this jungle of secret warfare and official deceit, there are unchartered depths, perhaps more frightening than what has yet been disclosed, to be brought to light.

I have confidence that we will now get at the truth, thanks to the courage leadership of Senator SYMINGTON and the dedication and good faith of the members of the committee.

For my own part, I deeply believe that the peril to our free institutions created by those practices of official deceit and secret warfare are more ominous than any problem confronting our country.

Whether in military uniform or civilian garb, no group within our society, however well-intentioned, can be permitted to make the momentous decision to wage secret warfare while officially deceiving Congress and the public. This, as history abundantly confirms, is the way that free nations under civilian governance eventually forfeit their freedom.

In closing, I am moved to pay my personal tribute to the few men, of the hundreds or thousands who participated in these unauthorized bombings and falsification of reports, who have had the courage to step forward and make these facts known. I refer to such individuals as Airman Lonnie Franks, who was instrumental in exposing the Lavelle case, and Major Hal Knight, who volunteered to testify on the secret Cambodia bombings.

Major Knight summed it all up better than anything I could say in his recent testimony before the Armed Services Committee. He said:

> I didn't take an oath to support the military, I took an oath to support the Constitution.

Mr. President, I ask unanimous consent that several recent newspaper articles relating to this matter be printed at this point in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the New York Times, July 22, 1973]

FALSIFYING MILITARY RECORDS

(By Seymour M. Hersch)

WASHINGTON.—It always seems to begin with conviction and misspellings. There was ex-G.I. Ronald L. Ridenhour's description of My Lai 4. Then Airman Lonnie D. Franks told of Gen. John D. Lavelle's unauthorized bombings of North Vietnam.

This time it was a former Air Force major, telling a Senator how he participated in the falsification and destruction of official documents in connection with yet another secret war in Southeast Asia—this one involving 100,000 tons of B–52 bombs in Cambodia.

"The end result was that we reported strikes in South Vietnam when they were actually in Cambodia," wrote Hal M. Knight of Memphis. "I ask why we had to fake the reports and I was told it was necessary for political reasons. It was obvious to me that the practice was so widespread and so many people were involved that it could not have been done unless the authority had come from a very high source."

"I am not opposed to the war but I believe that full disclosure is necessary for the people of this country," wrote Mr. Knight, who is 37 years old and now a graduate student in history. "It is my firm conviction that the American people, through their elected representatives, have the right to know how the war has been conducted."

Mr. Knight's letter was written last January, and eventually found its way to Senator Harold E. Hughes, the Iowa Democrat who had been instrumental in organizing last fall's Senate Armed Services Committee hearings into the Lavelle bombings.

On Monday, Mr. Knight told his story before the committee, including a description of how he destroyed the secret orders for the flights after the missions had been flown.

The Pentagon admitted it had conducted 3,630 previously unannounced sorties over Cambodia between March, 1969 and May, 1970, when the Cambodian invasion took place. The White House acknowledged that President Nixon and his top advisers had personally authorized the bombings, which were kept secret from the American people. But the raids failed nonetheless to drive the Vietcong from their sanctuaries and entrenched bases along the Cambodian-South Vietnam borders.

Then the Pentagon conceded that falsified reports, depicted as a "double-entry" bookkeeping system, were made to hide the secret raids from the military's own internal reporting system. Finally, it was acknowledged that two classified reports sent to the Senate Armed Services Committee in 1971 and earlier this year included the falsified documents. The documents did not list any B–52 raids at all during the 14 months the B–52s were staging almostly nightly attacks.

The disclosures seemed certain to harden Congressional resolve to end the Cambodian bombing by Aug. 15, the deadline accepted by the President in a compromise agreement with Congress. The suggestion was made by Mike Mansfield, the Senate Majority Leader, who said this week that the falsification would "make it difficult if not impossible, to get an extension." Senator Hugh Scott, the Republican leader, similarly said that, although the White House had not yet indicated it would seek an extension of the bombing deadline, any attempts to do so "will be affected by these revelations."

By week's end, three distinct issues had been isolated by Senator Hughes and Stuart Symington, the acting chairman of the Armed Services Committee who joined in expressing his outrage over the deceptions and the lies, Mr. Symington has scheduled full-scale hearings into the secret Cambodian air war, which will deal with the following:

The White House's basic decision to bomb and say nothing at a time the United States was officially professing its respect for Cambodia's neutrality. Mr. Nixon's personal credibility will be at stake, in light of his assurance to the American people on April 30, 1970, the eve of the Cambodian invasion, that "for five years neither the United States nor South Vietnam has moved against enemy sanctuaries (in Cambodia) because we did not wish to violate the territory of a neutral nation."

The military's decision to permit falsified data to be entered into its reporting system, a revelation that seemed to disturb some Senators more than any facet of the inquiry. "This is a totally dishonorable act," proclaimed Senator Hughes. At least three of the top Nixon Administration officials who were involved in making the initial bombing decision in 1969—Dr. Henry A. Kissinger, the President's National Security Adviser; Former Secretary of Defense Melvin R. Laird, and Retired Army General Earle G. Wheeler, the former chairman of the Joint Chiefs of staff—disavowed knowledge of the falsification and denounced it. Mr. Kissinger said of the falsification: "I think it's deplorable."

The deception and deliberate lying to the Senate committee in connection with the Pentagon-supplied reports that did not show the bombing. The Pentagon spokesman, Jerry W. Friedheim, suggested that some members of the committee had been briefed, but at least one of those so named, Senator Symington, denied any knowledge of the extended, 14-month bombing program. "This represents the very basis of democracy and control of the military itself," said Mr. Hughes, who spoke out on the issue throughout the week.

There were a number of mysteries yet to be unraveled, including the question that went begging all week here: How could the military have managed to hide something as awesome as more than 3,600 B–52 strikes in the middle of a not very popular war? Of course, the false reports may have eased this problem somewhat, but still there were the hundreds of B–52 pilots and crewmen who knew they were bombing Cambodia, the technicians who handled the special post-strike photo reconnaissance, and the Army G.I.'s who fought in areas near Cambodia and—as some reported last week—could hear the nightly B–52 raids across the border.

Adding to the mystery is the fact that The New York Times, despite the security, managed to learn about the secret missions and report on them, in May, 1969—barely two months after they began. For all of its importance to high-level officials, the dispatch passed almost unnoticed in Washington, and was not publicly recalled at the time of Mr. Nixon's invasion the following May.

And so it was left to Mr. Knight, a squat, heavy-set man who, like Ron Ridenhour and Lonnie Franks, did not want to be a hero. At one point during his four hours of testimony this week, his motives and loyalties were sharply challenged by Senator Strom Thurmond, the South Carolina Republican who still is an avowed hawk on Vietnam.

"Sir," Mr. Knight told the Senator, "I didn't take an oath to support the military; I took an oath to support the Constitution."

He told how he destroyed the specially flown-in orders on the morning after each Cambodian raid in a burner at the radar site which served to electronically guide the high-flying B–52's to their targets. He told how he then processed cover orders indicating that the missions were flown over South Vietnam and regularly forwarded them to higher headquarters.

"I talked to other guys over there about it and it was very frustrating," recalled Mr. Knight in an interview. They'd say, 'We

gotta do it.' I began to wonder whether I was the only sane guy over there or else everybody else was crazy. I was just out of step."

[From the New York Times, July 23, 1973]

PENTAGON HORRORS

A Senate investigation into secret bombing raids in Cambodia is beginning to unravel another sordid tale of cover-up by the Nixon Administration, of contempt for the truth, the law and the Constitution by military and civilian officials extending to the highest levels of Government.

Pentagon horrors exposed by the Armed Services Committee so far include the deliberate falsification and destruction of records in the military's own internal reporting system. These involved fourteen months of heavy, sustained bombing of Cambodia between March 1969 and May 1970, when United States and South Vietnamese troops openly invaded that country. The Pentagon then provided Congress, in 1971 and again just last month, with reports falsely indicating that no such bombings had ever taken place.

The Pentagon has already offered several conflicting versions as to the source of authority for the cover-up. There is no question, however, that the falsification and destruction of records did take place in evident violation of military law. Gen. George S. Brown, the recently named Air Force Chief of Staff who was then chief of air-operations in Southeast Asia, says the cover-up was "in accord with instructions" from higher authority. This is the same plea that was made last year by General Brown's successor in Saigon, Maj. Gen. John D. Lavelle, who was demoted and retired for falsifying reports on subsequent "unauthorized" raids against North Vietnam.

The Cambodian disclosures suggest the need for a thorough re-examination of the Lavelle case as well as a relentless inquiry to determine the identity of all of those responsible for the Cambodian cover-up. Such a search—for those who knew, or those who should have known and who therefore share responsibility—could extend to the highest reaches of the Pentagon, including both military and civilian officials.

Although Henry Kissinger insists that the White House "neither ordered nor was it aware of any falsification of records" on the secret bombing, the President himself is clearly implicated. It has been acknowledged that Mr. Nixon authorized the bombings and urged "special security precautions." If the White House did not prescribe the mechanics of the cover-up, it certainly gave a green light for some form of deception, aimed at misleading not only the world public through statements to the news media, but also deception in official responses to inquiries by the Senate Armed Services Committee. "Obviously it was a blunder of some magnitude," admitted the official Pentagon spokesman last week.

The "blunder" was not confirmed to the ranks of muddled bureaucrats. The President himself contributed directly to the falsified record when he told the American people on April 30, 1970, on the eve of the Cambodian invasion: "For five years, neither the United States nor South Vietnam has moved against these enemy sanctuaries [inside Cambodia] because we did not wish to violate the territory of a neutral nation."

[From the New York Times, July 21, 1973]

DURING SECRET BOMBING IN CAMBODIA, U.S. OFFICIALS SAID THEY OPPOSED IT

(By Robert D. McFadden)

Throughout the clandestine American bombing of Camodia from March, 1969, to May, 1970, United States officials repeatedly and emphatically insisted that American policy was to respect the neutrality, sovereignty and territorial integrity of Cambodia.

Long after the raids had begun, high State Department officials said that they strongly opposed any air or ground attacks in Cambodia. And while military officials made no secret of their desire for such raids, the Nixon Administration repeatedly indicated that they were not even under consideration.

At the end of the secret 14-month campaign, after American B–52's had made 3,630 raids and dropped more than 100,000 tons of bombs on what were believed to be Communist supply and staging areas in Cambodia, President Nixon— who had authorized the secret bombing—went on nationwide television on April 30, 1970.

A NEUTRAL NATION

In announcing his decision to send United States troops into Cambodia then, he declared:

"For the past five years—as indicated on this map that you see here—North Vietnam has occupied military sanctuaries all along the Cambodia frontier with South Vietnam. For five years, neither the United States nor South Vietnam has moved against those enemy sanctuaries because we did not wish to violate the territory of a neutral nation."

Because the sustained bombing campaign, which took place in a remote jungle area, was not public knowledge while it was under way, spokesmen for the President, the State and Defense Departments and the military commands in Southeast Asia never had to confront direct questions about it. Instead, numerous officials misled the press and public indirectly, a check of news accounts of the period indicates.

On March 25, 1969, nearly a month after the bombing began, Ronald L. Ziegler, the White House press secretary, denied reports from Saigon that President Nixon was considering air or ground raids into Cambodia.

On May 9, despite the Administration's secrecy, The New York Times quoted "knowledgeable sources" in the Nixon Administration as having said that B–52's had "raided several Vietcong and North Vietnamese supply dumps and base camps in Cambodia for the first time." But there was no indication at that time or in the ensuing year that the campaign of bombing was extensive or sustained.

Rather, the Administration sought repeatedly to give the impression that it did not want to become militarily involved in Cambodia. It even laid down rules of engagement that prohibited American troops from "hot pursuit" of Communist forces across the Cambodian border, though some artillery and small-craft air strikes were permitted inside Cambodia and called "protective reaction."

DIPLOMATIC TIES RESUMED

The United States sent a charge d'affaires to Phnom Penh in July, 1969, to resume diplomatic relations broken four years earlier after Cambodia complained of American air attacks on her territory. On the occasion of the charge's arrival, an American diplomat told a reporter:

"The Americans are making respect for Cambodia's borders and sovereignty, which they so long withheld, the keystone of their new policy."

Although Prince Norodom Sihanouk, who was then Cambodia's Chief of State, repeatedly protested United States incursions into Cambodia, he never publicly complained—or indicated that he knew about the American B–52 raids.

UNITED STATES APOLOGIZED IN 1970

After a number of incursions by American jets, the United States Government formally apologized to Cambodia on Feb. 20, 1970, over the deaths of about 35 persons in an air strike directed at a Vietcong position.

A note by the United States charge in Phnom Penh, Lloyd M. Rives, expressed concern over violations of Cambodian neutrality. Similar sentiments were expressed by senior American officials in Saigon and Washington on March 27 over a Cambodian incursion by a battalion of South Vietnamese Army troops with American gunship support.

"The South Vietnamese never informed us of the operation or asked for our approval, probably because they knew in advance what our answer would be," said an American official in Saigon. He added: "Coming so quickly after President Nixon's statements about limiting American involvement and respecting Cambodian neutrality, we would have had to say no."

In Washington, spokesmen for the White House, the Pentagon and the State Department on that occasion all strongly reaffirmed that it was a United States policy not to widen the war. Specifically, they said American forces were allowed to fire into Cambodian territory only in self-defense.

At about the same time, as the Government of Prince Sihanouk was falling in a coup d'état that brought Marshal Lon Nol to power, the question of American military aid to the Cambodian Government arose again.

Though Marshal Lon Nol said at one of his earliest news conferences that he would accept aid in the struggle with Communist troops on Cambodian soil, the State Department later said that it had received no request for help. Still later, Cambodia said she needed no help.

The possibility that Cambodia would seek American military help in late March, 1970, was viewed by United States diplomatic sources in Saigon as presenting the Nixon Administration with a "fantastic can of worms." At that time this same diplomat said: "The last thing the Administration wants to do right now is widen the war."

U.S. ACTION WAS ASKED

By the end of March, however, Marshal Lon Nol, who was then Premier, was in fact hinting broadly that United States bombers had been heavily pounding Cambodia for nearly a year—to urge President Nixon not to extend military aid and thus become more deeply engaged in Southeast Asia.

Ultimately, however, President Nixon did send United States troops into Cambodia for a time. His April 30 announcement included these passages:

"Cambodia has been a neutral nation since the Geneva Agreement of 1954—an agreement, incidentally, which was signed by the Government of North Vietnam. American policy since then has been to respect scrupulously the neutrality of the Cambodian people. For the past five years, we have provided no military assistance whatever and no economic assistance to Cambodia. North Vietnam, however, has not respected that neutrality."

[From the Washington Post, July 22, 1973]

HIDDEN HISTORY OF U.S. MOVES IN CAMBODIA EMERGING

(By Murrey Marder)

A hidden history of American military operations began emerging last week that challenges the basic record of United States involvement in the Cambodian war.

The significance of the piecemeal disclosures concerning Cambodia, plus other clandestine U.S. operations in Indochina that are now arousing congressional inquiry, transcends the dispute that suddenly forced the subject to the surface: falsification of records on secret American B–52 bombing of Cambodia in 1969–70.

New facts now available not only overturn the official version of how the United States entered the Cambodian war, but also illuminate the earliest roots of what has become known as the Watergate scandal.

The small nation of Cambodia, which the Nixon administration calls "the last lingering corner" of the Indochina war, now has come full circle in its rebounding impact on the American scene.

What the Nixon administration perceived

as a vital need to conceal its secret actions in Cambodia, and elsewhere in the world, initiated the Watergate psychosis. The congressional rebellion over the sweeping use of presidential power in the Watergate pattern, as an administration official conceded last week, now has undermined presidential influence in the world. The reaction on Capitol Hill to Watergate, in turn, helped to embolden Congress to force a cutoff date of Aug. 15 on American bombing in Cambodia, or any further American combat throughout Indochina.

As a result, the administration now faces the Aug. 15 deadline in a position of extraordinary diplomatic weakness to bargain effectively to extricate the United States from Cambodia. To magnify the administration's dilemma, it may have to negotiate with deposed Cambodian Prince Norodom Sihanouk, who charges that he was removed from power as a result of Central Intelligence Agency and U.S. military machinations.

The riots that ripped American college campuses in the spring and summer of 1970 over the April 30, 1970, crossing of Cambodia's border by American troops were based on a highly limited amount of information then available about the U.S. record in Cambodia.

There was no public knowledge that for the previous 13 months the United States had been conducting massive bombings of Communist "sanctuaries" in Cambodia, with 3,620 B–52 runs between March, 1969, and April, 1970.

Nor does the official public record show, even now, that for years before the open American border crossing, CIA and Special Forces units (Green Berets) were clandestinely supporting anti-Sihanouk forces, known as the Khmer Serei, in operations across the South Vietnamese-Cambodian border.

These secret activities are now liable to exposure in inquiries scheduled on CIA operations throughout Indochina, and further investigation of the falsified bombing reports.

No one can state with certainty what repercussions there might have been on the elections in 1970 and 1972 if the full state of American involvement in Cambodia were known in 1970.

President Nixon said last May 22 that the American reaction to known events in Cambodia reached "critical proportions" in mid-1970. He cited "nearly 1,800 campus demonstrations," "nearly 250 cases of arson on campus," and fatal clashes with law-enforcement forces on the campuses of Kent State University in Ohio and Jackson State University in Mississippi.

Administration alarm over the risk of exposure of its secrets about Cambodia led to creation of the "plumbers" unit in the White House, and the spreading web of officially authorized wiretapping and break-ins to find security leaks.

What concerned the Nixon administration was not so much the kind of information later leaked in 1971 by Daniel Ellsberg in the Pentagon Papers about American activity in Vietnam under the Kennedy and Johnson administrations. The Nixon administration was appalled about the risk of disclosure of its win secret operations and negotiations.

Public attention was focused last week on only the narrowest consequence of Cambodian secrecy, the officially falsified bombing reports. Assistant Defense Secretary Jerry W. Friedheim on Friday acknowledged that senior Pentagon officials made "a blunder of some magnitude" by sending Congress falsified reports that listed 3,630 bombing raids as having taken place in South Vietnam.

If that were all that has been revealed, or is now subject to disclosure in greater detail, the Nixon administration would have suffered an awkward, but not grievous, embarrassment.

Instead, the whole official U.S. history of how the Nixon administration enmeshed itself in Cambodia is now open to question.

On April 30, 1970, President Nixon startled the Nation by announcing that attacks by American and South Vietnamese armed forces "are being launched this week to clean out major enemy sanctuaries on the Cambodian-Vietnam border."

This kind of operation was often proposed to President Johnson by U.S. military leaders, and repeatedly rejected on grounds it would be a dangerous widening of the war with unpredictable consequences.

President Nixon said there was a sudden, drastic change in the situation.

For five years, he said, "North Vietnam has occupied military sanctuaries all along the Cambodian frontier with South Vietnam," using them for "hit-and-run attacks" on American troops across the border.

"North Vietnam in the last two weeks," President Nixon said, "has stripped away all pretense of respecting the sovereignty of neutrality of Cambodia."

The North Vietnamese troops, he said, suddenly had moved westward in the opposite direction of the South Vietnamese border; "thousands of their soldiers are invading the country from the sanctuaries; they are encircling the capital of Phnom Penh." If "this enemy effort succeeds" in controlling Cambodia, the President said, "Cambodia would become a vast enemy staging area and a springboard for attacks on South Vietnam along 600 miles of frontier," jeopardizing the lives of Americans there and the entire U.S. program of troop withdrawals from South Vietnam.

Since 1954, Mr. Nixon said, it had been U.S. policy "to scrupulously respect the neutrality of the Cambodian people."

"For five years," he said, "neither the United States nor South Vietnam has moved against those enemy sanctuaries because we did not wish to violate the territory of a neutral nation. Even after the Vietnamese Communists began to expand these sanctuaries four weeks ago, we counseled patience to our South Vietnamese allies and imposed restraints on our own commanders."

No longer, however, the President said, could the United States sit by "like a pitiful, helpless giant" when "the chips are down."

Last week, U.S. officials, in the course of explaining the falsified B–52 bombing report, gave a drastically different account of how the United States first came to take major military action against the "sanctuaries" in Cambodia.

Very early in the Nixon administration, they said, the subject of U.S. troop withdrawals was directly linked to suppressive military action against the Communist bases in Cambodia.

In March, 1969, Pentagon spokesman Friedheim said on Tuesday, Gen. Creighton W. Abrams, the U.S. commander in South Vietnam, "was beginning to get his forces ready for the first withdrawal increment" of U.S. forces—although that was not announced until June, 1969, an initial pullback of 25,000 men.

Friedheim recalled that Defense Secretary Melvin R. Laird, the prime promoter of the program of U.S. troop withdrawals from South Vietnam, visited South Vietnam in March, 1969.

Laird "went precisely to see in what manner it would be safe to accomplish the withdrawal program that the administration wished to accomplish over the next few years," said Friedheim.

In the discussions with Laird, the spokesman continued, "General Abrams said if you want me to withdraw half a million Americans in a safe way, I would like very much to be able to deal with the threat which comes from these sanctuary areas."

"It was determined that that was a reasonable request for the U.S. commander to make," said Friedheim. The United States, he said, mounted "a major interdiction campaign" of B–52 bombing raids against the sanctuary areas.

The target areas were "essentially the same ones" later to be struck by ground troops. Friedheim acknowledged: the "Fishhook" area where the Cambodian border projects deeply into South Vietnam, "the tri-border area" and other Communist base areas.

A newsman asked Friedheim last Tuesday: "You're sort of implying that the [B–52] raids weren't very effective, that we had to go in on the ground afterwards?"

"Certainly they were not satisfactory in and of themselves apparently, in the military judgment involved," Friedheim agreed.

Through a peculiar combination of circumstances, Prince Sihanouk, who was then Cambodia's ruler, never acknowledged the bombing raids. That was the original U.S. justification invoked for keeping them secret, that Sihanouk privately "acquiesced" in the air attacks because the uninvited Vietnamese Communist presence in his country was expanding to intolerable lengths.

Sihanouk, since his ouster in a coup launched in March 18, 1970, by anti-Communist and pro-American Lon Nol, the current President of the American-supported regime in Cambodia has remained silent about the secret American bombing raids of 1969–70. But Sihanouk has charged that he was overthrown by an American-plotted coup arranged with Lon Nol and his supporters, which Nixon administration officials then and now firmly deny.

The sequence of U.S. operations in Cambodia now spread on the public record, however, and the still unacknowledge history of clandestine American and South Vietnamese operations across the Cambodian border in the 1969–1970 period and earlier years, is bound to revive questions about the circumstances of Sihanouk's overthrow.

Elliot L. Richardson, now Attorney General, on May 24 at a farewell press conference on his brief tenure as Defense Secretary said in a discussion about secrecy in the Indochina war:

"Of course, you know the circumstances under which the bombing of Cambodia was kept secret—I think there were some legitimate considerations in that context when Sihanouk in effect was anxious not to be put in a position in which he was aware of it or had acquiesced in it. But once Sihanouk was out [March 18, 1970] that consideration disappeared."

But that obviously was not the premise on which the Nixon administration bureaucracy operated until last week when the falsification of the bombing reports was first revealed as a result of congressional challenge.

Moreover, the Nixon administration's claim of continuing "military operational and diplomatic sensitivities" still withholds from the public record the history of years of American clandestine involvement in Cambodia.

Although some of these secret activities have leaked into public print, the distinction between official and unofficial disclosures can be enormous in public—and political—consequences. A prime example is that there was a partial disclosure of the secret B–52 bombing of Cambodia as early as May 9, 1969 first printed in The New York Times.

That news leak touched off some of the early alarm inside the Nixon administration which precipitated creation of the White House "plumbers" group. But the intensity and duration of the B–52 bombing was never hinted at until last week, nor was the significance of that prolonged action on the entire course of developments in Cambodia.

Sihanouk once said of his once-placid kingdom of 7 million people, "We are a country caught between the hammer and the anvil."

For years he balanced delicately between the United States, China, North Vietnam and the Soviet Union. In 1965 he broke diplo-

matic relations with the United States, charging CIA plotting against his regime and flagrant violations of his border by American planes engaged in the Vietnamese war.

Between 1965 and 1969, Sihanouk secretly permitted supplies for the Vietnamese Communist forces to be transported across Cambodia. His underdeveloped nation, he said, had little choice in the matter.

Last month, in an interview in Romania, Sihanouk said that "my greatest mistake was 1963, when I rejected American aid," but he said the terms for aid had become humiliating.

Sihanouk said that to placate his army—then headed by Lon Nol—which was dismayed over the loss of American military assistance, he opened the port of Sihanoukville to Chinese ships to deliver military supplies to Vietnamese Communist forces emplaced on Cambodia's border with South Vietnam.

"There was two-thirds [of the supplies] for the Vietcong, and one-third for my army," Sihanouk said.

But by 1967, Sihanouk began protesting publicly that his nation was getting the worst of the bargain from all directions.

Sihanouk said the North Vietnamese and the Vietcong were supporting "the Khmer Vietcong," or pro-Communist Cambodian rebels against his regime, and "because the Khmer Communists have mistreated us, we are compelled to repress them." But from the other direction, he said, "the Khmer Serei, Americans, Vietnamese, Thai and South Koreans [based in South Vietnam] have joined forces in attacking us."

In June, 1969, however, as he saw signs that the United States appeared to be preparing to pull out of Indochina with its halt to the bombing of North Vietnam in late 1968, Sihanouk feared that he might be left to grapple alone with the Vietnamese Communists in his country; he renewed diplomatic ties with Washington.

The Lon Nol regime, which replaced Sihanouk, presented an outright ultimatum to the North Vietnamese and Vietcong to withdraw, and closed the port of Sihanoukville to their forces.

This was a threat the new regime in Phnom Penh woefully lacked the physical capacity to sustain. It appealed to the United States for urgent military support.

To many U.S. military leaders this was "a golden opportunity" rather than a crisis to be shunned; an opportunity to strike on the grounds at the Communist "sanctuaries" that had survived 13 months of B-52 bombing.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. HUGHES. I am happy to yield to the distinguished majority leader.

Mr. MANSFIELD. I am pleased that Major Knight put it in a nutshell when he said, "I took an oath to support the Constitution"—just as the President of the United States did, and just as every Member of Congress does, and just as every member of the Government is supposed to do.

I note that during the course of this analysis—and I must commend the distinguished Senator for relating the facts as they are—that in page 3, in the second paragraph, the statement is made:

Congress was not asked to approve or authorize this escalation and not officially informed of it even through classified channels, although it is now reported that a few members of Congress were privately told that the bombing had begun.

As far as the Senators concerned, we operate on the basis of equality. As far as committees are concerned, they are the servants of the Senate as a whole. As far as certain Members being told in private what is being done, and that information was not being given to the rest of the Senate, I want to say I am very much disturbed by such an operation because I think what it tends to do is to break down the equality which should prevail in this body among all Members, and no confidential information of this nature should be given to members of committees in private and not to the full membership.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may yield 2 minutes of my time to the Senator from Iowa.

The ACTING PRESIDENT pro tempore. The Senator from Iowa is recognized.

Mr. HUGHES. I thank the distinguished Senator from West Virginia.

Mr. President, I thank the distinguished majority leader for his comments in relation to what has been reported by the press as to Pentagon's informing some Members of this body of the beginning of the bombing, and its continuation.

I was shocked by the information as it dribbled out of the Pentagon during the last week or 10 days, because with each new memorandum that went out, new statements were made through their press office to the media at the Pentagon, information which was later denied, changed, and altered resulting in some confusion as to what they were willing to disclose to the country or to the committee. At a later time I will point out the paralleling policies of this Nation, the political pressures, and the attitude of the American people toward war and the expanding war in Southeast Asia, which I think are very interesting.

Once again we have discovered that there was not only a secret war being conducted for years in Laos, but a secret war in Cambodia that began 2½ months after this administration took office—concealed from Congress and the people and devastating in the ramifications it contains for constitutional government in this country.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order the Senator from Hawaii (Mr. FONG) is recognized for not to exceed 15 minutes.

(The remarks Senator FONG made at this point on the introduction of a proposed constitutional amendment (S.J. Res. 137) and a series of eight bills (S. 2220 to S. 2227) dealing with changes in the Constitution and immigration and nationality laws, are printed in the Routine Morning Business section of the RECORD under Statements on Introduced Bills and Joint Resolutions.)

THE ENERGY SHORTAGE IS REAL

Mr. McCLURE. Mr. President, the American people are being deceived and misled by their Government and the national press. They are being told that the present gasoline shortage is either phony or has been solved, depending on whether they are listening to the Federal Trade Commission or the American Automobile Association. They are being told that shortages, both present and predicted, will be avoided by energy R. & D. and that environmental legislation has not contributed to them. They are being told that removing some energy-related functions of the Department of the Interior and then renaming it the Department of Energy and Natural Resources will help solve the administration's problems of coordination of Federal energy operations. The American people are being duped. If we are to avoid crippling economic, environmental, and social disruptions in this society, it is essential that the hard, cold facts concerning our energy crisis be told. Only with the facts can public support be gained for the tough political decisions that lie ahead.

The present gasoline shortage is real. There is no evidence that it was contrived by anyone, contrary to the insinuations of the Federal Trade Commission and its staff. A careful reading of the recently released report will verify that.

Statements such as, "These major firms, which consistently appear to cooperate rather than compete" (emphasis added), illustrate the subjective conclusions that replaced objective facts. I am concerned that the present Chairman of the Federal Trade Commission may not yet fully realize the responsibility and need for objectivity which accompanies this position. It is possible that his previous position as Assistant to the Director of the Domestic Council, John Ehrlichman, did not adequately prepare him for this important, demanding assignment.

The chairman of the Senate Committee on Interior and Insular Affairs recently requested a background paper on the gasoline shortage from the Congressional Research Service of the Library of Congress. In the summary of this paper, prepared by Mr. David M. Lindahl, is found an objective conclusion concerning the gasoline shortage, which I will quote: "Limited refinery capacity, flagging domestic production, and a worldwide shortage of low-sulfur crude resulted in restricted supplies."

Mr. President, I ask unanimous consent that the complete summary be printed in the RECORD.

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

THE GASOLINE SHORTAGE: A NATIONAL PERSPECTIVE; A BACKGROUND PAPER PREPARED BY THE CONGRESSIONAL RESEARCH SERVICE

SUMMARY

The gasoline shortage is the result of several factors acting in conjunction. Limited refinery capacity, flagging domestic production, and a worldwide shortage of low-sulphur crude resulted in restricted supplies. At the same time demand was rising at rates much higher than before. This imbalance, if it continues, could create serious economic problems. The gasoline shortage has already had a major impact on consumers, farmers, and independent marketers. Unfortunately, there are no quick or simple solutions. The only short-term relief is likely to come from imports of foreign oil and oil products and through conservation efforts. A recurrence of gasoline shortages

can be expected for at least the next three years until new refineries are built. Until such time as supply once again is sufficient to meet demand, artificial means may be needed to ensure that supplies of gasoline are allocated to those who need them for high priority uses.

Mr. McCLURE. With regard to refinery capacity, the paper states the major problem facing new construction:

Siting is a major obstacle to new refinery construction that remains a problem. Delaware, for example, has banned refinery construction and other heavy industrial installations along its coasts. Sites in other areas have also been contested on environmental grounds.

The paper goes on to say:

The export of refinery capacity has been accelerated by siting problems. Even though modern refineries are not nearly as objectionable as were earlier refineries, very few communities have shown a willingness to permit construction. The added costs of pollution controls, siting delays, court injunctions, coastal zone regulations and other problems have led many companies to build their refineries outside the borders of the United States.

It is of interest to analyze the charge that the present shortage was created in order to benefit the major oil companies. Congressional and Presidential response to the shortage has been, however, completely predictable: increased Government control of the oil companies and their operations. The Senate, for instance, has passed the Emergency Fuels Allocation Act of 1973, while the President is preparing a mandatory allocation program. In other words, there was no rational basis for assuming that a gasoline shortage would improve oil company problems, but, as any astute political observer could have predicted, a shortage would result in increased Government regulation and control of the industry.

At the same time, though, that the American public is being told that major oil companies "created" the gasoline shortage, they are also being told that the shortage is no longer a serious problem. One of the major supporters of this thesis is the American Automobile Association.

AAA reports have been responsible for headlines such as "Gas Shortage Easing," but, let us examine closely the date contained in these reports. A week ago, the AAA reported a "measurable" easing of the nationwide shortage. Their own data, however, showed that 46 percent of the stations polled were operating normal hours, compared with 43 percent the week before. In addition, 48 percent were curtailing hours, compared to 49 percent the previous week, and 10 percent were limiting the amount of gasoline motorists could purchase, compared with 11 percent. I do not believe that changes of 1 to 3 percent represent "measurable" easing. Furthermore, their latest report indicates that the situation has further "improved," when "47 percent" of the stations polled were operating normal hours—up from 46 percent the week before. Would it not have been more accurate to report that over half our retail stations were still restricting their hours of operation? A further breakdown, however, of AAA data shows that in a recent survey of service station operations in the New York and New Jersey areas, the AAA checked with 216 major outlets and only 4 independent outlets. I question the validity, if not the motive, of this type of survey.

The harmful effects of such misleading items are, however, evident. On the east coast, vacationing motorists drive blissfully to the beach, creating 8½ mile traffic jams. And, why should they not? Have they not been told that the shortage is "easing"? Why should they reduce their speed to 50 miles per hour, or think twice before making two trips to the store instead of one? They have been told not to worry: The gasoline is there. But, in several critical areas of our Nation, the gasoline is not there. This fact will become evident to the urban vacationer this fall, when food supplies become scarcer. Of course, the Senate will probably pass an Emergency Food Allocation Act of 1973, but I do not think that that will grow many crops.

Farmers in Idaho, and elsewhere, are not getting all the fuel they need. A recent article in the Idaho Statesman, dated July 12, 1973, graphically describes the impact of the real gasoline shortage on agriculture. You can well imagine the feelings of these men and women when they read that "Exxon Halts Allocation of Gasoline," and will provide unlimited supplies to service stations east of the Rocky Mountains. Or, that Phillips Petroleum has increased the quantity of gasoline available east of the Rocky Mountains. Mr. President, I ask unanimous consent that this article from the Idaho Statesman be included in the RECORD.

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

FARMS FACE FUEL BIND AS IDAHO HARVESTS NEAR

(By Larry Buser)

Farmers who have increased production over last year, or who have purchased larger tractors, may find themselves in a fuel bind as the potato and wheat harvests approach.

Farmers with tractors that consume more gasoline and whose production increases require more machinery are having to make do with the same amount of gasoline or less than they were allotted last year.

The state executive director of the Agricultural Stabilization and Conservation Service (ASCS), Forest J. Severe, Boise, says the gas supply situation for farmers looks "very suspicious."

He said some farmers have been going to service stations to fill cans with gasoline for farm machinery, apparently because their fuel allocations are insufficient to meet their needs.

The ASCS office receives reports on gas supplies from farmers and gasoline distributors and forwards these reports to Washington to the Interior Department's Office of Oil and Gas. The department in Washington then contacts the oil dealers or their regional distributors to determine what action will be taken.

Severe says attempts to satisfy the 35 or more shortage complaints have "not been very encouraging or very glamorous as far as the effort we're putting into it. I'd say now we're getting about 10 to 15 per cent success" in solving shortage problems.

Art Hunt, executive director of the Ada-Boise County ASCS, says, "Generally if a farmer has received fuel in the past from the same distributor, he shouldn't have too much difficulty carrying out 1973 operations."

He says there was "a frightening scramble" for fuel by some farmers earlier this summer but that now most are "more confident" their gasoline needs will be met. However, he says, those who have increased land or business are experiencing some hardships in trying to obtain more fuel.

Lloyd Brown, ASCS program specialist, says the farmer who has purchased gasoline regularly from a distributor is getting by but might be a little "edgy" about the situation. He says in addition to those who have increased production or who have gone to larger machinery, the farmers who have been "shopping around" rather than purchasing from one dealer are having problems obtaining fuel.

Brown says farmers who are new in the area and have no regular dealer here often "can't get any at all and have to scrounge around and get whatever they can."

However, those who are forced to purchase fuel at service stations must pay about 40 cents per gallon rather than the farm delivery price of 32–35 cents per gallon, up five or six cents from early spring, says Severe.

Farmers in the Burley area are feeling the fuel strain and Mobil and Sinclair oil companies stopped servicing customers this spring. Fred Allen, Atlantic-Richfield dealer who serves much of Cassia County, is "really tight" and he is not permitted to take on any new accounts. Allen says Mobil had been supplying about 50 farmers in the Burley area who are now having "a devil of a time" getting fuel.

He says the Mobil customers had written Washington two months ago requesting allocations but have not been able to obtain necessary fuel. "We tried to help some a little bit and have gotten our hands spanked" by the company for taking on new accounts, he says.

One of Allen's regular customers recently increased his potato acreage and needs more fuel for production. "He's really screaming (for gasoline)," he says. Diesel fuel, Allen says, is also getting scarce.

Area distributors receive gasoline supplies at the beginning of each month, says Allen, and "it's the end of the month we're stretching it." In June Gov. Andrus established a "gasoline shortage hotline." Troubleshooter Pat Vaughan says he received "a flurry of calls near the end of June but which have dropped off considerably since the first of July.

Some farmers had purchased large gasoline storage tanks ranging from 200 to 20,000 gallons earlier this summer but Allen says "They can't get anybody to fill them so they haven't gained anything."

Mr. McCLURE. Mr. President, to solve this present shortage of both gasoline and diesel fuel, and to prevent future shortages of fuel oil, with resultant electric power blackouts and industrial shutdowns, it is vital that the public know the facts. They need to know that there is no allocation or rationing plan which can increase supplies. Government control of supplies can, at best, redistribute shortages. The public also needs to know that energy R. & D. is not going to help meet our present or short-term needs. I have been a strong supporter of increased R. & D., but a realistic evaluation must include the realization that the results are years in the future.

One of the hardest facts to be faced, though, by the American public is the need for reexamination of our national environmental goals and legislation. The future energy needs of our society cannot be met unless this unpleasant task is faced up to. And, we must begin with the Clean Air Act Amendments of 1970.

Regardless of recent statements by environmentalists, air equality control re-

quirements have been one cause of the present fuel shortage. I believe that most people are now aware of the increased fuel consumption of new automobiles. Reports of 6 or 7 miles to the gallon are not uncommon. Despite misleading statements by the Environmental Protection Agency, the fact is that a major portion of that decreased fuel efficiency is due to emissions control requirements imposed by law. Another requirement of the law, though, that is not so easily understood is the limitation on emissions of sulphur dioxide from electric power plants and other industrial fuel users.

On June 28, the EPA released a report by the Sulfur Oxide Control Technology Assessment Panel which concluded that "sulfur dioxide removal from stack gases is technologically feasible in commercial-sized installations." The report admits that "the reliability of currently available systems has been the subject of some question," but the authors "believe that an additional 18 months operating experience—or by 1974—should effectively remove engineering barriers to the application of stack gas cleaning to many facilities." Apparently the companies who manufacture this equipment do not share this belief, because to date none of them will provide enforceable guarantees of reliability for any SO_2 removal system. A recent study of SO_2 removal systems by Battelle's Columbus Laboratories made the following statements about the experience with limestone scrubbing technology in the United States:

With 40 years of small-scale experience, and now four years of intermittent but much more intensive large-scale development on relatively large units, *the availability of these plants is at most 25 to 30 percent.* Unless there are significant breakthroughs to cope with the problems remaining, it seems possible that *another 2 to 10 years will be required to achieve 100 MW and over,* and some experts seriously question whether such scrubbing will ever be achieved with limestone scrubbing. (Emphasis added)

The concept of reliability with respect to our Nation's electric generating capacity must be emphasized—especially in view of concern by all of us over energy supplies of all types. "Reliability" means the annual average proportion of time that a plant is available for electric generation, whether operated or not. Our Nation's fossil-fuel-fired electric generating plants have an average reliability of nearly 90 percent. To force control devices on these plants which would cut their reliability by even 10 to 20 percent would be disastrous. Of course it is difficult to conceive that the Government would force our country's generating capacity to be substantially reduced by malfunctioning control devices.

The control equipment would have to be bypassed if the plants are to continue to operate to meet the energy demand. It seems senseless to have a huge investment—and we are talking in terms of billions of dollars on a nationwide basis—in a technology that is nonfunctional. The consumers would really "take it in the neck"—or the pocketbook—in higher rates and higher prices if we were to follow that strategy.

Another major unresolved problem is the disposal of waste products from stack gas cleaning systems. The SOCTAP report points out that 100,000 megawatts of functioning flue gas desulfurization equipment would produce 48 million tons of sludge per year, which would cover 160 square miles to a depth of 10 feet assuming a 20-year storage requirement. It is misleading to suggest that the air quality problem is solved when that solution merely created a monumental solid waste problem.

The rationale behind the SOCTAP report is that if the industry is forced to buy the control technology then they will be able to find the engineering solutions to the reliability and disposal problem. The problem with this rationale is that it forces industry to turn their full-scale generating plants into experimental stations. There is no question that the electric industry will purchase and install the SO_2 removal technology if that is what the law demands. However, the people of this country will be footing the bill in terms of increased electric bills and reduced amounts of available electricity. I feel the conclusion that SO_2 flue gas removal technology is now feasible is a decision that is premature and will force an unwise allocation of our country's resources in an unproven technology.

Prior to EPA's adopting the conclusions of the SOCTAP report, I recommend an examination of the points I have raised with respect to that report's conclusions.

In order to meet air quality standards with available technology, the electric utilities have increased their consumption of fuel oil, discarding the abundant domestic coal reserves. In 1972, for instance, the Nation's electric utilities burned 493.9 million barrels of fuel oil, a 24.7 percent increase over 1971. In addition, unnecessary stringent sulphur restrictions on residual fuel oil have forced utilities to increase their consumption of the light distillate oil used for home heating. One estimate of the amount of No. 2 oil and diesel fuel which will be used this year for blending with higher-sulphur residual oil is 186,000 barrels per day. One major utility alone, Commonwealth Edison in Chicago, will use 233 million gallons of No. 2 and diesel fuels to generate electricity this year. When you realize that seven gallons of fuel will provide for the cultivation of an acre of farm land each year, then 233 million gallons is the equivalent of 10 percent of the fuel needed to farm the total cultivated acreage, nationwide.

One solution to this problem would be sulphur content standards for fuels, in those areas where human health would not be threatened.

A program must be developed, and implemented, by Federal, State, and local governments to permit burning of Nos. 4, 5, and 6 fuel oil of up to at least 1 percent sulphur content. This action should be taken before the end of August, if we are to avoid crippling fuel oil shortages this winter. In addition, the use of heavier fuels with sulphur contents of up to 3 percent should be seriously considered, in those regions where human health would not be threatened. I was amazed to read recently of tests conducted at a coal-fired electric power plant in Georgia, burning coal with a sulphur content of about 2 percent. Based on measurements taken at various locations around the plant, sulphur dioxide concentrations were much lower than we have been led to believe they would have been. At the worst location, the SO_2 concentration on the ground was lower than the primary ambient air quality standards by a factor of 8, and lower than the secondary standard by a factor of 6. The primary standards are, of course, those required to protect the public health, allowing a reasonable margin of safety. Secondary standards are required to protect public welfare—property, birds, trees, fish, and so forth.

I believe that the time for reexamination of the Clean Air Act Amendments of 1970, and the implementation of the act, has arrived. Congress passed this law in 1970, based on available information. Recent editorials in the Washington Evening Star express the opinion that the "clean-air ideal that Congress embraced so enthusiastically 3 years ago is coming into hard collision with the fact that its attainment—on the schedule envisioned—simply may not be possible through any rational means." With regard to the Clean Air Act standards, which the Star says "Congress set so blithely and so blindly in 1970," Congress should begin a reexamination, based on the experience and knowledge which has been gained during the past 3 years.

Mr. President, I ask unanimous consent that these two editorials, dated June 19, 1973, and June 25, 1973, be included in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Washington Star-News, July 19, 1973]

THE CLEAN-AIR COLLISION

The clean-air ideal that Congress embraced so enthusiastically three years ago is coming into hard collision with the fact that its attainment—on the schedule envisioned—simply may not be possible through any rational means. Developments emerging last week from both the Supreme Court and the Environmental Protection Agency reinforce that view. They cast heavier doubt on the nation's ability to meet the air-purity standards set by Congress, to become effective in 1975.

First came the court's decision that air quality cannot be allowed to deteriorate significantly anywhere in the country—even out in the great unpopulated expanses where pollution doesn't begin to approach the limits set by the Clean Air Act of 1970. This interpretation of the act might, if rigidly applied, serve virtually to paralyze growth in underdeveloped areas that are seeking new industry. And dispersal of some industry from the larger congested cities to rural towns should, we think, be a part of the general program to reduce pollution. But the worst impact of the decision may hit the metropolitan centers in a way that relates, detrimentally, to both pollution and energy production. If new electric plants and other utilities cannot be located outside the areas of urban contamination, the problems of depollution and power supply will become much more difficult.

But the extent of this restriction will be unknown until there is clarification by the court, which gave no written opinion, and hence no guidance at all, but only upheld a lower court decree by a tie vote. Further litigation must be awaited to get the needed answers. And meanwhile, some major cities have only the dimmest prospect, or none at

all, of meeting the air standards set for the year after next.

That became more starkly apparent last Friday when the EPA rolled out a partial plan for meeting Congress' requirements. An astounding reduction of traffic is contemplated in 18 urban areas—possibly even a total ban on private cars in Los Angeles, and a 60 percent cutback of driving in northern New Jersey. This a good deal more than public opinion can be expected to bear. Certainly the prospective plans for the Washington area (on which we will have more to say later) would come as a jolt to countless wage-earners here.

Taken as a whole, the EPA's ideas for urban sectors, going into effect so soon, could exact intolerable economic penalties and prove politically indefensible. Given a bit more time, the widespread public-transit improvements now underway, and anti-pollution equipment on autos, can greatly ease the pain of transition to cleaner air.

Fortunately, the acting EPA chief, Robert W. Fri, seems to have no delusions about this. In presenting the highly restrictive plan, Fri said he was "not sure these are the results that Congress intended," and that he will "explore with Congress the desirability of extending the deadlines for these areas that are so deeply affected." That is the wise course. Congress should begin reexamining the Clean Air Act, with a view to revisions that would allow more flexibility in reaching some of its goals. The need is for careful coordination, to achieve the final high objectives with the least possible economic damage.

[From the Washington Star-News, July 25, 1973]

COMING TO GRIPS WITH REALITY

For all the clean-air planners' dire warnings of the past year or so about imminent, ultra-harsh sanctions against automobile pollution, it appears now that Washington's problem is not only manageable, but in comparison with some other urban areas presents hardly a serious challenge.

This is partly so, of course, because those other cities are in so much worse shape, not because of an absence of air pollution here.

By the Environmental Protection Agency's own definition, meeting the letter of the law by 1975 in the worst of those other places would require curtailing auto travel in dimensions of 50 to 100 percent. Such measures obviously are politically and economically absurd. And as the EPA virtually conceded the other day, it seem. certain both that Congress will do something about the statutes and that the agency itself will be taking a more tolerant attitude toward enforcement.

Thus, in our region's case, most of the steam already has seeped out of such proposals as imposing massive surcharges on off-street parking as a means of discouraging auto travel. The EPA, bowing to technological realities, has become more amenable to stretching out deadlines for anti-pollution devices on older cars. It appears, at the moment, that the main components of an acceptable Washington area plan will involve the purchase of additional buses, conversion of more street space to the exclusive use of buses and car pools, bans (to an undetermined degree) on street parking, and curtailing air pollution at filling stations.

We commend this emphasis on crash programs of improved public transit not only because political and technological reality demands it, but as plain common sense. A significant drop in the use of cars cannot occur in a vacuum, for the travel demands remain. If the decrease is to occur at all, a reasonably adequate alternative means of mobility is a first requisite.

Quite plainly, no one at this point really knows what will occur next in regard to the clean-air standards which Congress set so blithely and so blindly in 1970. Much of the answer will rest with Congress, but not all. If, in the first place, urban areas all over the nation are thinking about vastly increasing their bus fleets—as apparently they are—there is a real question about the ability of industry to deliver them.

For all the uncertainties, however, our local situation has its bright side. After a great deal of unconscionable foot-dragging on the part of Maryland, officials of that state, Virginia and the District reportedly are finally on the verge of agreement on a coordinated plan for the Washington area as a whole. That is a large step forward. And if a plan half-way reasonable is submitted voluntarily to the EPA, our guess is that it will be accepted gratefully, with a sigh of relief.

Mr. McCLURE. During its reexamination of the act, I urge my colleagues to consider the implications of imposing needless and costly burdens on our society, particularly at this time of problems and shortages in fuels, agriculture, international trade, and the value of our currency. The Standing Committee on Environmental and Resource Management, of the National Academy of Public Administration, recently issued its report on national energy policy and programs. I would like, at this point, to quote from that report, concerning the impact of environmental controls on our society:

For the most part, environmental controls must ultimately be left to the states and, in some cases, to regional agencies. The states should be allowed to pursue their own projects to achieve environmental control within the limits of minimum ambient standards to be set by the Federal government. These should be conservative values, and the states should be granted some elbow room. The current procedure of requiring federal approvals, and of federal pressures on the states to propose unrealistic standards, should be abolished. EPA now twists the arms of state agencies forcing them to propose overly strict environmental standards under the threat that the Federal agency will take over if local agencies are not strict enough. The Federal program gives little or no recognition to trade-offs, that is the overall social costs of environmental requirements at any level. The mindless Federal pursuit of environmental extremism—including the pursuit of zero discharge into water and to the total "nondegradation" of the air—is nonsensical on its own terms. More than that, it ignores both the needs and resources of the states and localities in many if not all areas.

Whether speaking about federal-state relationships or relationships within the Federal government, we must improve the coordination between energy decision making and environmental decision making. The separation and exaltation of environmental administration will lead, as in any single-mission program, to the ignoring of trade-offs. Today, Section 101 of the Federal Water Pollution Control Act postulates a national objective of zero discharge of pollutants to navigable waters by 1985, and the Clean Air Act calls for the protection and enhancement of air quality with language which has been read by the courts as meaning total nondegradation. We must consider the implications of both zero discharge to water and nondegradation of the air in terms of the growing scarcity of clean fuels and the vastly higher prices people will pay for energy if it must be produced with a closed cycle technology for both air and water pollution control purposes. Our Federal and state environmental laws must be revised to provide for a rational balance of our various societal objectives, including the provision and use of energy in light of costs and benefits.

In the same vein, we must move away from a Federal policy that prescribes a rigid national standard for allowable emissions. This policy will strain an already limited supply of high quality fuel. Some areas can accommodate more pollutants than others and still have good water and air. In such areas, sources should be permitted to operate at emission and discharge rates commensurate with ambient quality maintenance. Again, flat emission controls impose needless and costly burdens and make impossible a rational balance of environmental and other objectives in light of the costs and benefits.

In summary, Mr. President, the present gasoline shortage is real. There is no evidence to show that it is contrived. The voluntary allocation program is not meeting the needs of farmers, ranchers, and other agricultural producers. And, the shortage of petroleum products will continue and grow worse, if the Congress and the administration do not act. In a free society such as ours, though, that action requires public understanding and support. I urge the national press to help provide all the facts, and choices, which are available. The decisions to be made may be hard, but the hardships of the American people, resulting from indecision, will be harder.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Pursuant to a previous order, the Senator from West Virginia (Mr. ROBERT C. BYRD) is recognized for not to exceed 8 minutes.

Mr. ROBERT C. BYRD. Mr. President, I yield back the remainder of my time.

ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transition of routine morning business of not to exceed 15 minutes, with statements therein limited to 3 minutes.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HATHAWAY). Without objection, it is so ordered.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. BURDICK) laid before the Senate the following communication which was referred as indicated:

PROPOSED AMENDMENTS TO THE BUDGET FOR 1974—DEPARTMENT OF STATE AND ARMS CONTROL AND DISARMAMENT AGENCY (S. Doc. No. 93–26)

A communication from the President of the United States, transmitting proposed amendments to the request for appropriations transmitted in the budget for the fiscal year 1974, for the Department of State and Arms Control and Disarmament Agency (with accompanying papers). Referred to the Committee on Appropriations, and ordered to be printed.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JACKSON, from the Committee on Interior and Insular Affairs, with amendments:

S. 1828. A bill to require the President to appoint, with the advice and consent of the Senate, the head of the Mining Enforcement and Safety Administration, Department of the Interior (Rept. No. 93-340).

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following favorable reports of nominations were submitted:

By Mr. LONG, from the Committee on Finance:

Stanley B. Thomas, of New York, to be an Assistant Secretary of Health, Education, and Welfare; and

William L. Gifford, of New York, to be a Deputy Under Secretary of the Treasury.

The above nominations were reported with the recommendation that the nominations be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. FONG:

S. 2220. A bill to repeal the "cooly trade" laws;

S. 2221. A bill to repeal the Bertillon System of Identification;

S. 2222. A bill to amend the Immigration and Nationality Act to remove the distinction between Eastern and Western Hemisphere immigrants, to establish an immigration ceiling, and for other purposes;

S. 2223. A bill to amend the Immigration and Nationality Act to provide that parents of permanent residents be eligible to file for the second preference category;

S. 2224. A bill to amend the Immigration and Nationality Act to include sons and daughters within the provision relating to waiving the exclusion from the United States for fraud;

S. 2225. A bill to amend the Immigration and Nationality Act to include sons and daughters within the provision relating to exclusion from deportation of aliens excludable for fraud;

S. 2226. A bill to amend section 312 of the Immigration and Nationality Act with respect to certain tests for naturalization; and

S. 2227. A bill to amend the Immigration and Nationality Act to provide for recording of admission for permanent residence in the case of certain aliens who entered the United States prior to October 3, 1965. Referred to the Committee on the Judiciary.

By Mr. BROCK:

S. 2228. A bill to provide for greater disclosure of the nature and costs of real estate settlement services, to eliminate the payment of kickbacks and unearned fees in connection with settlement services provided in federally related mortgage transactions, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. BIBLE (for himself and Mr. CANNON):

S. 2229. A bill to authorize the Director of the Bureau of Mines to extend certain assistance to certain individuals engaged in mineral exploration and development. Referred to the Committee on Interior and Insular Affairs.

By Mr. CURTIS:

S. 2230. A bill to amend the Watershed Protection and Flood Prevention Act, as amended. Referred to the Committee on Agriculture and Forestry.

By Mr. SPARKMAN:

S. 2231. A bill for the relief of George W. Wright. Referred to the Committee on the Judiciary.

By Mr. HOLLINGS (for himself and Mr. MAGNUSON):

S. 2232. A bill to promote commerce and protect the environment by establishing procedures for the siting, construction, and operation of deepwater port facilities off the coast of the United States, and for other purposes. Referred to the Committee on Commerce.

By Mr. CHURCH (for himself, Mr. HATFIELD, Mr. MCCLURE, and Mr. PACKWOOD):

S. 2233. A bill to establish the Hells Canyon National Recreation Area in the States of Idaho, Oregon and Washington, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. WILLIAMS (for himself, Mr. BROOKE, Mr. TOWER, Mr. PROXMIRE, and Mr. MCINTYRE):

S. 2234. A bill to amend the Securities Exchange Act of 1934 to provide for the collection and public dissemination of information concerning the holdings of and transactions in securities by institutional investors, including banks, bank holding companies, insurance companies, trust companies, investment advisers, investment companies, separate accounts, dealers, pension-benefit or profit-sharing trusts and plans, charitable endowment funds, and other funds maintained or utilized for the purpose of collective investment. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. HART:

S. 2235. A bill to establish an equitable private retirement system. Referred to the Committee on Finance.

By Mr. FONG:

S. J. Res. 137. Joint resolution proposing an amendment to the Constitution of the United States with respect to eligibility for the Office of President and Vice President. Referred to the Committee on the Judiciary.

By Mr. CURTIS:

S.J. Res. 138. Joint resolution to amend the Economic Stabilization Act. Referred to the Committee on Banking, Housing and Urban Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FONG:

S. 2220. A bill to repeal the "cooly trade" laws;

S. 2221. A bill to repeal the Bertillon System of Identification;

S. 2222. A bill to amend the Immigration and Nationality Act to remove the distinction between Eastern and Western Hemisphere immigrants, to establish an immigration ceiling, and for other purposes;

S. 2223. A bill to amend the Immigration and Nationality Act to provide that parents of permanent residents be eligible to file for the second preference category;

S. 2224. A bill to amend the Immigration and Nationality Act to include sons and daughters within the provision relating to waiving the exclusion from the United States for fraud;

S. 2225. A bill to amend the Immigration and Nationality Act to include sons and daughters within the provision relating to exclusion from deportation of aliens excludable for fraud;

S. 2226. A bill to amend section 312 of the Immigration and Nationality Act with respect to certain tests for naturalization; and

S. 2227. A bill to amend the Immigration and Nationality Act to provide for recording of admission for permanent residence in the case of certain aliens who entered the United States prior to October 3, 1965. Referred to the Committee on the Judiciary.

S.J. Res. 137. Joint resolution proposing an amendment to the Constitution of the United States with respect to eligibility for the Office of President and Vice President. Referred to the Committee on the Judiciary.

Mr. FONG. Mr. President, in the early 1960's, my colleagues and I led a long and hard effort to amend the immigration and naturalization laws so as to eliminate most, if not all, of the discriminatory concepts and provisions then in the law and to add provisions so as to reunite families.

In this effort, we were highly successful—insofar as the Act of October 3, 1965 went in amending the Immigration and Nationality Act.

MAJOR PROVISIONS OF 1965 AMENDMENT OF IMMIGRATION AND NATIONALITY ACT

The Act of October 3, 1965 amended the immigration laws so as to provide for the issuance of 170,000 visas to persons born in the Eastern Hemisphere and 120,000 visas to persons born in the Western Hemisphere, a total of 290,00 visas a year.

(a) Eastern Hemisphere Immigrants:

The Act of October 3, 1965, as I indicated, amended the immigration laws so as to permit the issuance of 170,000 visas to persons born in "each independent country, self-governing dominion, mandated territory, and territory under the international trusteeship system of the United Nations" in the Eastern Hemisphere. A maximum number of 20,000 immigrant visas in any fiscal year was to be available to each such foreign state.

An immigrant born in a colony or other component or dependent area of a foreign state is chargeable to the limitation of the foreign state, with not to exceed 1 percent of the maximum number of immigrant visas available to each state available to any such colony or area.

"Immediate relatives" and "special immigrants" were made admissible without regard to this Eastern Hemisphere numerical limitation.

Immediate relatives were defined by the amendment as "children, spouses and parents of a citizen of the United States"—in the case of parents, the citizen must be at least 21 years of age.

Special immigrants, who had been formerly termed "nonquota immigrants," were defined by the act as persons born in the Western Hemisphere, returning permanent residents, certain former citizens applying for reacquisition of citizenship, ministers of religion and employees or retired former employees of the U.S. Government abroad who had performed faithful service for 15 years and who the Secre-

tary of State approved for such entry because of services in exceptional circumstances.

All persons born in the Western Hemisphere, as I indicated, were treated differently from those born in the Eastern Hemisphere. These differences I shall more fully describe momentarily.

The 170,000 visas for persons born in the Eastern Hemisphere were allocable on the basis of eight categories:

First preference: Up to 20 percent or up to 34,000 visas were made available to unmarried sons and daughters of citizens;

Second preference: Up to 20 percent or up to 34,000 visas were made available to spouses and unmarried sons and daughters of aliens lawfully admitted for permanent residence;

Fourth preference: Up to 10 percent or 17,000 visas, to married sons and daughters of citizens; and

Fifth preference: Up to 24 percent or 40,800 visas, to brothers and sisters of citizens;

Or, in other words, 74 percent of the 170,000 visas or 125,800 visas a year were made available to families of citizens and permanent residents.

Then, 20 percent of the 170,000 visas were made available to certain categories of immigrants based on their qualifications. These were:

Third preference: Up to 10 percent or 17,000 visas were made available to members of the professions or persons possessing exceptional ability in the sciences or the arts who will substantially benefit prospectively the national economy, cultural interests or welfare of the United States; and

Sixth preference: Up to 10 percent or 17,000 visas, to qualified immigrants capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

In addition,

Seventh preference: Up to 6 percent were made available for conditional entry as refugees to aliens in non-Communist or non-Communist-dominated countries who (A) because of persecution fled from any Communist or Communist-dominated country or area or any country in the general area of the Middle East and are unable or unwilling to return on account of race, religion, or political opinion or (B) are persons uprooted by catastrophic national calamity who are unable to return to their usual place of abode; and

Eighth preference: Nonpreference visas. Whatever visas, up to each country's maximum 20,000 visas, were not used in any other category were to be made available to any other such persons desiring to immigrate to the United States.

Labor certification is required for third, sixth, and eighth preference visas. None is required for the other categories.

(b) Western Hemisphere Immigrants:

One hundred and twenty thousand visa numbers were made available to immigrants from the Western Hemisphere, exclusive of immediate relatives of citizens. These are allocated on a first come, first served basis, without limitation as to country, subject to labor certification, but not subject to the Eastern Hemisphere preference system.

(c) Effect of 1965 Amendment of Immigration and Nationality Act:

The old "quota" system was effectively abolished.

In addition, and, most importantly, no person is to receive any preference or be discriminated against in the issuance of an immigrant visa because of race, sex, nationality, place of birth, or place of residence.

An alien who had entered the United States prior to June 30, 1948—instead of the previous date of 1940—if he had continuously resided in the United States up to the date of enactment of the 1965 amendment, was of good moral character and ineligible to citizenship because of his status, was permitted to adjust his status to that of a permanent resident, in the discretion of the Attorney General.

There were other technical and minor amendments of the immigration law, but this was the main thrust of the Act of October 3, 1965, which became fully operative in 1968.

—At long last, quota restrictions on the Asian-Pacific Triangle, which had covered 80 percent of the peoples of the world, were eliminated!

—All persons, regardless of race, sex, nationality, place of birth or of residence in the Eastern Hemisphere and all persons in the Western Hemisphere were afforded equal treatment under our laws!

—Our humanitarian interest in and concern for the peoples of the world and in reuniting families was clearly evidenced! 80 percent or up to 136,000 of the 170,000 visas available to persons from the Eastern Hemisphere countries are now available to refugees and families of citizens and permanent residents of the United States.

We have now had almost 5 years experience under this Act of October 3, 1965, which became fully operative in 1968.

The time is now at hand for a review of what we did.

On the whole, we did a remarkably good job!

All too much in the fashion of our time, I shall not review with you what is right about our immigration and naturalization laws. I shall go directly to what I feel needs correction today.

PROPOSED CHANGES IN CONSTITUTION AND IMMIGRATION AND NATIONALITY LAWS

I am today introducing a constitutional amendment and a series of eight bills to amend the immigration and naturalization law. These fall into four categories:

I. To eliminate discrimination—whether based on citizenship by birth or naturalization, or race, or on the hemisphere in which one is born;

II. To broaden the provisions of the law to enable sons and daughters and parents to be more readily reunited with their families;

III. To facilitate naturalization despite language difficulty; and

IV. To update the adjustment provisions for law-abiding persons ineligible for permanent residence who have been in the country continuously for a considerable period of time.

I. DISCRIMINATION

(A) CONSTITUTIONAL DISCRIMINATION

Constitutional Amendment to Make Any Citizen Eligible for Office of President.

Every person in order to become a naturalized citizen—as well as every citizen and most peoples in the world, has read and studied our Constitution.

It is a tribute to the foresight and wisdom of our Founding Fathers that, with a mere 26 amendments, of which they themselves brought about the first 10, our great Nation under this Constitution is about to celebrate its bicentennial in 1976, a mere 3 years from now.

But, that wonderful Constitution has one very serious drawback—It limits the office of President to "natural born" citizens.

Clause 5 of section 1 of article II of the Constitution now reads:

> No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Clearly, naturalized citizens are not eligible for the Presidency. This has been recognized by the Supreme Court in *Knauer* v. *United States*, 328 U.S. 654, 658 (1946).

Knauer v. *United States* was a proceeding in which the Government was successful in its efforts to cancel the Certificate of Naturalization of a person of German origin who actively supported Hitler and Nazism on the ground that it had been secured by fraud in that he had falsely and fraudulently represented in his petition that he was attached to the principles of the Constitution and had taken a false oath of allegiance.

Mr. Justice Douglas, in his opinion, at 658, stated:

> Citizenship obtained through naturalization is not a second-class citizenship. It has been said that citizenship carries with it all of the rights and prerogatives of citizenship obtained by birth in this country "save that of eligibility to the Presidency." *Luria* v. *United States*, 231 U.S. 9, 22.

Even in his dissent on the ground that Congress is not given power to take away citizenship once it is conferred, Mr. Justice Rutledge, at 677, stated:

> I do not find warrant in the Constitution for believing that it contemplates two classes of citizens, excepting only for two purposes. One is to provide how citizenship shall be acquired, Const., Art. I, § 8; Amend. XIV, § 1, the other to determine eligibility for the presidency. Const., Art. II, § 1. The latter is the only instance in which the charter expressly excludes the naturalized citizen from any right or privilege the native-born possesses. *Luria* v. *United States*, 231 U.S. 9, 22. I do not think there is any other in which his status is, or can be made, inferior.

Thus, our naturalized citizens are, by the terms of the Constitution, in effect, relegated to second-class citizenship.

They are ineligible to the highest office our country can offer its citizens.

The United States is the poorer for that! We not only hurt our world image of being a country of equality for all under law, but we deprive ourselves of the potential services of many persons, even the one citizen who could best

serve our country at a particular time because of an accident of birth.

There has been much speculation on this restriction in the absence of any explanation of the origin or purpose of the presidential qualification clause in the recorded deliberations of the Constitutional Convention. However, whatever the motivation of our forefathers may have been, as then Acting Attorney General Richard G. Kleindienst stated in a letter commenting on this subject to the Honorable James O. Eastland, chairman, Committee on the Judiciary, under date of April 21, 1972:

Although there may have been some justification for such a restriction 180 years ago, it presumably has no place in the Constitution today. As the Supreme Court observed in *Schneider* v. *Rusk*, 377 U.S. 163, 165 (1964), except for the difference drawn by Article II, section 1 of the Constitution that only the "natural born" citizen is eligible to be President, "the rights of citizenship of the native born and the naturalized person are of the same dignity and are co-extensive."

This built-in discrimination against naturalized citizens should and must be eliminated from our Constitution.

Further, the very term "natural born" citizen is open to controversy. Does it mean only persons born on the soil of the United States and not children born of American citizens living abroad?

This was a question when the candidacy of George W. Romney for the Presidency was being urged.

My Amendment makes it clear that all persons who are citizens of the United States—however that citizenship was acquired—by birth or naturalization, are eligible for the office of President.

Additionally, some question exists as to whether the 14-year residency in the United States is to be immediately preceding the date on which a term of office commences or whether the provision of Article II, section 1 that the person shall have been "fourteen years a resident within the United States" means at any time prior to the taking of office.

President Hoover's right to enter upon the office of President was not challenged although he had not been a resident of the United States for 14 years immediately preceding his assumption of office.

Nonetheless, this ambiguity too is cleared up in my proposed Amendment.

Residency in the United States for a total of 14 years at any time preceding the date on which the term of office commences is to be the requirement.

Mr. President, I ask unanimous consent that the text of my joint resolution proposing an Amendment to the Constitution of the United States with respect to eligibility for the offices of President and Vice President be printed in the RECORD at this point.

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

SENATE JOINT RESOLUTION 137

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within 7 years after its submission to the States for ratification:

"Article —

"Notwithstanding the provision of clause 5 of section 1 of Article II of the Constitution relating to citizenship, any person who is a citizen of the United States shall be eligible to the Office of President if he has been a resident of the United States for a total of at least fourteen years at any time preceding the date on which commences the term of office for which he is elected, and if he is otherwise eligible to such office."

(B) RACIAL DISCRIMINATION

Mr. FONG. Two types of racially discriminatory laws are still be found in our statutes. These are the "Cooly Trade Laws" and the Bertillon System of Identification. Both of these discriminate against Orientals.

(1) Cooly Trade Laws:

Webster's New International Dictionary, second edition, unabridged, defines "coolie" or "cooly" as—

In India, Egypt, and China, and sometimes Japan, especially among Europeans, a native unskilled hired laborer, or a porter or carrier; also, elsewhere, a cheap laborer transported from the East Indies, China, or Japan.

Webster's Third New International Dictionary, unabridged, defines a "coolie" as an unskilled laborer, carrier, or porter or a semiskilled menial usually in or from the Far East, hired for low or subsistence wages. In Africa, a person of Indian origin or descent.

In 1862, Congress enacted what is termed "The Cooly Trade Laws" to correct what was then a widespread practice of exploiting persons of Oriental origin, particularly Chinese and Japanese. These persons were procured abroad and brought to other foreign ports or places—including the United States—where they were disposed of, sold, or transferred as servants or apprentices, or held in service or labor. American citizens were made subject to a fine of $2,000 and a 1-year prison term for engaging in such coolie traffic or building or sailing any vessels for such traffic. Any vessels used in coolie trade and owned by citizens of the United States or registered or licensed in the United States were made subject to forfeiture to the United States.

This law was amended in 1869, again in 1875 and finally in 1911.

The 1875 amendment made it a criminal offense for a citizen or anyone amenable to the laws of the United States to take to or from the United States any subject of China, Japan, or any Oriental country, "without their free and voluntary consent, for the purpose of holding them to a term of service," or for anyone to contract to supply coolie labor. All contracts for a term of such service in the United States were declared void.

In 1911, when the Circuit Courts' duties were transferred to the District Courts, a correcting technical amendment was enacted.

While these laws undoubtedly had a laudable purpose when enacted, today they are obsolete.

The word "coolie" carries a demeaning connotation to the person of Oriental descent to whom it is applied and it is used only when that connotation is intended.

There is no practical need today for such laws; they are merely a source of irritation to persons of Oriental origin.

These "Cooly Trade Laws" should be deleted from our statutes—they should not be a source of racial misunderstanding perpetuated in our statute books.

Mr. President, I ask unanimous consent that the text of my bill repealing the "Cooly Trade Laws" be printed in the RECORD at this point.

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

S. 2220

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 2158–2163, Revised Statutes, and sections 1, 2, and 4 of the Act of March 3, 1875 (ch. 141, 18 Stat. 477) (8 U.S.C. 331–339), are hereby repealed.

Mr. FONG. (2) Repeal of Bertillon System of Identification:

By the Acts of March 17, 1894, and of April 28, 1904, Congress provided for the Bertillon System of Identification at the various ports of entry, to prevent the unlawful entry of Chinese into the United States. This was a part of the section of the law titled the "Chinese Exclusion Laws."

Webster's New International Dictionary, second edition, unabridged, describes the Bertillon System as a system for the identification of persons by a physical description based upon anthropometric measurements, notes or markings, deformities, color, impression of thumb lines, and so forth.

Webster's Third New International Dictionary, unabridged, describes it as a system for the identification of persons by a physical description based upon anthropometric measurements, standardized photographs, notation and classification of markings, color, bodily anomalies, thumb print impressions, and other data that has been largely superseded by fingerprinting.

In 1943, the other sections of the Chinese Exclusion Laws, of which this section providing for the use of the Bertillon System was a part, were repealed—Act of December 17, 1943, 57 Stat. 600. However, this section was not included in the provisions of that repeal statute even though for some years prior thereto, no moneys had been appropriated to prevent entry of illegal aliens referred to this section.

I feel I need say very little to support repeal of this last, obsolete section of the Chinese Exclusion Laws. The very memory of this discriminatory legislation based solely on race should be eliminated from our statute books.

Mr. President, I ask unanimous consent that the text of my bill to repeal the Bertillon System of Identification be printed in the RECORD at this point.

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

S. 2221

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Acts of March 17, 1894, Article III, 28 Stat. 1211; April 28, 1904, c. 1762, § 1, 33 Stat. 478 (8 U.S.C. 298), are hereby repealed.

(C) HEMISPHERIC DISCRIMINATION

Mr. FONG. The October 3, 1965 Act amending the Immigration and Nationality Act, as I indicated, eliminated most of the discriminatory provisions of the law.

Under the provisions of the Immigration and Nationality Act prior to the 1965 amendment, as I indicated before, persons born in the Western Hemisphere were "nonquota" immigrants and permitted to immigrate freely.

The 1965 amendment—section 21(e) of the Act of October 3, 1965—limited to 120,000 the number of special immigrants born in the independent countries of the Western Hemisphere or in the Canal Zone—except for immediate relatives of citizens of the United States, who were admissible in any one year. Labor certification was required for such immigrants.

Since there was no provision for a preference system or for a limitation on the number of immigrants admissible from any one country, admission is on a first-come, first-served basis.

While it was never the intent of Congress to discriminate against persons born in the Western Hemisphere—and, in fact, this first-come, first-served basis, was intended to benefit persons born in the Western Hemisphere, in effect it has proven to be disadvantageous to them.

As of July 1, 1973, visa applications filed prior to September 8, 1971 are being processed for persons born in the Western Hemisphere. For most countries in the Eastern Hemisphere, all preference categories are current except for third and nonpreference preferences, which are being processed for applications filed prior to February 1, 1973.

Additionally, while persons born in the Eastern Hemisphere are eligible for adjustment of status in the United States upon application, if eligible, and if an immigrant visa is available to him at the time of approval of the application, persons born in the Western Hemisphere or the adjacent islands must leave the United States and appear before a consular officer overseas in order to adjust their immigration status. This is not only a great inconvenience but a most expensive procedure—especially in my State of Hawaii.

A person born in the Western Hemisphere, who resides in Hawaii and seeks to adjust his status to that of an alien lawfully admitted for permanent residence, must make a 2,500 to 3,000-mile trip to do so. A person born in the Eastern Hemisphere can adjust in Hawaii. This casts an unnecessary and costly burden on the person born in the Western Hemisphere, solely because of his place of birth.

These discriminations based on place of birth should be eliminated.

All persons—whether born in the Eastern or Western Hemisphere—should be treated alike under our Immigration and Nationality Law. My bill does that.

My bill would add the 170,000 visas now available to persons born in the Eastern Hemisphere and the 120,000 visas now available to persons born in the Western Hemisphere so as to make the numerical limitation 290,000—available to all persons, wherever born.

My bill would then make all persons subject to the preference system I first outlined, so that relatives—first, second, fourth, and fifth preference visas—would be reunited; refugees from the Western Hemisphere countries would become eligible for seventh preference visas; professionals and other workers would become eligible for third or sixth preference visas; and, should there be any unused visas in the preference categories, nonpreference or eighth preference visas would be available.

The 20,000 limitation per country would also become applicable to all countries in the Western Hemisphere as well as Eastern Hemisphere.

And, persons born in the Western Hemisphere would be eligible to adjust their status in the United States on the same basis as do persons born in the Eastern Hemisphere.

So as to provide for an equitable adjustment period, priority dates held by persons born in the Western Hemisphere on July 1, 1973 would be retained and visas allotted for the most preferential class to which the immigrant is eligible.

This bill eliminates discrimination in our Immigration and Nationality Act based on accident of birth in the Eastern and Western Hemisphere. This discrimination, too, should be eliminated from our statute books.

Mr. President, I ask unanimous consent that the text of my bill amending the Immigration and Nationality Act to remove the distinction between Eastern and Western Hemisphere immigrants, to establish an immigrant ceiling, and for other purposes be printed in the RECORD at this point.

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

S. 2222

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 201(a) of the Immigration and Nationality Act is amended—

(1) by striking out in clause (i) of such subsection "45,000" and inserting in lieu thereof "75,000"; and

(2) by striking out in clause (ii) of such subsection "170,000" and inserting in lieu thereof "290,000".

SEC. 2. (a) Section 101(a)(27) of such Act is amended by striking out subparagraph (A) thereof and renumbering subparagraphs (B), (C), (D), and (E) as (A), (B), (C), and (D), respectively.

(b) Section 211(b) of such Act is amended by striking out "section 101(a)(27)(B)" and inserting in lieu thereof "section 101(a)(27)(A)".

SEC. 3. Section 212(a) of such Act is amended—

(1) by striking out in paragraph (14) "to special immigrants as defined in section 101(a)(27)(A) (other than the parents, spouses, or children of United States citizens or of aliens lawfully admitted to the United States for permanent residence),"; and

(2) by striking out in paragraph (24) "section 101(a)(27)(A) and (B)" and inserting in lieu thereof "section 101(a)(27)(A)".

SEC. 4. Section 241(a)(10) of such Act is amended by striking out "(other than an alien who is a native-born citizen of any of the countries enumerated in section 101(a)(27)(A) and an alien described in section 101(a)(27)(B))" and inserting in lieu thereof "(other than an alien described in section 101(a)(27)(A))".

SEC. 5. Section 244(d) of such Act is amended by striking out "is entitled to a special immigrant classification under section 101(a)(27)(A), or".

SEC. 6. Section 245(c) of such Act is repealed.

SEC. 7. Section 349(a)(1) of such Act is amended by striking out "section 101(a)(27)(E)" and inserting in lieu thereof "section 101(a)(27)(D)".

SEC. 8. Section 21(e) of the Act entitled "An Act to amend the Immigration and Nationality Act, and for other purposes", approved October 3, 1965, Public Law 89-236, 79 Stat. 921, is repealed.

SEC. 9. Each special immigrant, as that term was defined in section 101(a)(27)(A) of the Immigration and Nationality Act immediately prior to July 1, 1973, who had a priority date as such an immigrant immediately prior to July 1, 1973, shall be allotted a visa according to the most preferential class for which such immigrant files a visa petition and to which he is entitled under section 203(a) of such Act. Upon according such class to that special immigrant, the date of the filing of his visa petition shall be considered to be the priority date he had as such a special immigrant.

SEC. 10. The amendments and repeals made by this Act shall become effective on July 1, 1973.

II. TO BROADEN THE PROVISIONS OF THE LAW TO ENABLE SONS AND DAUGHTERS AND PARENTS TO BE MORE READILY REUNITED WITH THEIR FAMILIES

Mr. FONG. Back of the various preferences for the issuance of visas to immigrants has been a desire to reunite families. As I pointed out heretofore, 74 percent of all visas are available to families of citizens and permanent residents.

A. PARENTS OF PERMANENT RESIDENTS

While parents of citizens are entitled to "immediate relative" status and admissible outside the quota—section 201(b) of the Immigration and Nationality Act—there is no provision made in the law at present for parents of aliens lawfully admitted for permanent residence to be reunited with their resident alien children.

Permanent residents, too, should be permitted to be reunited with their parents.

My bill proposes to make parents of permanent residents eligible for second preference visas along with the now eligible spouses, and unmarried sons and daughters of aliens lawfully admitted for permanent residence.

The humanitarian need for such amendment, it appears to me, needs no further documentation.

Mr. President, I ask unanimous consent that the text of my bill amending the Immigration and Nationality Act to provide that parents of permanent residents be eligible to file for the second preference category be printed in the RECORD at this point.

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

S. 2223

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 203(a)(2) of the Immigration and Nationality Act is amended by inserting after "spouses," the following: "parents,".

B. WAIVER OF EXCLUSION FROM THE UNITED STATES FOR FRAUD ON THE PART OF SONS AND DAUGHTERS OF CITIZENS OR PERMANENT RESIDENTS

Mr. FONG. Mr. President, section 212(i) of the Immigration and Nationality Act reads:

Any alien who is the spouse, parent, or child of a United States citizen or of an alien lawfully admitted for permanent residence and who is excludable because (1) he seeks, has sought to procure, or has procured, a visa or other documentation, or entry into the United States by fraud or misrepresentation, or (2) he admits the commission of perjury in connection therewith, may be granted a visa and admitted to the United States for permanent residence, if otherwise admissible, if the Attorney General in his discretion has consented to the alien's applying or reapplying for a visa and for admission to the United States.

Under section 212(i) of the Immigration and Nationality Act, an alien who is the spouse, parent or child of a citizen or permanent resident who seeks to or has procured a visa or entry to the United States by fraud or misrepresentation or perjury, may be granted a visa, if otherwise admissible, with the consent of the Attorney General.

Because a child is defined in section 101(b)(1) of the Immigration and Nationality Act as an unmarried person under the age of 21 years, sons and daughters of citizens and resident aliens who are over the age of 21 years are not eligible for this waiver of excludability.

Since it is the firm and settled principle of our immigration law to reunite families, to make this waiver available only to a "child"—as well as parent or spouse—of a U.S. citizen or resident alien surely does not serve the purpose of reuniting families.

All too frequently, the fraud, misrepresentation or perjury is committed by a son or daughter not much over the age of 21 and consists of denying their marital status—not necessarily to obtain a first or second preference visa—available to unmarried sons or daughters of citizens and resident aliens, respectively—as against a fourth preference visa which is available to married sons and daughters of citizens, but rather for fear of incurring a parent's wrath at their having married without the parent's consent.

Congress has long made it clear that it is the intent to keep family units together and preserve family ties, even at the cost of rigorous enforcement of the immigration law.

In keeping with this humanitarian goal, not only children, parents and spouses of citizens and resident aliens should be eligible for this waiver, but sons and daughters should be eligible for this waiver of exclusion. My bill would accomplish this by substituting the words "son, or daughter" for the word "child" now in section 212(i) of the Immigration and Nationality Act.

Mr. President, I ask unanimous consent that the text of my bill amending the Immigration and Nationality Act to include sons and daughters within the provision relating to waiving the exclusion from the United States for fraud be printed in the RECORD at this point.

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

S. 2224

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 212(i) of the Immigration and Nationality Act is amended by striking out "or child" and inserting in lieu thereof the following: "son, or daughter".

C. WAIVER OF DEPORTABILITY FROM THE UNITED STATES FOR FRAUD ON THE PART OF SONS AND DAUGHTERS OF CITIZENS OR PERMANENT RESIDENTS

Mr. FONG. Section 241(f) of the Immigration and Nationality Act addresses itself to the inapplicability of the provisions of the section to the deportation of an alien excludable at the time of entry as an alien who sought to procure or procured a visa or other documentation, or entry to the United States by fraud or misrepresentation but who was otherwise admissible at the time of entry, and who is the spouse, parent, or child of a U.S. citizen or of an alien lawfully admitted for permanent residence.

Both section 212(i) and section 241(f) were added to the Immigration and Nationality Act by the Act of September 26, 1961 (75 Stat. 655).

Section 241(f) is a companion section to section 212(i), and reads:

The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence.

Immigration and Naturalization Service v. *Errico,* 385 U.S. 214 (1966), involved a native of Italy, who, in 1959, falsely represented to the immigration authorities that he was a skilled mechanic with specialized experience in repairing foreign automobiles. This was done to evade the then applicable quota restrictions. A U.S. citizen child was born to the Erricos in 1960.

Scott, aka Plummer v. *Immigration and Naturalization Service,* No. 91, was also decided in *I.N.S.* v. *Errico,* supra. In the Scott case, a native of Jamaica contracted a proxy marriage to a U.S. citizen solely for the purpose of entry into this country. The court found that she never lived with her husband and never intended to do so. She entered the United States in 1958 and thereafter gave birth to an illegitimate child, who became a citizen of the United States at birth.

In both cases, the immigrant was saved from deportation because of having the necessary familial relationship to a U.S. citizen. This would also have been the case if the familial relationship was to a lawful permanent resident.

The court, at page 220, stated:

The intent of the Act [P.L. 85-316, Section 7 (1957), reenacted 75 Stat. 665 (1961), 8 U.S.C. § 1251(f)] is plainly to grant exceptions to the rigorous provisions of the 1952 Act for the purpose of keeping family units together. Congress felt that, in many circumstances, it was more important to unite families and preserve family ties than it was to enforce strictly the quota limitations or even the many restrictive sections that are designed to keep undesirable or harmful aliens out of the country.

In *I.N.S.* v. *Errico,* 385 U.S. 214 (1966), the Supreme Court interpreted section 241(f) of the Immigration and Nationality Act so as to save from deportation an alien who misrepresents his status for the purpose of evading quota restrictions, if he or she has the necessary familial relationship to a U.S. citizen or lawful permanent resident, even though the deportation charge did not result directly from the misrepresentation.

In that case, the Supreme Court reviewed the legislative history of section 241(f) and its predecessor statute (Public Law 85-316, 71 Stat. 639 (1957)). The Court concluded that the intent of the predecessor statute, section 7 of the 1957 Act, was "not to require that aliens who are close relatives of U.S. citizens have complied with quota restrictions to escape deportation for their fraud, (stating it) is clear from its language, and there is nothing in the legislative history to suggest that Congress had in mind a contrary result."

The Court stated, at page 224:

The fundamental purpose of this legislation was to unite families. . . . the Act principally granted relief to persons who would be temporarily or permanently separated from their nearest relatives if the strict requirements of the Immigration and Nationality Act, including the national quotas, were not relaxed for them.

And the Court continued, at page 225, stressing the humanitarian purpose of the statute of "preventing the breaking up of families composed in part at least of American citizens" or lawful permanent residents.

Despite this affirmance by the Supreme Court of the clear expression of intent on the part of Congress to unite families and grant relief from deportation, it has been the policy of the Immigration and Naturalization Service to interpret this section 241(f) in as limited a fashion as possible.

To correct this and further the humanitarian purpose of reuniting families, the word "child" in section 241(f), like the word "child" in section 212(i), should be changed to "son, or daughter," making the two sections consistent, and excluding spouses, parents, sons or daughters of U.S. citizens or of permanent residents from excludability or deportation because of fraud in procurement of a visa or other document, or in entry into the United States.

This humanitarian purpose of reuniting families would be accomplished by my bill.

Mr. President, I ask unanimous consent that the text of my bill amending the Immigration and Nationality Act to include sons and daughters within the provision relating to exclusion from deportation from the United States of aliens excludable for fraud be printed in the RECORD at this point.

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

S. 2225

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 241(f) of the Immigration and Nationality Act is amended by striking out "or child" and inserting in lieu thereof the following: "son, or daughter".

III. TO FACILITATE NATURALIZATION DESPITE LANGUAGE DIFFICULTY

Mr. FONG. Mr. President, having tried to rectify some of the discrimination in our present Immigration and Nationality Act in the bills I introduced today, and

to reunite more members of families, it is now time to turn our attention to the treatment of immigrants when they seek to acquire citizenship by naturalization. It is our duty to enact laws to see to it that they, as well as citizens, are treated equitably under our laws.

The present provision of the Immigration and Nationality Act—section 312—requires that, in order to be naturalized, a person must understand, read, write, and speak English. Only persons who were 50 years of age and had been living in the United States for periods totaling at least 20 years when the Immigration and Nationality Act was enacted in 1952 were exempted from that requirement as were those physically unable to comply with the requirement.

On the other hand, most States have no literacy requirement for voting.

In my own State of Hawaii, the name of a candidate may be printed on the ballot with the Hawaiian or English equivalent or nickname, if the candidate so requests in writing at the time his nomination papers are filed—Hawaii Revised Statutes, section 11–112. If a citizen is illiterate or physically disabled, he is provided the assistance of two election inspectors who are not of the same political party—Hawaii Revised Statues, section 11–139—to assist him in voting. Furthermore, if a person otherwise eligible to register cannot sign his name, the clerk of the county where he registers is authorized to mark the affidavit of registration "Unable to sign"—Hawaii Revised Statutes, section 11–15—and he is then registered as a voter.

New Mexico and several other States, I am informed, authorize ballots and instructions to be printed in English or Spanish.

In 1966, the Supreme Court of the United States in *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), sustained the constitutionality of section 4(e) of the Voting Rights Act of 1965 which prohibited States from conditioning the right to vote of persons educated in American-flag schools in which the predominant language was other than English.

The Spanish-speaking Puerto Rican citizens of New York had challenged the English literacy test requirement of New York in the *Katzenbach* case.

The Supreme Court in holding the New York law unconstitutional, pointed out, at pages 654–655:

> Congress might well have concluded that as a means of furthering the intelligent exercise of the franchise, an ability to read or understand Spanish is as effective as ability to read English for those to whom Spanish-language newspapers and Spanish-language radio and television programs are available to inform them of election issues and governmental affairs.

It is clear that citizens are deemed to have sufficient knowledge to exercise their franchise intelligently without literacy tests, or with a knowledge of Spanish or Hawaiian, or if, as in the case of the Puerto Rican citizen in New York, they can show they successfully completed the sixth grade, or whatever grade is required under State law, in an accredited school in any State or territory, the District of Columbia or the Commonwealth of Puerto Rico in which the predominant language is other than English.

The Court in *Katzenbach* v. *Morgan*, supra, at pages 656–658, pointed out that the question of whether or not Congress could have gone further in affording relief to persons literate in a foreign language to those educated in non-American flag schools under section 4(e) of the Voting Rights Act of 1965 was not being decided in that case.

Surely, we can go the one step further. We can and should permit potential citizens who are over the age where language comes easily to them—I suggest that it is reasonable to determine that the age of 50 years is such an age in one's life—not to be required to demonstrate an ability to read, write, and speak English in order to qualify for naturalization as a citizen of these United States. We should permit such a person over the age of 50 years to take the literacy test in his own language. The bill which I introduce would do just that.

This bill would enable a person over the age of 50 years, literate in a foreign language, who meets all the other qualifications for naturalization, to take the literacy test in his own language.

Further, it would permit such person over the age of 50 years, literate in a foreign language, to demonstrate, in his own language, his understanding of the fundamentals of the history and the principles and form of our Government needed to be a functioning citizen of the United States.

In addition, my bill would waive the literacy requirement for those persons over the age of 60 years, who have resided in the United States for 20 years, who are illiterate, but who otherwise meet the qualifications for naturalization.

These persons, over the age of 60 years, who have resided in the United States for 20 years, could also demonstrate their understanding of our form and principles of government in their own language, rather than in English.

As I pointed out, when section 312 of the Imigration and Nationality Act became effective in 1952, persons, who were then over the age of 50 years and had been living in the United States for 20 years, were not required to demonstrate an understanding of the English language, including the ability to read, write and speak words in ordinary usage.

Since that time, many good persons, legally admitted for permanent residence, find themselves in the same position—they neither read nor write any language.

It is, I submit, most reasonable to understand and acknowledge the great difficulty a person who has reached the age of 60 without ever having learned to read or write any language will have in trying to learn the intricacies of reading, writing, and speaking the English language with sufficient proficiency to meet a test of literacy in English as is now required by section 312 of the Immigration and Nationality Act.

Therefore, to afford these worthy legally resident aliens, who would otherwise be eligible to become worthy citizens, an opportunity to become naturalized—despite their lack of literacy—this bill would waive all literacy requirements for such persons and permit them to demonstrate in their own language their understanding of the fundamentals of the history and principles and form of government of these United States.

Mr. President, I ask unanimous consent that the text of my bill to amend Section 312 of the Immigration and Nationality Act with respect to certain tests for naturalization be printed in the RECORD at this point.

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

S. 2226

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 312 of the Immigration and Nationality Act is amended to read as follows:

"REQUIREMENTS AS TO UNDERSTANDING THE ENGLISH LANGUAGE, HISTORY, PRINCIPLES, AND FORM OF GOVERNMENT OF THE UNITED STATES

"SEC. 312. (a) Except as otherwise provided in this title, no person shall be naturalized as a citizen of the United States on his own petition unless he demonstrates an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language. The requirements of this subsection relating to an ability to read and write shall be met if the applicant can read or write simple words and phrases to the end that a reasonable test of his literacy shall be made. No extraordinary or unreasonable conditions shall be imposed upon the applicant.

"(b) The requirements of subsection (a) shall not apply to any applicant who is otherwise qualified to be naturalized and who—

"(1) on the effective date of this Act, is over fifty years of age and has been living in the United States for twenty years;

"(2) upon filing his petition, is over fifty years of age and can demonstrate an ability to read, write, and speak words in ordinary usage in his own language;

"(3) upon filing his petition, is over sixty years of age and has been living in the United States for twenty years; or

"(4) is physically unable to comply with the requirements of such subsection.

"(c) Except as otherwise provided in this title, no person shall be naturalized as a citizen of the United States upon his own petition unless he demonstrates a knowledge and understanding of the fundamentals of the history and the principles and form of government of the United States. In the case of an applicant to whom subsection (b) (2) or (3) applies, such knowledge and understanding may be demonstrated in a language other than English."

IV. TO UPDATE THE ADJUSTMENT PROVISIONS FOR LAW-ABIDING PERSONS INELIGIBLE FOR PERMANENT RESIDENCE WHO HAVE BEEN IN THE COUNTRY CONTINUOUSLY FOR A CONSIDERABLE PERIOD OF TIME

Mr. FONG. Mr. President, the Immigration and Naturalization Service estimates that there are between 1,000,000 and 2,000,000 persons illegally in the United States at the present time.

The Service has neither the personnel nor the funds to deport all these people—even if it should be decided that deportation is the answer to this problem.

Many of these people have been in the country for many, many years. They have acquired American citizen spouses and have American citizen children; they have jobs and so have already affected the labor market.

An alien who can show extreme hardship to himself, his citizen or permanent resident spouse, parent or child under section 244(a)(1) of the Immigration and Nationality Act may apply for sus-

pension of deportation if he has been continuously present in the United States for not less than 7 years immediately preceding the date of such application and proves he is of good moral character, and if neither House of Congress passes a resolution in opposition.

Even if an alien is deportable because of conviction of a crime involving moral turpitude, is an anarchist, Communist or subversive, or a violator of the narcotic laws, or a prostitute or procurer, or convicted of a gun violation, engaged in espionage, violated the Alien Registration Act of 1940 or engaged in importation of persons for immoral purposes, under section 244(a)(2) of the act, he is permitted to adjust his status to that of a permanent resident if he has been in the United States for a continuous period of not less than 10 years following such an act and proves he has been a person of good moral character during all of such period, and if in the opinion of the Attorney General, his deportation would result in exceptional and extremely unusual hardship to the alien, his citizen spouse, parent or child and if the Congress passes a concurrent resolution favoring suspension of deportation.

Under section 249 of the Immigration and Nationality Act, an alien is permitted in the discretion of the Attorney General to make a record of lawful admission for permanent residence, if not inadmissible under section 212(a) insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens. If the entry was prior to July 1, 1924, the record of entry is made as of the date of entry. In the Act of October 3, 1965, 79 Stat. 920, the date for adjustment was moved up from June 28, 1940, to a new date of June 30, 1948, with a record of lawful admission for permanent residence being made as of the date of approval of the application for persons who have had a residence in the United States continuously since such entry, are persons of good moral character and not ineligible to citizenship.

In the interest of keeping families united and as a matter of trying to effect a more feasible solution to the problem of our illegals, while studying a more permanent solution to this problem, I am introducing a bill to bring the date for making a record of lawful admission for permanent residence up to October 3, 1965, the date of the passage of the amendments to the Immigration and Nationality Act which set up the new preference visa system.

While not an ideal and while far from a total or final solution to the problem of the illegal alien, this bill would enable persons of good moral character who have resided continuously in the United States from October 3, 1965 up to the date of application to make a record of lawful admission for permanent residence and who are not inadmissible under sections 212(a) as criminals, procurers or other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens, and not ineligible to citizenship, to regularize their immigration status and take their place in our society and economy, legally, without fear of deportation proceedings hanging over their heads as a threat to their security.

Mr. President, I ask unanimous consent that the text of my bill to amend the Immigration and Nationality Act to provide for recording of admission for permanent residence in the case of certain aliens who entered the United States prior to October 3, 1965 be printed in the RECORD at this point.

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

S. 2227

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 249(a) of the Immigration and Nationality Act is amended by striking out "June 30, 1948" and inserting in lieu thereof "October 3, 1965".

SEC. 2. (a) The title preceding section 249 of such Act is amended to read as follows:

"RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASE OF CERTAIN ALIENS WHO ENTERED THE UNITED STATES PRIOR TO JULY 1, 1924, OR OCTOBER 3, 1965"

(b) The designation of section 249 in the table of contents (Title II—Immigration, chapter 5) of such Act is amended to read as follows:

"Sec. 249. Record of admission for permanent residence of certain aliens who entered the United States prior to June 1, 1924, or October 3, 1965".

Mr. FONG. Mr. President, the Senate Joint Resolution and eight bills I am introducing would, I submit, be a step in the direction of a more equitable and just treatment of all persons under our laws, be they citizens or aliens.

I ask my colleagues to join me as cosponsors of all or any of these bills.

By Mr. BROCK:

S. 2228. A bill to provide for greater disclosure of the nature and costs of real estate settlement services, to eliminate the payment of kickbacks and unearned fees in connection with settlement services provided in federally related mortgage transactions, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. BROCK. Mr. President, it is difficult to overestimate the importance to an individual of the events surrounding the purchase of his home. For most people, buying a home is the largest and most complex financial transaction in which they will ever engage.

Moreover, in spite of the increasing mobility of the American people, the average homebuyer is very, very inexperienced in the matter. In his life, he will go through the process only a very few times, perhaps years and miles apart and almost always with different problems.

A great many people will buy a home only once in their lives. For them, and for all persons buying for the first time, it can be a frightening experience.

The importance, in financial and other terms, of the home purchase, and the inevitable inexperience of the individual home buyer, add up to a special need for the protection of the buyer, and it is to that problem, that legislation I am today inroducing directs itself.

At the outset, I want to reject the idea that our citizens are not capable of thinking for themselves with regard to buying a house, or any other aspect of their lives. The American people do not need the Government to step in and do their thinking for them. What they need is the information on which to make their judgments.

I want to reject some specious solutions to this problem which, like so many grand-sounding ideas with regard to the business of finance, would serve only to dry up sources of credit. At this very moment, the availability of mortgage money is severely limited throughout the country, and consumers will little appreciate it if we worsen the situation by throwing out the mortgage baby with the settlement cost bath.

The need is not to impose large new costs on the lenders, costs which would lead them to further restrict credit. The need is to assure the homebuyer that he has the information he needs in order to thoughtfully carry out the process of homebuying.

Among the various aspects of the homebuying process, perhaps the most confusing of all are settlement costs. The legislation I am introducing today will help clarify the confusion by providing the buyer with the information he needs in order to have a clear picture of what his settlement costs will be.

The bill has four substantive provisions:

First. It establishes a national uniform statement of settlement costs, which would become the standard real estate settlement form for virtually all home purchases in the United States.

Second. It directs the Secretary of the Department of Housing and Urban Development to prepare and distribute special informational booklets to help persons borrowing money to finance a home better understand the nature and costs of real estate settlement services. Included in the booklet will be an explanation of the uniform statement of settlement costs. HUD will distribute the booklets to lending institutions, who are required by the bill to present one to each mortgage applicant at the time of application is made.

Third. It requires lenders to provide borrowers—and to the Government in the case of governmentally assisted loan—the full cost of settlement at least 10 days prior to the settlement date. Utilizing the uniform statement of settlement costs, the lender must provide the borrower an itemized disclosure of each charge arising in connection with the settlement. The lender is specifically charged with responsibility for obtaining any charges which may originate from other sources, and to include these charges in the disclosure. Thus the borrower will know his complete settlement cost, including attorney's fees, taxes, various insurance provisions, credit investtigation, title searches, appraisal fees, and the like.

Fourth. It protects the homebuyer from having to pay kickbacks and other unearned fees, by flatly prohibiting such activities, and providing stiff penalties for violation.

Mr. President, this is sound legislation. It protects the consumer without demeaning him, regulates the lender without putting him out of business, and serves the people at a minimal cost.

I am pleased to introduce this legislation, and I urge its careful consideration by this Chamber.

By Mr. BIBLE (for himself and Mr. CANNON):

S. 2229. A bill to authorize the Director of the Bureau of Mines to extend certain assistance to certain individuals engaged in mineral exploration and development. Referred to the Committee on Interior and Insular Affairs.

Mr. BIBLE. Mr. President, on behalf of my colleague, Senator CANNON, and myself, I introduce for proper reference a bill to authorize the Director of the Bureau of Mines to extend certain assistance to certain individuals engaged in mineral exploration and development.

Mr. President, this measure could well be called the small miners' and prospectors' bill. Its purpose is to provide such assistance, financial or otherwise, as the Director of the Bureau of Mines determines as necessary to enable small, independent operators to engage in mineral exploration and development. It was prepared and is introduced at the request of veterans of the search for gold, silver, and other minerals throughout our Western mountains.

Despite the fact that the large mining companies are involved with complex electronic equipment in their continuing search for mineral resources, the burro and the jeep have not been replaced by the helicopter. In testimony before the Senate Interior and Insular Affairs Committee, it has been continually stressed that nearly all of the mineral discoveries over the past century have been the result of individual prospectors making the initial discovery and then being forced for financial reasons to go to the large companies for development.

This bill, if properly implemented, will enable the prospector to again return to the hills in research of the minerals we so desperately need if the United States is to continue to hold its place as a world leaders in this industrial age.

By Mr. HOLLINGS (for himself and Mr. MAGNUSON):

S. 2232. A bill to promote commerce and protect the environment by establishing procedures for the siting, construction, and operation of deepwater port facilities off the coast of the United States, and for other purposes. Referred to the Committee on Commerce.

Mr. HOLLINGS. Mr. President, I introduce for appropriate reference a bill relating to the siting, construction, and operation of deepwater port facilities off the coasts of the United States.

Mr. President, over the next 3 days a special joint subcommittee of the Senate Committees on Commerce, Public Works, and Interior and Insular Affairs will be conducting hearings into the subject of deepwater ports. Over 30 witnesses from Federal and State governments, private industries, universities, and environmental groups are slated to testify on this important emerging national issue.

This special subcommittee will be considering S. 1751, the Deepwater Port Facilities Act of 1973, an administration legislative proposal addressing this issue. After reviewing this legislation, I have become concerned about its thrust and about its basic features. Accordingly, I and Senator MAGNUSON are introducing a bill on the same subject which, we believe, is a better alternative to S. 1751.

In the first place, the administration, by designating the Department of Interior as the single lead agency monitoring the development of deepwater ports, has sought to make the issue primarily one of energy. No doubt our energy requirements relate directly to the need for such terminal facilities, but I see the issue as primarily one involving navigation, ships, marine transportation, and marine environment. Accordingly, in this new bill authority over deepwater ports would be given to the Coast Guard as lead agency. The Coast Guard, as a component of the Department of Transportation, is uniquely qualified to manage matters dealing with vessel and port safety, navigation, and protection of the marine environment. On the latter aspect it should be noted that the Department of Interior's outer Continental Shelf safety and environmental protection program has recently received serious criticism, first by the National Academy of Engineering and most recently by the General Accounting Office.

Which leads me to my second point—the environmental protection features of S. 1751. I am sure that the Senate wishes to avoid lengthy litigation on deepwater ports such as we have witnessed in the case of the Alaska pipeline, litigation which might still continue. Federal action on such massive facilities requires environmental credibility. We need to directly involve Federal agencies which have environmental credibility and we need to directly involve citizens with environmental concerns in the deepwater port decisionmaking process. With respect to citizen involvement, S. 1751 would require a public hearing only at the discretion of the Secretary of Interior. Our bill would mandate public hearings.

To obtain environmental credibility we must be concerned about expertise. The draft environmental impact statement on deepwater ports now being circulated by the Department of Interior is largely the work of agencies other than the Department of Interior. These other agencies, namely, the Coast Guard, the Maritime Administration, and the National Oceanic and Atmospheric Administration provided the bulk of the material which went into the draft statement. I might mention that the Sea Grant program, managed by the National Oceanic and Atmospheric Administration, provided the basic input for the Council on Environmental Quality's major study on the marine environment aspects of deepwater ports.

Therefore, Mr. President, this new bill we are introducing would lodge environmental examination responsibility with those best suited to handle it with credibility.

Third, I feel that S. 1751 fails to provide States with a strong input into the plannnig of the entire system associated with deepwater port development; namely, refineries, tank farms, industrial growth, population increases, and so on. For this reason, I suggest that States have federally assisted coastal zone management programs to help them cope with the monumental size of land-side facilities associated with deepwater terminals prior to the development of those facilities. Since this program seeks only to help States make basic planning decisions, but does not give the Federal Government authority to make planning choices, it would be an extremely useful tool for States grappling with land-side impacts. The same is also true with the land-use program, should be it enacted. As a matter of national interest, we in the Congress should insure that a State is ready to help itself in the event a deepwater port is situated off its coast.

Mr. President, these are a few of the changes our bill makes in relation to S. 1751. I urge my colleagues to give this bill serious consideration.

I ask unanimous consent that the bill, in its entirety, be printed at this point in the RECORD.

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

S. 2232

A bill to promote commerce and protect the environment by establishing procedures for the siting, construction, and operation of deepwater fort facilities off the coast of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Offshore Marine Environment Protection Act of 1973".

SEC. 2. The Ports and Waterways Safety Act of 1972 (86 Stat. 424) is amended by adding at the end thereof the following new title:

"TITLE III—SITING, CONSTRUCTION, AND OPERATION OF DEEPWATER PORT FACILITIES IN THE OFFSHORE MARINE ENVIRONMENT

"DECLARATION OF POLICY

"SEC. 301. (a) FINDINGS.—The Congress finds and declares that—

"(1) plans now exist for the construction and operation of large-scale deepwater port facilities off the coasts of the United States;

"(2) to protect human health and safety, to prevent damage to the marine environment, and to assure uniform standards, a Federal regulatory mechanism is needed to oversee the siting, construction, and operation of such deepwater port facilities;

"(3) the planned development of such deepwater port facilities involves and affects interstate and foreign commerce, fisheries and wildlife, and navigation and will affect United States citizens and the marine environment over a broad geographical area;

"(4) any such deepwater port facility which is constructed and operated will necessarily generate concurrent development in the coastal zone of adjacent coastal States; and

"(5) there is a need to insure that each coastal State has an approved coastal management program to regulate, control, and direct land use developments within the coastal zone so that Federal and State cooperation will effectively manage and protect both the coastal and marine environments.

"(b) PURPOSES.—Congress declares that the purpose of this title is to authorize and regulate the siting, construction, and operation of deepwater port facilities and to provide for the fullest possible protection of the marine and coastal environment to prevent any adverse impact which might occur as a direct or indirect consequences of the development of such facilities.

"DEFINITIONS

"SEC. 302. As used in this title—

"(1) 'Application' means any application submitted under this title for a license to construct or operate a deepwater port facility, including renewal, modification, and certification as to environmental features of any such license or application for license.

"(2) 'Coastal State' means any State of the United States in or bordering on the Atlantic, Pacific, or Arctic Oceans, Gulf of Mexico, Long Island Sound, or the Great Lakes, and includes Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

"(3) 'Deepwater port facility' means any manmade structure, either fixed or floating, located in the navigable waters of the United States more than five hundred feet to the seaward of the mean low-water mark or located beyond the territorial sea of the United States and which is intended for use as a port or terminal for transportation of goods and commodities from vessels to shoreside.

"(4) 'Citizen of the United States' means any private person, individual, association, corporation, or entity; or any officer, employee, agent, department, agency, or instrumentality of the Federal Government or of the government of any State or political subdivision thereof.

"(5) 'Licensee' means a person to whom a license is issued pursuant to this Act to construct or operate a deepwater port facility.

"(6) 'Marine environment' includes, but it is not limited to, coastal navigable waters, the fish and wildlife resources of the coastal areas and coastal zone, and the recreational and scenic values of such waters and resources.

"(7) 'Secretary' means, except as otherwise specifically provided, the Secretary of the Department in which the Coast Guard is operating.

"(8) 'United States' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

"LICENSE TO CONSTRUCT OR OPERATE DEEPWATER PORT FACILITIES

"SEC. 303. (a) GENERAL.—No citizen of the United States may construct or operate a deepwater port facility except on the basis of written plans recommended for authorization and approval by the Commandant of the Coast Guard and authorized and approved by the Secretary. Upon such authorization and approval, pursuant to and in accordance with the provisions of this title, the Secretary may issue to, transfer to, or renew for a citizen of the United States a license to construct or operate a deepwater port facility.

"(1) he determines that the applicant is financially responsible;

"(2) he determines that the applicant can and will comply with applicable laws, regulations, and license conditions;

"(3) he has been assured by the appropriate Federal agencies that the proposed facility, as to which a license is sought, will not unreasonably interfere with international navigation or other reasonable uses of the high seas, as defined by treaty, convention, or customary international law;

"(4) he has been assured by the Secretary of State that issuance is consistent with the international obligations of the United States;

"(5) he finds that the issuance would not adversely affect competition, restrain trade, or further monopolization; and

"(6) he has been assured, pursuant to section 304 of this title, that such facility will not pose an unreasonable threat to the integrity of the marine environment in which it is to be located, and that all possible precautions are being taken and will be taken to minimize adverse impact on the marine environment, including the marine environment of the State or States near the coast of which such deepwater port facility will be located.

"(c) TERM OF LICENSE.—License issued under this title shall be for a term of no longer than thirty years, with preferential rights in the licensee to renew under such terms and for such period, not to exceed thirty years, as the Secretary finds is reasonable and appropriate.

"(d) ANTITRUST LAWS APPLICABLE.—The grant of a license under this title shall not be admissible in any way as a defense to any civil or criminal action for violation of the antitrust laws of the United States.

"(e) TRANSFER OF LICENSE.—Licenses issued under this title may be transferred after the Secretary determines that the transferee meets the requirements of this title.

"(f) CONDITIONS, REVOCATION, OR SUSPENSION OF LICENSES.—(1) No license shall be issued under this title unless the licensee or transferee first agrees in writing that—

"(A) there will be no change from the plans and operational systems detailed in the application without prior approval in writing from the Secretary; and

"(B) the license will comply with any reasonable condition or conditions which the Secretary may impose at the date of issuance or transfer of the license or at any time thereafter.

"(2) The Secretary, upon a petition in writing from—

"(A) the licensee;

"(B) a State adjacent to a deepwater port facility constructed or operated by the licensee;

"(C) any department or agency authorized under section 304 of this title to grant or deny any certification; or

"(D) any aggrieved citizen of the United States may, with or without a hearing, modify by addition deletion, or other amendment, the terms and conditions of any license issued, transferred, or renewed under this section.

"(3) The Secretary may, for violation of any condition or for other cause shown, suspend or revoke any license issued, transferred, or renewed under this section.

"(g) NATIONAL SECURITY.—Notwithstanding the foregoing, the Secretary shall not issue a license under this section and shall cancel or suspend any license issued in any case in which the President determines that it would be contrary to the national security of the United States: *Provided*, That within ninety days of such determination by the President, the Senate, by majority vote, consents to such determination.

"ENVIRONMENTAL CERTIFICATION

"SEC. 304. (a) GENERAL.—Prior to the issuance, transfer, modification, or renewal of any license under section 303 of this title, the Secretary of Commerce, through the National Oceanic and Atmospheric Administration, shall grant, with or without any condition or conditions, or shall deny certification of a deepwater port facility, with respect to those features of the facility which would affect the marine and coastal environment. Upon a showing that the location, construction, and operation of such facility does not post an unreasonable threat to the integrity of the marine and coastal environment and that all possible precautions have been taken to minimize anticipated adverse impact on the marine and coastal environment, the Secretary of Commerce may grant such certification.

"(b) CRITERIA.—The Secretary of Commerce, through the National Oceanic and Atmospheric Administration, shall establish and apply, and may from time to time revise, criteria for reviewing and evaluating deepwater port facilities. Such criteria may include, but are not limited to—

"(1) the effect on ethetic and recreational values;

"(2) the effect on fish plankton, shellfish, and wildlife resources;

"(3) the effect on the oceanographic currents or wave patterns and upon shorelines and beaches, including bays and estuaries and other features characteristic of the adjacent coastal zone;

"(4) the effect on alternate uses of the oceans and navigable waters, such as scientific study, fishing, and other living and nonliving resources exploitation;

"(5) the dangers to such facility occasioned by waves, winds, and weather and the steps which can be taken to protect against such dangers; and

"(6) such other considerations as the Secretary of Commerce deems appropriate or necessary to fully evaluate any deepwater port facility.

"(c) CONDITIONS.—The Secretary of Commerce, through the National Oceanic and Atmospheric Administration, shall, where appropriate, recommend reasonable conditions which shall be incorporated into a license issued, transferred, modified, or renewed under to section 303 of this title to insure that a proposed deepwater port facility does not pose an unreasonable threat to the integrity of the marine environment and that all possible precautions to minimize environmental adverse impact are being taken and will be taken and maintained by the applicant and licensee.

"(d) APPROVED STATE PROGRAM REQUIREMENT.—No certification pursuant to this section shall be issued unless the adjacent coastal State, or States, shall have an approved coastal zone management program pursuant to the National Coastal Zone Management Act of 1972 (86 Stat. 1280). The Secretary of Commerce, through the National Oceanic and Atmospheric Administration, shall consult with the appropriate State authorities concerning existing and prospective coastal management programs, and shall insure the coordination of construction and operation of any deepwater port facility with such related development in the coastal zone as is permitted or contemplated to be permitted within an approved coastal management program of the adjacent coastal State or States.

"(e) ENVIRONMENTAL PROTECTION AGENCY.—The Administrator of the Environmental Protection Agency, prior to the issuance, transfer modification, or renewal of any license pursuant to section 303 of this title, shall grant, with or without any condition or conditions, or shall deny certification of a deepwater port facility. Upon a showing by the applicant that the location, construction, or operation of the proposed facility will not result in failure to comply with or cause a violation of effluent limitations or other standards or requirements imposed by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or any other relevant Act which is subject to his administration, the Administrator of the Environmental Protection Agency may grant such certification.

"(f) SECRETARY OF THE INTERIOR.—The Secretary of the Interior, prior to the issuance, transfer modification, or renewal of any license pursuant to section 303 of this title, shall grant, with or without any condition or conditions, or shall deny certification of a deepwater port facility. After consultation with the Governor of any State or States off whose coasts such a facility is located or is proposed to be located, to insure that the operation of the facility and directly related land-based activities located outside the coastal zone, as defined by that State or States, would be consistent with the land-use program of such State or States, the Secretary of the Interior may grant such certification.

LICENSING PROCEDURE

"SEC. 305. (a) GENERAL.—The Secretary is authorized to issue reasonable rules, and regulations governing application for and issuance, transfer, modification, renewal, suspension, or revocation of licenses pur-

suant to this title. Such rules and regulations shall be issued in accordance with section 553 of title 5, United States Code, without regard to subsection (a) thereof. Such rules and regulations shall contain a mechanism for full cooperation and coordination with the certification responsibility of the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and the Secretary of the Interior under section 304 of this title.

"(b) SUBMISSION OF PLANS.—Any citizen of the United States making application to construct or operate or to modify a deepwater port facility shall submit detailed plans to the Secretary, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and the Secretary of the Interior at least two years prior to the expected commencement of construction. However, in the case of any such facility which was constructed in whole or in part prior to the date of enactment of this title or as to which construction was planned to commence prior to two years after such date, the applicant may submit such plans to such parties as soon as possible. The agencies shall agree on, and may from time to time modify, a single fee to be paid by the applicant. Such fee shall be established in an amount which shall be sufficient to cover the full administrative costs.

"(c) OTHER AUTHORIZATIONS.—An application for a license concurrently filed with the Secretary, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and the Secretary of the Interior shall constitute an application for all Federal authorizations required for construction or operation of a deepwater port facility. After insuring that an application contains all information required, the Secretary shall forward a copy thereof to those Federal agencies which have or share jurisdiction over any such construction, or operation. No license under this Act shall be issued, transferred, modified to authorize any extension or expansion of such facility, or renewed, until the Secretary has been notified in writing by each such agency that the application is lawful and proper.

"(d) ENVIRONMENTAL IMPACT STATEMENT.—A single detailed environmental impact statement in connection with each license shall be prepared jointly by the Secretary, the Secretary of Commerce, the Administrator of the Environmental Agency, and the Secretary of the Interior. Such statement shall be circulated in compliance with guidelines established by the Council on Environmental Quality.

"(e) HEARING REQUIREMENT.—A license may be issued, transferred, renewed, suspended, or revoked pursuant to this title only after notice and a public hearing in accordance with the provisions of section 554 of title 5, United States Code. So far as practicable, hearings held by the Secretary shall be consolidated with hearings held by other agencies. At least one public hearing shall be held in the vicinity of the actual or proposed site of a deepwater port facility.

"ENFORCEMENT OF REGULATIONS AND CONDITIONS ON LICENSES

"SEC. 306. (a) RECORDS.—(a) Each licensee shall establish and maintain such records, make such reports, and provide such information as the Secretary shall reasonably require or request. Each such licensee shall submit such reports and make available such records and information to the Secretary as he shall by regulation require.

"(b) INSPECTION.—Any officer or employee duly designated by the Secretary, upon presenting appropriate credentials and a written notice of inspection authority to any licensee, is authorized to enter a deepwater port facility or any property within such facility to determine whether such licensee has acted or is acting in compliance with the provisions of the license and the declaration of policy of this title. Such officer or employee may inspect, at reasonable times, records, files, papers, processes, controls, and facilities, and may test any feature of a deepwater port facility. Each inspection shall be commenced and completed with reasonable promptness and such licensee notified of the results of such inspection.

"PUBLIC ACCESS TO INFORMATION

"SEC. 307. (a) GENERAL.—Copies of any communication, document, report, or information received or sent by any applicant shall be made available to the public upon identifiable request, and at reasonable cost, unless such information may not be publicly released under the terms of subsection (b) of this section. Except as provided for under subsection (b) of this section, nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

"(b) EXCEPTION.—The Secretary shall not disclose information obtained by him under this Act which concerns or relates to a trade secret referred to in section 1905 of title 18, United States Code, except that such information may be disclosed—

"(1) upon request, to other Federal Government departments and agencies for official use;

"(2) up request, to any committee of Congress having jurisdiction over the subject matter to which the information relates;

"(3) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceedings; and

"(4) to the public in order to protect health and safety after notice and opportunity for comment in writing or for discussion in closed session within fifteen days by the party to which the information pertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to the public health and safety).

"RELATIONSHIP TO OTHER LAWS

"SEC. 308. No action taken pursuant to this title shall relieve, exempt, or immunize any person from any other requirements imposed by Federal, State, or local laws, regulations, or ordinances. Nothing contained in this title supplants or modifies any treaty or Federal statute or authority granted thereunder, nor does it prevent a State or political subdivision thereof from prescribing for deepwater port facilities within its jurisdiction higher safety or environmental standards.

"PENALTIES AND REMEDIES

"SEC. 309. (a) CRIMINAL VIOLATION.—Any person who willfully violates any provision of this title shall on conviction be fined not more than $25,000 for each day of violation or imprisoned for not more than one year, or both.

"(b) CIVIL VIOLATION.—(1) Any person who violates any provision of this title other than willfully shall be liable to the United States for a civil penalty of a sum which is not more than $25,000 for each day of violation. The amount of such civil penalty shall be assessed by the Secretary after notice and an opportunity for an adjudicative hearing conducted in accordance with section 554 of title 5, United States Code, and after he has considered the nature, circumstances, and extent of such violation, the practicability of compliance with the provisions violated, and any good-faith efforts to comply with such provisions.

"(2) Upon the failure of the offending party to pay such civil penalty, the Secretary may commence an action in the appropriate district court of the United States for such relief as may be appropriate or he may request the Attorney General to commence such an action.

"(c) EQUITABLE REMEDY.—The Attorney General or the Secretary may bring an action in the appropriate district court of the United States for equitable relief to redress a violation by any person of any provision of this title. The district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

"ADVISORY COUNCIL

"SEC. 310. (a) ESTABLISHMENT.—There is hereby established an 'Advisory Council for Deepwater Port Policy' which shall assist the Secretary in the performance of his duties and obligations under this title.

"(b) MEMBERS.—The Council shall consist of fifteen members who shall be appointed by the Secretary on the following basis—

"(1) two, to be selected from a list of not less than four qualified individuals recommended by the American Institute of Merchant Shipping, who shall be representative of shipping management;

"(2) two, to be selected from a list of not less than four qualified individuals recommended by the American Federation of Labor and Congress of Industrial Organizations, who shall be representative of maritime labor;

"(3) two, to be selected from a list of not less than four qualified individuals recommended by the chairman of the Committee on Merchant Marine and Fisheries of the House of Representatives and the chairman of the Committee on Commerce of the Senate as having expert knowledge or experience in a scientific or technical discipline relevant to the development of marine transportation systems;

"(4) two, to be selected from lists of qualified individuals recommended by environmental organizations, who shall be representative of environmental concerns;

"(5) two, to be selected from a list of not less than four qualified individuals recommended by the American Petroleum Institute who shall be representative of the petroleum industry;

(6) two, to be selected from a list of not less than four qualified individuals recommended by the National Academy of Sciences as recognized authorities in the fields of marine biology, ecology, or other scientific area relevant to protection of the coastal and marine environment; and

"(7) three, to be selected from lists of qualified individuals recommended by the Governors of coastal States, who shall be representative of the coastal States.

As used in this subsection, 'qualified individual' means an individual who is equipped by education, experience, known talents, and interests to further the policy of this title effectively, positively, and independently if appointed to be a member of the Council. Each list of qualified individuals shall be accompanied by such biographies and other material on each person recommended and in such form as the Secretary shall direct.

"(c) TERMS OF OFFICE.—The terms of office of the members of the Council first taking office shall expire as designated by the Secretary at the time of appointment, two at the end of the first year, two at the end of the second year, two at the end of the third year, three at the end of the fourth year, three at the end of the fifth year, and three at the end of the sixth year. Successors to members of the Council shall be appointed in the same manner as the original members and shall have a term of office expiring six years from the date of expiration of the term for which their predecessors were appointed. Any member appointed to fill a vacancy on the Council occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. No member may be reappointed upon the expiration of his term.

"(d) CHAIRMAN.—The members of the Council shall select one of their members to

serve as chairman of the Council for a period not to exceed one year.

"(e) STAFF SUPPORT.—The Secretary, the Secretary of Commerce through the National Oceanic and Atmospheric Administration, the Administrator of the Environmental Protection Agency, and the Secretary of the Interior may provide the Council with such staff support as the Council, with the concurrence of a majority of the members of the Council, may request and as any of the foregoing officials deems appropriate.

"(d) FUNCTION.—The Council shall assist the Secretary by meeting periodically to confer upon and make specific recommendations concerning the administration and implementation of this title and concerning the submission by the Council of such material, views, and reports as the Secretary, the Secretary of Commerce, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, or a committee of the Congress may request or as the Council may determine to issue concerning any matter relevant to the purposes of this title.

"CITIZEN CIVIL ACTION

"SEC. 311. (a) ACTION AUTHORIZED.—Except as provided in subsection (b) of this section, any person may commence a civil action for injunctive relief on his own behalf, whenever such action constitutes a case or controversy—

"(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any provision of this title or any condition on a license issued pursuant to this title; or

"(2) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this title which is not discretionary with the Secretary. Any action brought against the Secretary under this paragraph shall be brought in the district court for the District of Columbia.

The district courts shall have jurisdiction over suits brought under this section without regard to the amount in controversy or the citizenship of the parties.

"(b) ACTION BARRED.—No civil action may be commenced—

"(1) under subsection (a)(1) of this section—

"(A) prior to sixty days after the plaintiff has given notice of the violation (i) of the Secretary and (ii) to any alleged violator,

"(B) if the Secretary or the Attorney General has commenced and is diligently prosecuting a civil action with respect to such matters in a court of the United States, but in any such action any person may intervene as a matter of right.

"(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Secretary. Notice under this subsection shall be given in such manner as the Secretary shall prescribe by regulation.

"(c) GOVERNMENT INTERVENTION.—In any action under this section, the Secretary or the Attorney General, if not a party, may intervene as a matter or right.

"(d) COSTS.—The Court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such an award is appropriate.

"(e) OTHER ACTIONS.—Nothing in this section shall restrict any right which any persons (or class of persons) may have under any statute or common law to seek enforcement or to seek any other relief.

"AUTHORIZATION FOR APPROPRIATIONS

"SEC. 312. There is authorized to be appropriated $1,000,000 for the fiscal year 1974, $1,000,000 for the fiscal year 1975, and $1,000,000 for the fiscal year 1976, for administration of this Act.".

SEC. 3. The Administrator of the National Oceanic and Atmospheric Administration, in consultation with the Secretary of the Department in which the Coast Guard is operating, the Secretary of the Interior, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, the Council on Environmental Quality, the Secretary of Housing and Urban Development, the Secretary of Health, Education, and Welfare, and the heads of other appropriate Federal departments, agencies, and instrumentalities; the Governors of the coastal States and the heads of the appropriate departments or agencies of such States and political subdivisions of such States; the scientific community; not-for-profit organizations concerned about protection of the marine environment and coastal zone development and management; and private industry, shall coordinate a study and prepare a plan or plans for the development and protection of the offshore marine environment of the United States. This study and preparation—

(a) may be conducted outside of the National Oceanic and Atmospheric Administration under the direction of a university or recognized research center by an interdisciplinary group, none of the members of which may have a financial interest or conflict of interest (other than any fee paid by the Administrator for serving as a member of such group) with respect to the findings and conclusions of such study and the content of such plan or plans;

(b) shall be completed not less than two years after the date of enactment of this Act; and

(c) shall be submitted, upon completion, by the Administrator to the Congress without prior clearance or review by any other official or agency of the executive branch of the Federal Government. For purposes of this section, there is hereby authorized to be appropriated such sums as are necessary, not to exceed $10,000,000.

By Mr. CHURCH (for himself, Mr. HATFIELD, Mr. MCCLURE, and Mr. PACKWOOD):

S. 2233. A bill to establish the Hells Canyon National Recreation Area in the States of Idaho, Oregon, and Washington, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

LEGISLATION TO CREATE THE HELLS CANYON RECREATION AREA

Mr. CHURCH. Mr. President, I send a bill to the desk for appropriate reference, in which I am joined by Senators HATFIELD, MCCLURE, and PACKWOOD. The bill is designed to assure that the Hells Canyon area in Idaho and Oregon will be preserved for the enjoyment and benefit of the people.

This bill represents the culmination of months of work and numerous meetings between the four Senators from Idaho and Oregon. The work has, however, been well worth it. For the first time, we have reached a common agreement on a legislative approach to save the Hells Canyon and its surrounding environs.

Like all initial drafts, the bill can undoubtedly be improved. This task, however, must be left to the hearing process. We intend to hold hearings on the legislation in Idaho and Oregon, so that the people of our respective States can fully express their views.

Major features of the bill are:

First. Creation of a Hells Canyon National Recreation Area. The recreation area would include a ¼-mile buffer on either side of the Snake River from Brownlee Dam to Oxbow Dam. Just before Oxbow Dam on the Oregon side of the river and at approximately the damsite itself on the Idaho side of the river the recreation area boundary begins. The recreaton area then surrounds the Hells Canyon and continues on to the northern boundary of the Nez Perce National Forest in Idaho and within the State of Oregon to the Washington State border. A ¼-mile buffer strip continues along the Snake River from the end of the major portion of the recreation area on to the town of Asotin, Wash.

Second. Creation within the recreation area, of a Hells Canyon Wilderness. The wilderness area on the Idaho side follows the course of Deep Creek to the hydrologic divide of the Snake River Canyon and follows that divide with some minor variations on to Pittsburg Landing; the northern boundary of the area is represented by a point approximately 500 feet back from the existing road to Pittsburgh Landing. The boundary was placed back from the road to assure that sufficient flexibility would be allowed for improvement of the road to the landing. On the Oregon side of the river, the wilderness area begins at a point between Oxbow and Hells Canyon Dams and continues, with minor variations, along the hydrologic divide of the Snake River Canyon to the Oregon Washington border. The wilderness area includes, within its boundaries the seven Devils Peaks in Idaho. Black Lake, however, is excluded. The lake is currently accessible by a road used by many recreation enthusiasts during the summer months. There will be no interference with this established use.

Third. A total prohibition on construction of any more dams along the Middle Snake River in Hells Canyon. This provision hardly needs elaboration. We seek to preserve, in its natural state, the deepest gorge on the North American Continent. A current moratorium imposed by the Federal Power Commission upon any dam construction in the canyon will expire in September of 1975. Congress must act to save the canyon before that date overtakes us.

Fourth. Language which protects upstream water rights in Idaho. I have insisted that any legislation dealing with Hells Canyon must include language to protect the present and future rights of the water users upstream in the State of Idaho. This bill contains such language, drafted by the water users themselves.

The language reads:

No provision of this Act, or any guidelines, rules or regulations issued hereunder, shall in any way limit, restrict or conflict with present and future use of the waters of the Snake River and its tributaries upstream from the boundaries of the Hells Canyon National Recreation Area created hereby, for beneficial purposes, whether consumptive or non-consumptive, now or hereafter existing, including waters used for domestic, municipal, stockwater, irrigation, mining, power, or industrial purposes.

Fifth. A specific directive that existing grazing on public lands within the the recreation and wilderness areas shall be allowed to continue. The original Wilderness Act permits ranchers and stockmen to continue their grazing operations within wilderness areas. We have reiterated that such pastoral uses shall not be infringed upon by the provisions of this bill.

Sixth. Limitations on the current condemnation powers being exercised by the Forest Service in acquiring private lands in Hells Canyon. The members of both the Oregon and Idaho Senate delegations share a common concern over protection of private property rights within the recreation and wildeness Areas created by this bill. Therefore, the bill specifically provides that the Forest Service may not condemn in excess of 5 percent of the private lands lying within the recreation area for the purpose of acquiring title to the land.

Recognizing that methods other than the acquisition of title to the private lands can be utilized to protect the area, the Forest Service is allowed to acquire scenic easements, by condemnation, if necessary without regard to the 5 percent limitation. We have attempted to strike a reasonable balance with this feature. The bill thus enables the Forest Service to protect the natural beauty of the area, without need for acquiring title to private inholdings.

Seventh. Preservation of multiple-use management for all parts of the recreation area, excepting wilderness. The bill also provides for a review of certain lands within the recreation area for possible inclusion within the national wilderness preservation system at a future date. The Rapid River drainage in Idaho is designated for such a study, and all lands lying within the recreation area within the State of Oregon are so designated. During the period of the study, no action may be taken with respect to these lands which would result in destroying their wilderness eligibility. Lands lying outside of the areas designated would continue to be administered in accordance with multiple-use principles, with recreational uses given special emphasis, but without restriction against timber cutting on a selective-cut basis. In addition, the whole recreational area, including the parts designated as wilderness, would be withdrawn from the location of new mining claims, subject, of course, to valid existing rights.

Eighth. Authorization of funds to improve public access to Hells Canyon at Pittsburg Landing on the Idaho side of the river and Dug Bar on the Oregon side. Access by car to the Snake River is thus made available, while the river, itself, can be used for conveyance deep into the heart of the Hells Canyon wilderness. Moreover, lookout points would be provided on both sides of the canyon where sightseers could drive by car and enjoy a broad, panoramic view of the breathtaking canyon.

Ninth. Designation of the Snake River, between Hells Canyon Dam and Asotin, Wash., as part of the National Wild and Scenic Rivers System. Specifically the river would be divided into three segments: From Hells Canyon Dam to Pittsburg Landing, designated as wild; from Pittsburg Landing to Dough Creek, as scenic; and from Dough Creek on to Asotin, Wash., as recreational.

Tenth. Deauthorization of the proposed Asotin Dam, an ill-conceived project opposed by a majority of the people in the area

Eleventh. Development by the Forest Service of a comprehensive management plan for the entire recreation area, with consideration given alternative methods of transportation. While recognizing the existing right of motorboat operators to continue the use of the river, the Forest Service could regulate the use to prevent undue congestion.

Twelfth. The bill provides that no new wilderness may be created within the recreational area without the specific consent of Congress. This is to assure that the views of the people of each State will be fully considered in any future action affecting the area.

In sum, I feel we have written a good bill. Our next step is to take it to the people of Idaho and Oregon for their recommendations. With the help of the people of our respective States, I believe an even better bill will emerge, to assure, for this and future generations, that the unique beauty of the Hells Canyon will be preserved.

I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 2233

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, (a) to assure for this and future generations that the natural beauty, historical and archeological values of the Hells Canyon Area and the one hundred and one and fourteenths mile segment of the Snake River between Hells Canyon Dam in Idaho and Asotin, Washington, together with portions of certain of its tributaries and adjacent lands, are preserved, and the recreational and ecologic values and public enjoyment of the area are enhanced, the Hells Canyon National Recreation Area is hereby established.

(b) The Hells Canyon National Recreation Area (hereinafter referred to as the "recreation area") including the Hells Canyon Wilderness Area (hereinafter referred to as the "wilderness area"), shall comprise the lands and waters generally depicted on the map entitled "Hells Canyon National Recreation Area" date ———— 1973 which shall be on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture. The Secretary of Agriculture (hereinafter referred to as "the Secretary"), shall, as soon as practicable after the date of enactment of this Act, publish a detailed description and map showing the boundaries of the recreation area and the wilderness area in the *Federal Register*.

SEC. 2. The lands designated as the Hells Canyon Wilderness Area are hereby incorporated in the National Wilderness Preservation System and shall be administered in accordance with the provisions of this Act and the provisions of the Wilderness Act (78 Stat. 893), whichever is more restrictive, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

SEC. 3. Recognizing the benefits of classification under the Wild and Scenic Rivers Act (83 Stat. 906) the Congress hereby incorporates the below listed segments of the Snake River into the Wild and Scenic Rivers system in the status listed.

(1) that segment of the Snake River from Hells Canyon Dam downstream to Pittsburg Landing (River Mile 247.0 to river mile 214.5 inclusive), being free of impoundments and generally inaccessible except by trail, with watersheds and shorelines essentially primative, is hereby designated a Wild River:

(3) that segment of the Snake River from Pittsburg Landing to Dough Creek (River Mile 214.5 to River Mile 170.7 inclusive), being free of impoundments, with shorelines largely undeveloped, but accessible by road, is hereby designated a Scenic River:

(3) that segment of the Snake River from Dough Creek downstream to the town of Asotin, Washington, (river mile 170.7 to river mile 145.6 inclusive), being free of impoundments but being more or less developed and bordered on its west shoreline by Washington State Highway 129, is hereby designated a Recreational River.

SEC. 4. (a) Notwithstanding any other provision of law, or any authorization heretofor given pursuant to law, the Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, power house, transmission line, or other project work under the Federal Power Act (41 Stat. 1063), as amended (16 USC 791a et seq.), within the Recreation Area, except that the provisions of the FPA (41 Stat. 1063) shall continue to apply to any project (as defined in such Act) and all of the facilities and improvements required or used in connection with the operation and maintenance of said project, in existence within the Recreation Area which project is already constructed or under construction on the date of enactment of this Act.

(b) No Department or agency of the United States shall assist by loan, grant, license, or otherwise the construction of any water resource facility that would have a direct and adverse affect on the values for which the waters of the Area are protected, as determined by the Secretary.

SEC. 5. The Asotin Dam, authorized under the provisions of the Flood Control Act of 1962 (76 Stat. 1173), is hereby deauthorized.

SEC. 6. (a) No provision of this act, or any guidelines, rules or regulations issued hereunder, shall in any way limit, restrict or conflict with present and future use of the waters of the Snake River and its tributaries upstream from the boundaries of the Hells Canyon National Recreation Area created hereby, for beneficial purposes, whether consumptive or non-consumptive, now or hereafter existing, including waters used for domestic, municipal, stockwater, irrigation, mining, power or industrial purposes.

(b) No flow requirements of any kind will be imposed on the waters of the Snake River below Hells Canyon Dam under the provisions of this act, or any guidelines, rules or regulations adopted pursuant thereto.

SEC. 7. (a) The Secretary shall administer the recreation area in accordance with the laws, rules and regulations applicable to the national forests in such manner as will best accomplish the following objectives:

(1) the maintenance and protection of the free-flowing nature of the rivers within the Recreation Area;

(2) conservation of scenic, wilderness, cultural, scientific, and other values contributing to the public benefit;

(3) preservation, especially in the area generally known as Hells Canyon, of all features and peculiarities believed to be biologically unique including, but not limited to, rare and endemic plant species, rare combinations of aquatic, terrestrial and atmospheric habitats, and the rare combinations of outstanding and diverse eco-systems and parts of eco-systems associated therewith;

(4) protection and conservation of the salmon and other fisheries;

(5) protection of archeological and paleon-

tologic sites and interpretation of these sites for the public benefit and knowledge insofar as it is compatible with protection;

(6) preservation and restoration of historic sites associated with and typifying the economic and social history of the region and the American West;

(7) provision for public outdoor recreation in a manner compatible with the aforementioned objectives; and

(8) such management utilization and disposal of natural resources on federally owned lands, including timber harvesting by selective cutting, mining, and grazing and the continuation of such existing uses and developments as are compatible with the provisions of this Act.

(b) the segments of the Snake River designated as wild, scenic, or recreational river areas by this Act shall be administered by the Secretary in accordance with the provisions of this Act and in accordance with the provisions of the Wild and Scenic Rivers Act (82 Stat. 906), whichever is the more restrictive, except that the limitations on land acquisition in the Wild and Scenic Rivers Act shall be superseded by the applicable provisions of this Act. And no provision of this or any other Act shall be construed as a prohibition upon the maintenance of permanent structures along the banks of the Snake River of such design, number, and location, as the Secretary may approve, to furnish necessary sanitary and recreational facilities to the public.

SEC. 8. (a) Within five years after the enactment of this Act the Secretary shall develop a comprehensive management plan for the recreation area. Said plan shall provide for a broad range of land uses and recreation opportunities.

(b) In his review, the Secretary shall give attention to the historic, archeological, and paleontological resources within the recreation area which, as a result of the remoteness of the area, offer significant opportunities for anthropological research. The Secretary shall inventory such resources and is hereby authorized to make such rules and regulations, including recommendations for listing of certain areas in the National Register of Historic Places, as he deems necessary to assure their full protection in an undisturbed state. The Secretary's comprehensive plan shall include recommendations for future protection and controlled research use of all such resources.

(c) As an element of his review and plan, the Secretary shall conduct a detailed study of alternative means of access to, and transportation within, the recreation area, and of necessary public service and administrative facilities.

(d) The Secretary shall review those portions of the recreation area comprising the rapid river drainage in Idaho, and all undesignated lands lying within the recreation area in the State of Oregon as to their suitability or nonsuitability for inclusion within the National Wilderness Preservation System, but no such portions shall become part of such system unless so provided by Act of Congress.

(e) (1) In conducting the review and preparing the plan required by this section, the Secretary shall provide for full public participation and shall cooperate with all interested agencies, organizations, and individuals including the Nez Perce Tribe of Indians, the States of Idaho, Oregon, and Washington and their principal universities, as well as governmental and nongovernmental agencies and organizations concerned with historical, ecological, and land use studies. The Secretaries or directors of all Federal departments, agencies, and commissions having relevant expertise are hereby authorized and directed to cooperate with the Secretary in his review and to make such studies as the Secretary may request on a cost reimbursable basis.

(2) Prior to submitting his plan to the President and the Congress, the Secretary shall comply with the Provisions of Section 8(d) of the Wilderness Act with regard to his recommendations as to wilderness designation.

(f) During the period of his review the Secretary shall administer all Federal lands under study for inclusion within the National Wilderness Preservation System, within the recreation area in such a manner so as not to preclude their possible future designation by the Congress as wilderness.

SEC. 9. (a) The Secretary may not acquire fee simple title by condemnation to private lands within the recreation area in excess of 5 per centum of the privately owned lands existing within the recreation area on the date of enactment of this act.

Subject to the restrictions on acquisition of fee simple title imposed by Subsection (a), the Secretary may acquire lands by donation, purchase with donated or appropriated funds, exchange, bequest or otherwise any lands or interests therein including scenic easements which he determines are needed to carry out the purposes of this Act.

As used in this act the term "scenic easement" means the right to control the use of land in order to protect esthetic values for the purposes of this act, but shall not preclude the continuation of any farming or pastoral use exercised by the owner as of the date of this Act.

(b) In exercising his authority to acquire lands, the Secretary shall give prompt and careful consideration to any offer made by an individual owning any land, or interest in land, within the boundaries described in subsection 1(b) of this Act. In considering such offer, the Secretary shall take into consideration any hardship to the owner which might result from an undue delay in acquiring his property.

(c) The Secretary may utilize condemnation proceedings without the consent of the owner to acquire private lands or interests therein pursuant to this section only in cases where, in his judgment, all reasonable efforts to acquire such lands or interests therein by negotiation have failed, and in such cases he shall acquire only such title as, in his judgment, is reasonably necessary to accomplish the objectives of this Act.

(d) In exercising his authority to acquire property by exchange, the Secretary may accept title to any non-Federal property, or interests therein, located within the recreation area and, notwithstanding any other provision of law, he may convey in exchange therefore any federally owned property within the States of Idaho, Oregon or Washington which he classifies as suitable for exchange and which is under his administrative jurisdiction. The values of the properties so exchanged shall be approximately equal, or if they are not approximately equal, they shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require. In the exercise of his exchange authority, the Secretary may utilize authorities and procedures available to him in connection with exchanges of national forest lands.

(e) Nothing in this Act or in the Wilderness Act shall be construed as limiting the authority of the Secretary to acquire mineral interests in lands within the recreation area, with or without the consent of the owner. Upon acquisition of any such interest, the lands and/or minerals covered by such interest are by this Act withdrawn from entry or appropriation under the United States mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

(f) Any land or interest in land owned by the States of Idaho, Oregon or Washington or any of their political subdivisions may be acquired only by donation or exchange.

(g) Notwithstanding any other provision of law, any Federal property located within the recreation area may, with the concurrence of the agency having custody thereof, be transferred without consideration to the administrative jurisdiction of the Secretary for use by him in carrying out the puposes of this Act. Lands acquired by the Secretary or transferred to his administrative jurisdiction within the recreation area shall become parts of the recreation area and of the national forest within or adjacent to which they are located.

SEC. 10. (a) The Secretary shall make and publish regulations setting standards for the use and development of privately owned property within the boundaries of the recreation area. Such regulations shall be generally in furtherance of the purposes of this Act and shall have the object of assuring that the use of such privately owned property is consistent with the purposes of this Act and with the long run comprehensive plan of the recreation area. Such regulations shall be as detailed and specific as is reasonably required to accomplish such objective and purpose. Such regulations may differ amongst the several parcels of private land in the boundaries and may from time to time be amended by the Secretary. All regulations adopted under this section shall be promulgated in conformity with the provisions of the Administrative Procedure Act. The United States District Court for the District in which the affected land is situated shall have jurisdiction to review any regulations established pursuant to the first sentence of this subsection, upon a complaint filed within six months after the effective date of such regulations, by any affected landowner in an action for a declaratory judgment.

(b) After publication of such regulations, no interest in privately owned lands shall be acquired by the Secretary by condemnation unless he determines, in his judgment, that such lands are being used, or are in imminent danger of being used, in a manner incompatible with the regulations established pursuant to this section, in which case the Secretary may acquire scenic easements to protect the area from such incompatible use.

SEC. 11. Notwithstanding the provisions of Section 4(d)(2) of the Wilderness Act and subject to valid existing rights, all Federal lands located in the recreation area are hereby withdrawn from all forms of location, entry and patent under the mining laws of the United States, and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

SEC. 12. The Congress hereby recognizes and declares the need to take action to regulate the use of, and protect the surface values of, the Federal lands in the recreation area, and directs that rules and regulations necessarry to carry out this section shall be promulgated and issued by the Secretary of Agriculture. Such regulations shall include, when deemed necessary, provisions for control of the use of motorized and mechanical equipment for transportation over, or alteration of, the surface of such Federal land in connection with any authorized activities on such land.

SEC. 13. The Secretary shall permit hunting and fishing on lands and waters under his jurisdiction within the boundaries of the recreation area in accordance with applicable laws of the United States and the states wherein the lands and waters are located except that the Secretary may designate zones where, and establish periods when, no hunting or fishing shall be permitted for reasons of public safety, administration, or public use and enjoyment. Except in emergencies, any regulations of the Secretary pursuant to this section shall be put into effect only after consultation with the appropriate state fish and game department.

SEC. 14. (a) The Secretary shall regulate the use and number of motorized and nonmotorized river craft. The use of said craft is recognized as a valid use of the Snake River within the boundaries of the Wilder-

ness and the recreation area. Further, the Secretary shall study the uses and impact of said craft to determine which management options are most consistent with the purpose of the Act.

(b) Ranching, grazing, farming and the occupation of homes and lands associated therewith, as they are present on the date of enactment of this Act, are recognized as traditional and valid existing uses of the recreation area, and nothing in this act may be construed as implying or meaning otherwise.

SEC. 15. Nothing in this Act shall diminish, enlarge, or modify any right of the States of Idaho, Oregon, Washington or any political subdivisions thereof, to exercise civil and criminal jurisdiction within the recreation area or of rights to tax persons, corporations, franchises, or property, including mineral or other interests, in or on lands or waters within the recreation area.

SEC. 16. The Secretary may cooperate with other Federal agencies, with state and local public agencies, and with private individuals and agencies in the development and operation of facilities and services in the area in furtherance of the purposes of this Act, including, but not limited to restoration and maintenance of the historic setting and background of towns and settlements within the recreation area.

SEC. 17. (a) There is hereby authorized to be appropriated the sum of not more than $60,000,000 for improvements of:

(1) the existing road from the town of Imnaha, Oregon, to Dug Bar on the Snake River;

(2) the existing road from White Bird, Idaho, over Pittsburg Saddle to Pittsburg Landing on the Snake River;

(3) either the existing road from Imnaha, Oregon, to Five Mile Point, or an alternate road following generally the same route to Five Mile Point, and thence to Hat Point Lookout above the Snake River;

(4) The existing road from Riggins, Idaho, to Heaven's Gate Lookout above the Snake River.

(b) There is hereby authorized to be appropriated the sum of not more than $10,000,000 for the acquisition of lands and interests in lands.

(c) There is hereby authorized to be appropriated the sum of not more than $10,000,000, for the development of recreation facilities (principally campgrounds) along the four roads as described in subsection 17(a) above and for the development of interpretive visitor's centers at Hat Point in Oregon and at Heaven's Gate in Idaho.

(d) There is hereby authorized to be appropriated the sum of not more than $1,500,000 for the inventory, identification, development and protection of the historic and archeological sites described in section 5 of this Act.

SEC. 18. If any provision of this Act is declared to be invalid, such declaration shall not affect the validity of any other provision hereof.

Mr. McCLURE. Mr. President, 25 years go, Hells Canyon was brought to national attention as the center of political controversy. The argument raged for several years and subsided only with the decision that Brownlee, Oxbow and Hells Canyon dams should be built by Idaho Power Co. The alternative would have been the massive High Hells Canyon Dam to be built by the Federal Government, which would have flooded the lower elevations of the canyon from Deep Creek to Farewell Bend, below Weiser.

Since then the argument has shifted—from Hells Canyon downstream to the Middle Snake, and from High-vs.-low dams to no-dams-at-all. Many people who did battle for the old Hells Canyon fight on the side of "maximum development" now find themselves on the side of "no development." That earlier battle became a partisan one, but today Senator CHURCH and I have joined together in sponsoring legislation which will provide a management plan for this entire region for years to come. I know that I cannot expect any major decision to be without controversy, but this proposal attempts to walk the line of fairness between contending views that will yield the maximum in acceptance and the minimum in contention.

And while some things change, others remain constant. Southern Idaho's devotion to the land and its paramount concern is protected in this bill as far as legislative language can do so—the right of the people of Idaho to decide how best to preserve and use the waters of the Snake River.

Senator JORDAN was Governor of the State of Idaho when the earlier fight was ended, and he wisely insisted then that decisions affecting water use in the Snake River Basin above Hells Canyon must be preserved to the people of Idaho. This same steadfast determination led to the moratorium legislation which he authored. That same unyielding commitment is present in this legislation.

Today we introduce a bill to establish the Hells Canyon National Recreation Area. In some ways it is like the Sawtooth National Recreation Area legislation which became law last year. In other respects it is tailor-made to fit differing circumstances. This proposal is the culmination of several years of efforts to find some kind of preservation for the unique qualities of the region and at the same time recognize legitimate private interests and preserve compatible uses. Jobs and tax base are important, just as are the ageless hills of the Middle Snake. The clear tumbling streams of the Seven Devils are priceless, just as the life of communities dependent upon the resources of the region is beyond price.

Hells Canyon is the deepest gorge in the United States, its matchless reach almost untouched by man's puny dams in its depths. The Middle Snake, with its endless succession of ridges blending into the distant haze, brings a serenity to the soul challenged only by the jumbled waters of its rapids which defeated pioneer efforts to establish boat traffic. The sound of steamboat whistles never became accustomed between these canyon walls, but the jetboat is a commonplace sight to the eagle wheeling on the canyon's currents.

Hells Canyon is host to visitors to its hydroelectric dams, but the stretch below remains free-flowing. There are its remaining natural character. In the stretch of the river and it is being threatened by development of private lands along the shoreline. Either would destroy its remaining natural character. In the introduction of today's bill, we hope to preserve the area as it is.

In the past, three successive bills have passed the Senate which would put a 10-year moratorium on the building of further dams on the Middle Snake. However, in each case, the bills did not get out of the Interstate and Foreign Commerce Committee in the House. As time progressed, the public became more indignant about the prospects of a dam on the Middle Snake and more demanding that some sort of assurances be made that such dam construction would not take place. Although I supported the theory behind the moratorium, I felt it did not solve the problem of public land management or private land development would foreclose our options on a final decision about a management plan for the entire area. I think there has now been established an environmental feeling on our part in Idaho that we have sacrificed enough, and that we do not want to sacrifice any more of the natural beauty of our State. We do not want any more of those kinds of irreversible changes. The time has come for the creation of a final solution to the problems facing the Middle Snake.

But before that could happen, we had to find a way of dealing with the problems of uncontrolled subdivision and commercial development on the private land in the area. When the owners of the larger private holdings in the area indicated their willingness to sell last fall, I supported the efforts to obtain the necessary funds for the Forest Service to acquire those lands. If any protection were to be adopted for the area, these lands would have to be acquired in order to avoid irreversible changes and preserve our options. I felt it was better to acquire them at that time, before the threatened development became a reality—and before a larger sum would have to be paid to out-of-State speculators.

With that barrier crossed, the road was then clear for some positive and final solution to the problem of the Middle Snake. However, as we progressed in our work on this legislation, we had to keep in mind certain realities which would necessarily dictate the kind of plan devised.

The first, of course, was the question of additional dams. This bill calls for a ban on all future dam construction in the area and, as a further mark of our newer attitudes, deauthorizes the Asotin Dam which had been authorized by Congress earlier as part of the Lower Snake navigation.

Some earlier proposals would have placed the Middle Snake in a wilderness category without recognizing the large and growing use of the river by powerboats. I pointed this out 2 years ago and have continued to insist that we do nothing to destroy this recreational opportunity which has become so important to so many of our people.

While boating is primarily for recreation, it is still essential for the working ranches that are located near the river in both Idaho and Oregon. This legislation, also, will replace the clumsy tool of condemnation now being used by the Forest Service under authority granted by Congress. While we are justifiably concerned about proliferating subdivision, there is no need to force people off the land or to destroy private ownership when they want to continue in ranching operations. I will urge that the Forest Service use these alternatives as soon as the legislation passes.

There are three primary areas involved in this bill. The first is the Snake River itself. It is treated for designation under the Wild and Scenic Rivers Act from Hells Canyon Dam downstream, and included for Recreation Area Administration upstream. The second is the Middle Snake which I have discussed extensively because of the complexity of current problems. The third area is the Seven Devils. I have a particular interest there because this is where I grew up. I can not separate my own personal feelings from public judgment. I know and love that area and its people in a way which is not dispassionate or objective. These are truly "The Hills of Home" to me.

My grandfather bought a small ranch on Hornet Creek near Council just after the turn of the century. It was here that I spent my summers during my boyhood. Here I learned the feel of sweat running down by back as we pitched hay in the summer heat, the smell of the hay drying in the field or dusty in the haymow, the joy of a cooling swim in the river at the end of day the tang of a juicy apple in the fall, and the smell of wood smoke on a clear, cold winter day. It was here we went for Christmas and here we groaned after Thanksgiving dinners that stuffed us with all the goodness of an abundant pantry. And it was here, too, that I learned much that I cling to as life unwinds its skein for me. Among these good people, life was real and earnest, good men and women were recognized for their worth, and the bounty of the Lord was there for those who worked hard, were honest and frugal, and did not shrink from duty to God and man. And it was in these mountains that I learned to fish and to hunt. My earliest memories are of trips into the mountains to spots that time and events have changed, and to some that remain the same. My grandfather's brother built the road up Cuddy Mountain to a gold mine that finally closed in the Great Depression. I spent happy weeks at Lost Valley Reservoir with a friend who rented boats to fishermen. And I wandered up trails through woods untouched by man, and explored the workings of the old Peacock mine on Kinney Point. I have watched this area, changing and unchanging, and love it with a love that only a lifetime can build. Bear and Cuprum, Black Lake and the Red Ledge, Landore and the Kleinschmidt Grade, Horse Saddle and Heaven's Gate, No Business Canyon and the He Devil, all have special meaning to me. That is why I have a special interest in forging legislation which will permit the greatest amount of protection for the land and, at the same time, the greatest amount of protection for these people who have loved the land with me.

We have provided for a wilderness that encompasses the peaks of the Seven Devils and the canyon rim-to-rim from Hell's Canyon Dam downstream to Pittsburg Landing. The Rapid River drainage, on the east side of the Seven Devils, has been the subject of public hearings by the Forest Service, and, as I understand the results of those hearings, everyone agreed that it deserves special management. We have directed that it be further studied for suitability for inclusion in the wilderness area. It may be that it will be decided that timber values can be harvested without undue adverse effect upon the water quality and watershed values, but that decision can await the further study and public hearings.

We have directed that other areas on the Oregon side of the river be studied for possible inclusion in the wilderness, but that the remainder of the area in Idaho be managed for multiple use with an emphasis on recreation. We specifically provide that selective harvest of timber and present grazing shall continue. Possible mining is not prohibited, but will be very carefully scrutinized.

We realize that a comprehensive management plan has to be worked out for the recreation area which would provide for a broad range of land uses and recreation opportunities. Therefore, we direct the Secretary of Agriculture to review the area and develop such a plan within five years from enactment of this bill.

Recognizing that different portions of the Snake River are worthy of the benefits and protection afforded in the Wild and Scenic Rivers Act, we designate certain portions of the river as wild, scenic or recreational.

Another consideration was that of the upstream water rights. Although the Middle Snake is often referred to as one of the last free-flowing rivers in the country, we had to keep in mind that the Snake River in its entirety already has a great many reservoirs. Although it is correct that the Middle Snake stretch had some spectacular white water, we had to remember that the water was there at some times of the year through the grace of discharges from impoundments further upstream. And most of that upstream water is being used for irrigation purposes. Therefore, the rights of those upstream water users had to be protected in the legislation, and have been.

And a final consideration was that of the various communities which depend on the timber management on National Forest lands for their livelihood. On the Idaho side alone, there are more than six communities thus affected. Therefore, we had to insure that the boundaries of the Wilderness Area were not so extensive as to preclude selective timber harvesting in the areas being used by those communities. And that has been taken care of also. I am joining in a request directed to the Forest Service to identify the projected impact on the levels of goods and services that can be anticipated under this proposal. Rural communities dependent on these raw materials, as well as the Congress, can better plan for the appropriate management changes with this needed information.

A lot of time and preparation has gone into the introduction of this bill today, and I am very pleased to be one of the sponsors. It is a long-awaited piece of legislation which incorporates the many various points of view on what protection should be afforded the Middle Snake River. I look forward to early field hearings and the opportunity to hear testimony from interested citizens. This is a vital part of the legislative process and the comments received are very helpful as the bill is further studied in the committee. I hope that final action of the bill will be speedy so that its implementation can proceed as soon as possible.

Mr. HATFIELD. Mr. President, I am very pleased to join today with my colleague from Oregon (Mr. PACKWOOD) and the Senators from Idaho (Mr. CHURCH and Mr. MCCLURE) in introducing legislation to establish the Hells Canyon National Recreation Area. It is significant that for the first time, the four Senators from Idaho and Oregon have reached agreement on this matter.

The future disposition of this magnificent stretch of the Middle Snake River and its surrounding lands has been of great concern to the citizens of Oregon and Idaho and other Americans who have been fortunate enough to visit the area. Plans have been promoted to construct additional dams, to subdivide the land and to otherwise destroy or degrade the unique values of Hells Canyon.

In the last session of Congress, I joined with the senior Senator from Idaho (Mr. CHURCH) and our former colleague, Senator Jordan, in cosponsoring a moratorium on dam construction on the Middle Snake. This legislation passed the Senate then, as it had in the 91st Congress, without a dissenting vote.

Also during the last session of Congress, the Governors of Oregon, Idaho, and Washington, appeared before our Senate Appropriations Committee to urge that lands along the river in danger of subdivision and development be purchased by the Department of Agriculture and managed by the U.S. Forest Service to assure continuing protection. As a member of that committee, I supported the request and with the support of my colleague from Oregon (Mr. PACKWOOD) and the senior Senator from Idaho (Mr. CHURCH) we were able to provide the necessary funding. Consequently, the Department of Agriculture is now in the process of acquiring these lands.

While each of these actions were necessary at the time, they have only been piecemeal efforts to protect the Hells Canyon area. Earlier this year, I joined with Congressman AL ULLMAN of Oregon in introducing legislation to establish the Hells Canyon National Parklands Area. I am now equally pleased to join with my colleagues in the Senate in sponsoring legisaltion to provide necessary and lasting protection for the area.

As with the legislation I introduced earlier this year, the bill we are introducing today provides for a comprehensive study to determine the best use of the various lands in the area. This could result in varied land classification, including back-country, intensive recreation, or wilderness. Lumbering and grazing would not be precluded from the area and would also be considered in the study. Our legislation would provide immediate wilderness protection and designation of those lands within the canyon rim. Provision is made for full participation of the public in the development of the plan.

Mr. President, the entire Oregon congressional delegation is united in its belief that legislation is needed to provide further protection for the Hells Canyon area. That is the goal of both this bill and the legislation which Congressman ULLMAN and I earlier introduced. Through committee hearings and de-

liberations, I am confident that differences can be resolved and such protection will be provided.

Mr. PACKWOOD. Mr. President, I join today, with Senators CHURCH and MCCLURE, and my Oregon colleague Senator HATFIELD, in introducing long-awaited and long-overdue legislation. The measure to which I refer would establish the Hells Canyon National Recreation Area and has come about as a result of many months of hard and diligent work on the part of many concerned individuals dedicated to the goal of insuring that no dams will be built on the Middle Snake River, that this river will remain unblemished and free-flowing. The Middle Snake forms the border between the States of Idaho and Oregon, and it is particularly encouraging that the Senators from both these States are joining in wholehearted endorsement of legislation which seeks to protect the river and surrounding lands so that generations now and in the future may take pleasure in the area's scenic wonders.

In the 92d Congress I introduced the Hells Canyon-Snake National River bill aimed at stopping dam construction on the river and commercial exploitation along its banks. The threat of such development was increasing daily, and the reasons for abhorring exploitation of the river and surrounding lands were easily justified. Hells Canyon is the scenic climax of the Snake River. Flowing through and shaping some of the most spectacular country on the continent, the big river stretches a thousand miles from Yellowstone to the Columbia. For almost 200 miles along the border of Idaho and Oregon, the Snake River has carved a gorge, the deepest in North America, some claim the world. Viewed from the Oregon side at Hat Point this spectacle of canyon and mountains is one of the most impressive land forms in America—like having the Grand Tetons and the Grand Canyon all in one.

Hells Canyon is more than a freak of nature or a recordbook curiosity. It is a continuum of life and land forms unique on this continent and perhaps on any other. Compressed here within a few miles are all the life zones of North America, ranging from dry desert country at river level to alpine tundra in the Seven Devils above. In wildlife the canyon is rich in both variety and quantity. And yet Hells Canyon is also more than a simple catalog of plants and animals. It is a strange and beautiful place where ebony walls rise from a wild river, a place of steep grassy hillsides that lie brilliantly on the somber undertone of rock. Hells Canyon is a color and a quality of light that changes with the day and the season. It is a quiet and reassuring place, and yet at times a little awesome and frightening.

Although I was able to obtain 3 days of hearings on my national river bill of the 92d Congress, the committee declined to take further action on what was in my view a very crucial piece of conservation legislation. The problem to a large extent was upstream water rights. My old bill did not give the protection to these water rights which others felt should be a mandatory part of any bill to designate the area. The bill now before us does. It provides that waters of the Snake River and its tributaries upstream from the boundaries of the Hells Canyon National Recreation Area shall not be restricted.

When things were looking particularly bad for the Hells Canyon/Snake River area, the public rallied to the consensus that no additional dams should be built; however, a far graver prospect loomed on the horizon. Some of the ranchers in the area were negotiating with real estate developers. The threat of subdivision and commercial development was enough to bring together for the first time in the last Congress many individuals in high places who each sought in his own way to bring about protection of the Hells Canyon/Snake River: Senator CHURCH and I, and Governors Andrus, Evans and McCall joined forces and descended on the White House and the House and Senate Appropriations Committees. Senator CHURCH and I continued to work with members of the Appropriations Committee to see that money was added to the Forest Service allotment of the Land and Water Conservation Fund to finance the acquisition of these critically endangered lands. We succeeded in getting funds included in the appropriation bill, and to stop threats by private operators to sell recreation sites along the river, the U.S. Agriculture Department, through the U.S. Forest Service, has taken the first steps in condemnation proceedings that will result in Federal acquisition of about 15,000 acres of private property. Under Secretary of Agriculture J. Phil Campbell, signed a declaration of taking on May 10, 1973, and sent it to the Justice Department with a request that condemnation action be filed in Federal District Court. As a practical matter, the action means that prime rancher-owned lands cannot be sold to private developers. Court hearings on fair market value on the condemned lands will be held at a designated time.

Now, with meaningful legislation such as this new bill jointly sponsored by the Senators from the States most directly affected by the proposal, we can once again move to save the untarnished natural beauty of Hells Canyon and the Snake River from the encroachments of modern society. Senator CHURCH has been very instrumental in bringing together opposing factions, and we now have a strong base of unified support for our Hells Canyon National Recreation Area bill. I am pleased, also, to have Senator HATFIELD joining us, as these are signs of an encouraging trend toward a consensus on the future of the Hells Canyon/Snake River area. The history of dam proposals for Hells Canyon is perhaps the most confusing in conservation annals. And a part of that history has already ended tragically with the construction of three dams in the upstream reaches of the gorge, Oxbow, Brownlee, and Low Hells Canyon dams. The deepest and wildest part of the remaining canyon has been threatened by what has been called "the last storage project on the Columbia River system." The name of that last dam is High Mountain Sheep. The essence of the bill we will be presenting to fellow Senators is a complete and total ban of all dams on the 101-mile segment of the Snake River between Hells Canyon Dam and Asotin, Wash. In addition, the Asotin Dam is specifically deauthorized under the terms of the bill. In addition, we have made provision for the Secretary of Agriculture to review all the lands within the National Recreation Area and prepare a long-range plan for their mangement with recommendations for future protection of the area. About 70,000 acres on the Oregon side of the river will be included in the National Wilderness Preservation Sytem. In addition to this instant wilderness, those remaining lands in Oregon which are a part of the National Recreation Area will be studied for possible future wilderness designation and for a broad range of land uses and recreation opportunities. Furthermore, all Federal lands under study within the recreation area will be managed in such a way so as not to preclude their possible future designation by the Congress as wilderness.

Although, I would like to see the wilderness provisions strengthened and more in conformity with the Wilderness Act of 1964 as relates to the Secretary of Agriculture's study of the National Recreation Area, I feel that we cannot afford to delay this legislation further at the price of losing a national treasure. Most of the difficulties can be worked out in hearings, when all the conflicting voices can be heard and some consensus reached from our conclusions. But we must move quickly now to set up the hearings and put the wheels in motion toward complete and responsive legislation which will strongly set forth the importance of the whole concept of preserving our ecological values. Basically, the legislation is sound. We have attempted to take into consideration the exact needs of the area and provide ample protection and preservation of scenic, historical, archeological, geological, recreational, botanical, and fish and wildlife values. The battle to preserve this unique treasure has been a long and arduous one, and each small step toward a consensus of opinion has been a victory in itself. The fight to preserve the Snake River has brought together many people and groups from opposite poles of the political spectrum. Our ranks have grown, and it is, I feel, a good omen for the kind of support we may expect in the weeks and months ahead.

By Mr. WILLIAMS (for himself, Mr. BROOKE, Mr. TOWER, Mr. PROXMIRE, and Mr. MCINTYRE):

S. 2234. A bill to amend the Securities Exchange Act of 1934 to provide for the collection and public dissemination of information concerning the holdings of and transactions in securities by institutional investors, including banks, bank holding companies, insurance companies, trust companies, investment advisers, investment companies, separate accounts, dealers, pension-benefit or profit-sharing trusts and plans, charitable endowment funds, and other funds maintained or utilized for the purpose of collective investment. Referred to the Committee on Banking, Housing and Urban Affairs.

INSTITUTIONAL INVESTOR FULL DISCLOSURE ACT

Mr. WILLIAMS. Mr. President, I am introducing today a bill on behalf of my-

self and Senators BROOKE, MCINTYRE, PROXMIRE, and TOWER to require institutional investors to disclose on a regular basis their portfolio holdings and large securities transactions. This is the third bill to result from the recently completed 18-month securities industry study conducted by the Subcommittee on Securities of the Committee on Banking, Housing and Urban Affairs. Legislation growing out of this study has already dealt with problems of exchange membership, commission rates, and the development of an efficient nationwide system for the clearing and settlement of securities transactions. Now our order of business is to address directly the role of institutions in our securities markets and the implications of that role for the small investor and our capital raising mechanisms.

I believe that the most effective way this can be done is by full disclosure by institutional investors of their securities holdings and portfolio transactions. The Institutional Investor Full Disclosure Act will accomplish this task, while providing us with needed information about institutional trading practices and investment policies.

Institutional dominance of our country's securities markets and the closely related problem of the disaffection of small investors have reached a point where the Congress must act promptly if investor confidence in the fair and orderly operation of those markets is to be maintained and fully justified.

Institutional investors have come in recent years to dominate securities trading and to hold enormous influence over the price levels and the nature of price movements.

In 1960, financial institutions accounted for approximately 24 percent of the trading volume on the New York Stock Exchange. Currently, it is estimated that they account for approximately 70 percent of that volume. The figures for share ownership are just as dramatic—and as disturbing. In 1960 institutions held only 17 percent of equity securities. The comparable figure today is over 30 percent.

The staggering expansion—or explosion—of institutional trading and share ownership has had fundamental consequences for the operations of the market. On the one hand, institutional holdings have increasingly tended to concentrate in the securities of the largest and most glamorous of public companies. This phenomenon has created what has recently been dubbed the "two-tier market." This market is one in which 30 or 50 stocks, which are the current institutional favorites, increase in value and attract significant trading volume. At the same time the rest of the market, the thousands of other publicly traded securities, fail to attract sufficient investor interest for their prices to reflect their true value or volume to provide meaningful liquidity.

The potentially dangerous consequences of the phenomenon called the "two-tiered market" are obvious. Sound companies are unable to raise long-term funds. Companies favored by institutions gain unfair advantages over others in their employee compensation abilities and acquisition capabilities. And independent, competently run companies become almost irresistible objects for takeover efforts, particularly by dollar-rich foreign investors.

There is another side to the institutional investor phenomenon, a side of more direct concern to small investors and to those of us concerned with assuring that the markets operate in a fair and orderly manner with respect to such investors. When institutions trade in enormous blocks, strains—perhaps unbearable strains—are placed on our trading mechanisms.

We must face up to the fact that these mechanisms were designed or evolved to deal with a trading pattern characterized by a large number of small transactions. Today we have a market characterized by a relatively small number of large transactions. The growth of the institutional investor and the block trade have brought with them the elimination of much of the pure auction mechanism of the exchange markets. In its place, we have watched develop an essentially negotiated transaction mechanism.

I do not want to suggest that the growth of equity trading by institutional investors is necessarily bad, or that we should at this time in any way place direct regulatory constraints on that trading. But institutional trading has brought about major changes in our marketplace. We must recognize and deal with these changes if we are to protect the small investor and preserve the vitality of our capital raising mechanisms.

One conclusion that flows inescapably from the recognition of these changes in our markets, is the need for the prompt development of a true central market system within which all investors and traders can be assured at all times of having the ability to participate in the best market for any given security. This central market is an objective which the Securities and Exchange Commission is now admirably and actively pursuing. It is also a subject concerning which I will shortly introduce major and far-reaching legislation.

A second conclusion which follows from an understanding of the new institutional preeminence in the markets, is the need to go back to basics—back to the fundamental principle upon which the Federal securities laws were built: Full disclosure. Persons who have the power to control or influence securities prices or trading patterns may or may not need to be regulated, but at a minimum, fairness requires that they disclose to other investors what securities they hold and how they trade.

In the 1930's, the persons with this market power were primarily the issuers and underwriters and specialists. Today they are primarily the finincial institutions. I believe that full disclosure—"truth in securities" as it was called in the 1930's—should be required of institutions as it is of the other groups. The Institutional Investor Full Disclosure Act, which I am introducing today embodies that belief.

The securities acts contain various prohibitions against the manipulation of securities prices and the use of manipulative and deceptive devices. They confer broad powers on the Commission to regulate trading by members of stock exchanges and to require disclosure by various persons.

In 1968 the Congress directed the SEC to study the purchase, sale and holding of equity securities by institutions, in order to determine, among other things, their effect on "the maintenance of fair and orderly securities markets" and "the stability of such markets." The institutional investor study, conducted by the SEC pursuant to that mandate concluded:

An effective program of government regulations of institutional investors and the securities markets must emanate from empirical analyses of institutional behavior, weighed on the scales of competing policy considerations. . . . [T]he course of future developments cannot be accurately gauged nor can reasoned regulatory policies be plotted without a continuing flow of such information. The Commission believes that gaps in information about the purchase, sale and holdings of securities by major classes of institutional investors should be eliminated, and recommends that the Securities Exchange Act of 1934 be amended to provide the Commission with general authority to require reports and disclosures of such holdings and transactions from all types of institutional investors.

This recommendation was analyzed by the Subcommittee on Securities in connection with its securities industry study. The conclusion was reached—

That the SEC should obtain regular and comprehensive information regarding institutional transactions which contribute to unusual price movements, so that it will be continuously in a position to impose or recommend appropriate restrictions if they are required.

The Institutional Investor Full Disclosure Act will implement these significant recommendations of the Commission and the subcommittee. The Commission has expressed to me its full support for the objective of this legislation. There can be no doubt that the maintenance of confidence in our securities markets, particularly the assurances that are necessary to bring the small investor back into these markets, requires the Congress prompt consideration of this bill.

Mr. President, I now ask unanimous consent that the full text of this legislation be printed in the RECORD.

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Institutional Investor Full Disclosure Act."

Section 1. Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by inserting after subsection (e) the following new subsection:

"(f)(1) Every institutional investment manager who uses the mails, or any means or instrumentality of interstate commerce, or any facilities of a national securities exchange, directly or indirectly, to effect or to cause to be effected transactions in securities and who exercises investment discretion for or has investment authority over any account or accounts having an aggregate fair market value at any time during the preceding 12 months of at least $10 million, and every registered dealer and exchange member with any trading or investment account or accounts having an aggregate fair market value at any time during the pre-

ceeding 12 months of at least $5 million shall file with the Commission such periodic and other reports as the Commission, by rule, regulation or order pursuant to paragraph (4) of this subsection, shall prescribe as necessary or appropriate in the public interest, to assure the maintenance of fair and orderly markets, or for the protection of investors.

"(f)(2) For purposes of this subsection, the term 'institutional investment manager' means—

(A) any bank, or any bank holding company as defined in the Bank Holding Company Act of 1956, or any subsidiary thereof;

(B) any insurance company or any subsidiary thereof;

(C) any separate account;

(D) any investment company;

(E) any investment adviser;

(F) any person, or any group of persons, exercising investment discretion for or having investment authority over any account or accounts of—

(i) any employees' stock bonus, pension or profit-sharing trust which is described in Section 401 of the Internal Revenue Code of 1954, as amended, whether or not it meets the requirements for qualification thereunder;

(ii) any fund, trust, or company within the meaning of Section 202 (a)(5) of the Investment Advisers Act of 1940, which is organized and operated for religious, charitable, educational, benevolent, civic, fraternal, or any of the other purposes described in Section 501 (c) of the Internal Revenue Code of 1954, as amended, whether or not it meets the requirements for qualification thereunder;

(iii) any fund, trust, or company within the meaning of Section 202(a)(5) of the Investment Advisers Act of 1940, which is organized and operated for the benefit of federal, state or municipal employees;

(iv) any other funds, trust, company or pool of assets maintained or utilized for the purpose of collective investment; or

(v) any person or persons other than the person or persons exercising such discretion or having such authority.

"(f)(3) A person shall be deemed to have investment authority over an account if such person (A) is empowered to determine what securities shall be purchased or sold for such account; or (B) makes day-to-day decisions as to the purchase or sale of securities even though some other person may have ultimate responsibility for the investment decisions for such account.

"(f)(4) The Commission, by rule or regulation, shall require every institutional investment manager, dealer and exchange member subject to paragraph (1) of this subsection, to file with the Commission quarterly reports, and reports for such shorter periods as the Commission shall prescribe, containing the following information with respect to accounts over which such institutional investment manager exercises investment discretion or has investment authority and trading and investment accounts operated by such dealer or exchange member:

(A) the name of the issuer, the title, the number of shares of principal amount, and the value of each security held by such accounts;

(B) with respect to any transaction effected by any such account or any series of transactions effected within any 10 successive trading days by any such account or accounts involving at least 2,000 shares of any equity security or 1 percent of the outstanding shares of that class of securities whichever is less:

(i) whether the transaction or transactions involve purchases or sales, or both;

(ii) the trade dates;

(iii) the name of the issuer and the title of the securities;

(iv) the number of shares traded;

(v) the prices at which the shares were traded;

(vi) the market or markets in which the transaction or transactions were effected; and

(vii) such other information concerning the transaction or transactions as the Commission, by rule or regulation, may prescribe.

The Commission, by order, may require any institutional investment manager, dealer or exchange member subject to paragraph (1) of this subsection to file reports containing such information as the Commission shall designate with respect to any transaction or series of transactions effected by any account or accounts over which such institutional investment manager exercises investment discretion or has trading authority or by any trading or investment account or accounts operated by such dealer or exchange member.

"(f)(5) The Commission, by rule or regulation or by order, may unconditionally or upon specified terms and conditions or for specified periods exempt any institutional investment manager, dealer or exchange member subject to paragraph (1) of this subsection or any class or classes of such persons from any provision or provisions of this subsection or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the maintenance of fair and orderly markets and the protection of investors.

"(f)(6) The information contained in all reports filed pursuant to this subsection shall be available to the public information in such form as the Commission, by rule, shall prescribe: *Provided, however,* That any person filing such information may file with the Commission written objection to the public disclosure of such information, and the Commission shall grant confidential treatment to such information for which application has been made if it finds, and publishes its reasons for such finding, that the public disclosure of such information is not in the public interest or would jeopardize the fair and orderly operation of the markets.

"(f)(7) The Commission may adopt such rules or regulations or orders as it deems necessary or appropriate for the protection of investors or in the public interest to preclude unnecessarily duplicative reporting pursuant to this subsection by two or more institutional investment managers who exercise investment discretion or have investment authority over the same account or accounts, or to preclude unnecessarily duplicative reporting that otherwise may be required of institutional investment managers or dealers or exchange members who are required to file reports pursuant to paragraph (4) of this subsection and who also are required to file reports pursuant to any other provision of this title, any provision of the Investment Company Act of 1940, or any provision of the Investment Advisers Act of 1940."

By Mr. HART:

S. 2235. A bill to establish an equitable private retirement system. Referred to the Committee on Finance.

THE RETIREMENT BENEFIT FUND ACT

Mr. HART. Mr. President, I introduce the Retirement Benefit Fund Act.

This proposal has been developed by Mr. Ralph Nader and Ms. Karen W. Ferguson, an attorney with the public interest research group.

A natural question would be, I think:

What in the world is a nonexpert in pension reform and a sponsor and strong supporter of S. 4, the pension bill introduced by Senator WILLIAMS and Senator JAVITS, doing offering pension legislation at this late point in the game?

My shorthand answer is that I view S. 4 and its offspring as developed by the Senate Finance Committee as really the early rather than the late innings of the effort to reform the Nation's pension systems.

That view does not detract from the importance of passing this year a pension bill setting vesting and funding requirements, fiduciary standards, and establishing portability and pension reinsurance programs.

Such provisions are needed now to protect those long-service employees covered by pension plans who will lose out, because their employer shuts the plant gates, or because the pension plan goes broke, or because of unduly restrictive qualification requirements.

Introduction of this bill should in no way slow congressional consideration of such reforms, reforms which will come about largely as a result of the considerable efforts and leadership given this effort by Senator WILLIAMS, chairman of the Labor and Public Welfare Committee, and Senator JAVITS, ranking minority member of the committee.

However, even a layman can understand that these changes will not reform the basic approach of most of today's pension programs which says that many are not served so a few can benefit.

Even a nonexpert can understand the figures which show that as many as three of five workers in the private nonfarm sector do not participate in pension programs because they work for employers who do not have retirement plans—and that the proposed reforms will do little to improve these figures.

Neither will the legislation likely to pass Congress this year provide full equity for the worker who changes jobs often and for good reasons, nor for all surviving spouses of pension programs participants.

The limitations of the reforms now being discussed in Congress are the limitations of a private system based on the premise that large numbers of persons must lose out if others are to benefit. The proposals under study seek to reduce the number of persons losing out by striking a balance between the interests of employees in more secure pensions and the cost to employers of providing such pensions.

We can argue whether the correct balance has been struck, but without challenging what some have called the "lottery" premise on which the present system rests, large number of people will continue to lose out.

Looking toward a future of an even more mobile work force and of an ever greater demand for adequate and secure retirement programs, even the layman begins to understand why we need a pension system based on including all rather than excluding many.

And we cannot get there unless we come up with a system that insures an employee that he will benefit from every pension contribution made on his behalf.

The Retirement Benefit Fund Act seeks to reach that goal while continuing a private pension system.

We could, of course, abandon entirely the idea of a private pension system supplementing social security by greatly expanding the social security system.

Leaving aside the question of whether

the Nation is approaching the point of accepting such a proposal, the idea does raise serious economic concerns.

Private pension funds are now the country's largest single source of private investment capital, capital which is a critical factor in the Nation's economic growth.

Replacing the private pension system with an expanded social security program would mean that this source of capital—$166.5 billion at present—either would disappear from the private investment market or be invested by some type of Government or quasi-government agency.

Either way could lead to discomforting effects on a competitive market.

All of which brings me to still another basic concern about the proposals now before Congress.

My somewhat lengthy involvement with the subject of economic concentration leads me to question the effect new fiduciary standards and vesting and funding requirements will have on the accelerating trend toward dominance of the stock market by a few giant institutional investors.

It has been well reported that as these institutional investors grow, individual investors leave the market.

One result is that the big investors, for understandable reasons, favor a very small number of companies with their investments, and those firms on the "unfavored list" find hard to raise the money they need to remain competitive.

What has developed is something described as a two-tier stock market, with from 70 to 200 companies in the favored tier, and the remaining 90 percent of the companies left to scramble.

John C. Whitehead, chairman of the Securities Industry Association, is quoted as saying:

> If institutional dominance continues on its present course, we can look forward in another decade to complete dominance of our markets and of our corporations by a relatively small handful of institutions—the kind of industrial society that currently exists in Europe and Japan.

A magazine article reports that James M. Roche, former chief executive of General Motors, is fretting about the deplorable state of our capital markets at the precise time in our national history:

> When we face an extraordinary need for capital and for strong vigorous capital markets.

What may not have been as well reported is the large role pension funds play in this trend toward a market dominated by a few institutions.

Of the $166.5 billion in pension fund assets, $100 billion are administered by bank trust departments.

Of that $100 billion, four New York banks invest 43 percent or about $43 billion—and that money is invested in relatively few companies.

A special report in the June 2 edition of Business Week notes, for example, that a major New York bank recently invested 65 percent of a $1 billion pension fund in just seven stocks. And an examination of stocks held by any of the other bank trust departments reveals a similar phenomenon. Fifty-two pension funds administered by the First National City Bank of New York have 35 percent of their common stock investments in 10 companies.

The most frequently proposed solutions to the concentration problem deal with the imposition of size limitations, either on the size of the institutions or on the amount of investments they are allowed to make at any one time, and disclosure requirements. But even if implemented, these solutions will do little to restore the element of individual decisionmaking which is the hallmark of a vigorous economy.

There is another possible solution.

Company pension plans reportedly are the fastest growing sector of the institutional groups.

And this rate of growth can only increase when Congress passes a law establishing new vesting, funding, and fiduciary standards.

It makes sense then to seek to diversify the control over these pension funds.

This, too, is an important goal of the Retirement Benefit Fund Act.

I ask unanimous consent that the Business Week article entitled, "Are the Institutions Wrecking Wall Street?" be printed at the conclusion of my remarks.

Briefly then, the Nader proposal would work this way:

The Security and Exchange Commission would license a number of closely regulated competitive retirement funds.

The individual employee would select a fund in which an employer or the worker could deposit pension contributions.

Unions would be free to bargain over the level of employer contributions.

Pension contributions would be immediately vested and fully funded, and benefits would grow with each contribution regardless of how many times an individual changed jobs.

Pension contributions—including those made on behalf of spouses—would be tax deductible, but there would be a limit on the amount an individual could contribute.

Each employee would receive a passbook—similar to those supplied by savings accounts—showing the total amount credited to his account and projecting yearly pension payments the employee would receive at different retirement dates.

An employee could retire at any time, but only once. Pension payments, based on the amount of money in his account, projected earnings on that account and age at retirement, could begin immediately.

Fund members would have the right to vote for directors and to express views on the fund's investment policies. Funds would be able to make some investments in areas—such as senior citizen housing—of long-range value to retirees.

To protect the funds against domination by a few financial institutions, the bill sets stiff requirements on permitted affiliations of fund officers and directors.

Because contributions would be invested for a longer period than is often the case under the present system, because administrative costs of individual programs would be largely eliminated, and because the system to prospective, estimates indicate the proposed system would not cost most employers more to provide more people with the same average pension benefits.

And because the retirement funds will handle administrative costs, it will be possible for smaller firms which now cannot afford to start pension programs to make contributions on behalf of employees.

The bill provides a 30-year transition period during which employees would receive benefits they would have received under the present system.

Mr. Nader outlined this proposal in a speech which he delivered to the Conference on Employee Benefits on May 24, 1972, and which I inserted in the RECORD on June 15, 1972. Since that time the proposal has been put into bill form by the Yale Legislative Services, a Yale Law School student organization established to provide legislative drafting assistance, at the request of Representative BENJAMIN ROSENTHAL. Tax provisions were added and technical changes were made by the Senate Legislative Counsel's office.

This bill is offered not as a perfect piece of legislation but as a vehicle for discussion on how best to move to a better pension system.

There are controversial policy choices which need to be studied, the most important of which is whether the best route for the future lies toward a nationalized pension system rather than a private pension system.

It is my hope, then, that those who take the time to study this proposal will do so mindful of the two problems it seems to answer—better pension payments for more people and dispersal of market power exercised by institutional investors fueled by pension funds.

I ask unanimous consent that the Retirement Benefit Fund Act, a section-by-section summary of its provisions, a statement discussing the retirement income aspects of the bill prepared by Ms. Ferguson, and a list of questions and answers about the bill be printed in the RECORD.

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

S. 2235

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

(a) This Act may be cited as the "Retirement Benefit Fund Act."

(b) Table of Contents.—

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FINDINGS AND DECLARATION OF POLICY

SEC. 2(a) The Congress finds that private pension plans in the United States are intrinsically woven into the working and retirement lives of American men and women; that such plans have become firmly rooted into our economic and social structure; that their operational scope and economic impact is interstate and increasingly affects more than thirty million worker participants through the United States; that private pension assets of approximately $150,000,000,000 accelerating at more than $10,000,000,000 annually, represent the largest fund of virtually unregulated assets in the United States; that the growth in size, scope, and numbers of private pension plans is continuing rapidly and substantially; that these rapidly growing pension funds are operated with little reference to the best interests of the participants whom the funds are supposed to benefit; that the Federal authority over the establishment, administration, and operations of these plans is ineffective to secure adequate protection of retirement benefits due to the workers covered and affected; that deficient and inadequate provisions contained in a number of such plans are directly responsible for hardships upon working men and women who are not realizing their expectations of pension benefits upon retirement; that there have been found to be serious consequences to such workers covered by these plans directly attributable to inadequate or non-existent vesting provisions and lack of portability to permit the transfer of accumulated moneys by employees from one employment to another; that terminations of plans beyond the control of the employees, without necessary and adequate funding for benefit payments, have deprived employees and their dependents of earned benefits; that employee participants have not had sufficient information concerning their rights and responsibilities under the plans, resulting in loss of benefits without knowledge of same; that the lack of uniform minimum standards of conduct required by fiduciaries, administrators, and trustees has jeopardized the security of employee pension benefits; that investment of pension fund moneys is becoming increasingly concentrated; that the costs inherent in the operation of the current pension plan system function to inhibit extension of pension plan coverage to countless millions of employees; that the existing law provides no incentive for employees to make their own provisions for retirement or provisions for the financial security of their surviving dependents; and that it is therefore desirable that a new legal framework be created to fulfill and protect the retirement interests of working Americans.

(b) It is the policy of this Act—

(1) to protect interstate commerce, and the interests of American workers by permitting and encouraging the creation of Retirement Benefit Funds, licensed by the Securities and Exchange Commission, for the purpose of receiving, investing, managing, and paying retirement benefits out of payments made to them by or on behalf of individual participants, such Retirement Benefit Funds to provide for full vesting of all payments made on behalf of individual participants so that an employee may change employment without forfeiture of benefits; for management by directors elected by and responsible to fund participants, and for investment by each fund of all monies with the sole aim of serving the best interests of fund participants; and

(2) to provide for insurance of all pension contributions and to assure adequate disclosure and reports to participants and beneficiaries of fund administration and operations, including financial information by the fund to the participant, as may be necessary for employees to have a comprehensive understanding of their rights and obligations to receive benefits from the funds in which they are participants;

(3) to provide incentives for employees to make their own provisions for retirement and provisions for the financial security of surviving dependents;

(4) to establish minimum standards of fiduciary conduct; and

(5) to provide for appropriate and adequate remedies, sanctions, and ready access to the courts for the aggrieved parties.

DEFINITIONS

SEC. 3. As used in this Act—

(1) "Retirement Benefit Fund" and "fund" means a corporation not for profit organized under the laws of any State or the District of Columbia and licensed according to the provisions of this Act for the purpose of receiving, investing, managing, and paying retirement benefits,

(2) "Commission" means the Securities and Exchange Commission,

(3) "beneficiary" means any natural person who may be entitled to receive payments from any fund by virtue of the death of a participant,

(4) "employee" means any individual who receives remuneration for services who is not a self-employed person,

(5) "employer" means a person who gives one or more employees remuneration in exchange for services,

(6) "pre-existing pension plan" means an employee pension benefit plan, other than a profit-sharing retirement plan, established or maintained prior to the date of enactment of this Act by an employer or employee organization, or by both for the purpose of providing retirement benefits to participants or their beneficiaries,

(7) "participant" means any natural person on whose behalf contributions are made to any fund.

(8) "self-employed person" means a person who owns an entire interest in an unincorporated trade or business, or in the case of a partnership, means a partner who owns more than 10 per centum of either the profits or capital interest in such partnership,

(9) "special allowance investment" means an investment in an enterprise the advancement of which the fund directors deem likely to be of particular social utility and of long-range value to the participants as retirees, including investments tending to reduce expenses typically incurred during retirement (such as housing, medical and consumer expenses) which would not be justified solely in terms of their monetary return and the risk involved,

(10) "person" means an individual, partnership, corporation, mutual company, joint stock company, trust, unincorporated organization, association, or employee organization.

(11) "affiliated person" of another person means—

(A) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting securities of such other person;

(B) any person five percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person;

(C) any person directly or indirectly controlling, controlled by, or under common control with, such other person;

(D) any officer, director, partner, copartner, or employee of such other person;

(E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and

(F) if such other person is an unincorporated investment company not having a board of directors, the depository thereof; and

(12) "consultant" means any person who advises or represents a fund.

TITLE I—RETIREMENT BENEFIT FUNDS

ORGANIZATION AND GENERAL PROVISIONS

SEC. 101. (a) The Securities and Exchange Commission shall prescribe rules and regulations necessary to carry out the provisions of this Act, including rules and regulations for the operation of Retirement Benefit Funds.

(b) There is hereby established a Retirement Fund Division within the Securities and Exchange Commission, with the power and responsibility of supervising Retirement Benefit Funds according to terms of this Act.

(c) The Commission is authorized to appoint and fix the compensation of such attorneys, actuarial consultants, hearing examiners, and other employees as may be necessary for carrying out the functions of the Retirement Fund Division under this Act, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to Classification and General Schedule pay rates, and the Commission may, subject to such provisions, appoint and fix the compensation of such other officers and employees as are necessary in the execution of the Division's functions. The Commission may procure the temporary and intermittent services of individuals in carrying out the functions of the Division to the extent authorized by section 3109 of title 5, United States Code.

(d) There are hereby authorized to be appropriated such sums as may be necessary to enable the Retirement Fund Division to carry out its functions and duties.

(e) The Commission shall submit annually a report to the Congress covering its activities under this Act during the preceding fiscal year.

LICENSING

SEC. 102. (a) Applications to be authorized to operate as a fund shall be filed with the Commission, in such form and containing such information and documents as the Commission shall by rules and regulations prescribe as necessary or appropriate for the protection of the interests of employees and the public. The information required by the Commission shall include—

(1) the name and address of each affiliated person of applicant and the name and principal address of every company, other than the applicant, of which each such person is an officer, director, or partner; a detailed statement of the business experience relevant to the application of each officer and director of the applicant;

(2) the name under which the proposed fund intends to operate, and the location of the fund's principal place of business;

(3) a recital of the investment policies of the applicant, and of other policies in respect of matters which the applicant deems matters of fundamental policy;

(4) a copy of the corporation's charter, its bylaws, and such other documents relating to the organization and operation of the corporation as the Commission may require; and

(5) any other information deemed necessary by the Commission to effectuate the purposes of this Act.

(b) Upon receipt of such application, the Commission shall examine the condition of such applicant, paying particular attention to the financial condition and demonstrated expertise of the persons described in the application, and to the demand for fund services. If the Commission is satisfied that the interests of employees and the public would be served by permitting the applicant to operate a fund, it shall issue a license to the applicant to so operate, which license shall be for the term of 12 years and renewable. The Commission shall provide public notice of its intention to issue a license and shall entertain comments from any member of the public concerning the suitability of the proposed licensee for a period of 30 days from the provision of said notice.

(c) No fund shall be affiliated with any bank, insurance company, or other financial institution.

(d) Application for license renewal shall be made at least six months prior to the expiration of the existing license. The Commission shall review all applications to determine whether renewal is appropriate.

(e)(1) On petition of 50 pension fund participants or if the Commission has grounds to believe that continued operation of a fund by a licensee is likely to jeopardize the actual and potential pension benefits of participants or is not in the public interest, the Commission shall hold a hearing to determine if a license renewal shall be denied or a license revoked. Adequate public notice, not less than 30 days prior to such hearing, shall be provided

(2) If after a full hearing on the record, with evidence presented from all interested parties and at which counsel for the challenged licensee is allowed to present and cross examine witnesses, the Commission decides, based on the record, that further operation of the fund as constituted may jeopardize the pension benefits of participants or is not otherwise in the public interest, it shall revoke such a fund's license or deny it renewal. The hearing examiner shall in his discretion permit intervention in any hearing by such members of the public as may be necessary to represent interests otherwise unrepresented. Intervenors shall have all the rights of a party at any hearing.

(3) In cases where the Commission has reason to believe that emergency measures are necessary to protect fund participants, it may, with or without prior notice place a fund under the management of a Commission trustee who shall have full powers to operate the fund pending the outcome of a hearing under paragraph (2). If such an emergency trustee is appointed, the management is entitled to a hearing not more than 90 days after it so petitions and a final Commission decision not more than 60 days after such a hearing. If the Commission after a hearing held pursuant to this subsection decides not to revoke or deny renewal to a licensee, control over such fund shall promptly be restored to licensee.

(4) If after a hearing under paragraph (2) the Commission decides to revoke or deny license renewal to a licensee and a trustee has not previously been appointed under paragraph (3), a trustee shall be appointed with full powers to operate such fund until it is terminated or returned to private management pursuant to this section. The trustee shall notify all fund participants of his appointment.

(5) Renewal or non-revocation under this subsection may be conditioned on such alterations in the policies or personnel of the fund as the Commission may deem necessary to protect the interest of the public or of the participants.

(6) After revoking a license, the Commission shall entertain applications from persons desiring to become the licensee of said fund. The Commission may require, as conditions of granting a new license, such changes in investment policy or personnel of the fund as are necessary to insure the financial soundness of the fund.

(7) No fund and no person affiliated with any fund shall be eligible to become a licensee of any other fund held in trust under paragraph (3).

(8) When the right to manage a fund under the control of a trustee is granted to a new licensee, said licensee shall notify all fund participants and beneficiaries of the change in management and each participant and beneficiary shall be provided the opportunity to have all amounts accumulated to his account transferred to another fund.

(9) In the event that no suitable applicant shall apply for a license to manage a fund under the control of a trustee within such reasonable period of time following revocation or non-renewal as the Commission shall prescribe, the trustee shall proceed to terminate the fund by notifying participants and beneficiaries that they must designate another fund to which all amounts accumulated to their accounts may be transferred. The trustee shall arrange with other funds for the continued payment of benefits to retired participants and beneficiaries, and shall pay to those funds amounts appropriate to cover the obligations assumed. Any fund licensed under this Act may be required by the Commission to assume a reasonable share of the obligations of a terminated fund.

(f)(1) The Commission shall establish procedures for the receipt and investigation of all complaints by any member of the public concerning the operations of an existing fund.

(2) Any petitioner or complainant may appeal from any Commission licensing decision to the United States District Court for the District of Columbia Circuit. The decision of the Commission shall be final unless contrary to law or not based on substantial evidence.

DIRECTORS AND OFFICERS

SEC. 103. (a)(1) No fund shall have a board of directors more than 40 percent of whose members are persons who are investment advisors of, affiliated persons of an investment advisor of, consultants to, or officers of employees of, such fund.

(2) No fund shall have a majority of its board of directors consisting of persons who are officers, directors, or employees of banks and insurance companies.

(3) The total number of persons on the board of directors who fit either of the following categories shall not total more than one-third of the directors.

(A) officers or directors of any employer or employer organization, or

(B) officers of any labor organization or its subdivisions.

(4) No fund shall invest in any company of which a director or officer of that fund is a director or officer.

(5) No person shall serve as officer or director of more than one fund at a time.

(b) No person who has been convicted under the law of the United States, or of any State (or of any political subdivision thereof), of robbery, bribery, extortion, embezzlement, grand larceny, burglary, perjury, or any crime described in section 9(a)(1) of the Investment Company Act of 1940 (— Stat. —; 15 U.S.C. 80a-9(a)(1)), or a violation of any provision of this Act, or a violation of section 302 of the Labor-Management Relations Act of 1947 (61 Stat. 157; 29 U.S.C. 186), or a violation of chapter 63 of title 18, United States Code, or a violation of section 874, 1001, 1027, 1503, 1506, 1510, 1951, or 1954 of title 18, United States Code, or a violation of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519; 29 U.S.C. 401) or a violation of the Welfare and Pension Plan Disclosure Act (— U.S.C. —; 29 U.S.C. 301), or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve—

(1) as a director, officer, consultant, counsel, agent, employee (other than as an employee performing exclusively clerical or janitorial duties) of, or in other fiduciary position of, any fund;

(2) as a consultant to any fund for five years after such conviction, unless prior to the end of such five-year period, in the case of a person so convicted—

(A) his citizenship rights, if revoked or suspended as a result of such conviction, have been fully restored, or

(B) the Commission determines that such person's service in any capacity referred to in paragraph (1) or this paragraph, would not be contrary to the purposes of this Act.

(c) It shall be unlawful for any officer, director or employee of a fund knowingly to permit any person to serve in any capacity referred to in subsection (b) in violation of that subsection.

(d) Any person who is convicted willfully violating this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

ELECTION OF DIRECTORS

SEC. 104. (a)(1) The board of directors of a fund shall consist of not less than 15 nor more than 20 members elected for terms of five years. The terms shall be so arranged that not less than 3 nor more than 4 expire each year.

(2) Not less than one-half of the seats on the board of directors shall be reserved for individuals who reasonably anticipate that the fund will represent the major non-governmental portion of their future retirement income. Beginning one year after the organization of the fund, one or two of the seats becoming vacant each year shall be filled by fund participants or beneficiaries until not less than one-half of the total seats are so occupied.

(b)(1) Funds shall provide in their bylaws for nomination of directors in accordance with the following guidelines;

(A) The first board of directors shall be selected by the license applicant.

(B) Thereafter—

(i) the officers of the fund may nominate a candidate for each seat as the term of the incumbent expires, except, that for the seats reserved for participant and beneficiary board members, the officers of the fund shall have no power of nomination, and

(ii) additional nominations for the board may be made by petitions signed by not less than

(I) 500 of the fund's participants, or

(II) 2 percent of the fund's participants, whichever is smaller.

(c) Campaigning for directorships shall consist only of a distribution of information at the expense of the fund, describing, in the language of the candidate, his qualifications and such positions on investment policy as he regards as important. In any matter distributed by a fund under the preceding sentence each candidate shall be afforded equal space with other candidates in which to make a presentation. The Commission may prescribe the amount of space to be provided each candidate, taking into account the necessity for non-incumbent candidates to make their views known to fund participants and the need to limit the financial burden on funds.

(d)(1) Election ballots shall be distributed and collected by mail, due care being

taken by the fund to assure the integrity of the electoral process.

(2) Each participant shall have one vote for each seat to be filled, and may cast his vote cumulatively. The seats reserved for participants and beneficiaries and all other seats shall be separated for the purpose of voting, and cumulative voting is within each category.

(3) The candidates in each category will be ranked according to total votes received. The candidate in each category with the largest vote total shall be awarded a seat on the board of directors, then the candidate with the second highest vote total; and so on, until the number of vacant seats is filled.

(e) (1) Complaints of election irregularities shall be made to the board of directors, who shall establish a single committee within 5 days after the receipt of any complaint to investigate complaints relating to that election. Except as provided in paragraph (2), if the board determines that such irregularities existed, it shall void the election and order a new one. The directors elected in the challenged election shall not be considered a part of the board of directors for the purpose of ruling on the validity of the election, nor are they eligible for membership on the investigatory committee.

(2) If the board of directors rules that there were no irregularities, or that such irregularities as may have existed had no effect on the result of the election, a complainant may appeal to the Commission.

(3) Any fund participant or beneficiary and any candidate standing for election in the challenged election may file a complaint alleging election irregularities.

(4) Upon receipt of a complaint that has been rejected by a fund, the Commission shall conduct an investigation of the election. If irregularities are found, the Commission shall void the election, and order a new election to be held under its supervision.

(5) A decision of the Commission under subsection (4) is reviewable by a United States district court. The decision of the Commission shall be final unless contrary to law or not based on substantial evidence.

(f) Any vacancy occurring on the board of directors other than by expiration of a term of office may be filled by vote of the remaining members of the board for the remaining term of the seat involved.

INVESTMENT POLICY

SEC. 105. (a) No fund shall issue or underwrite any kind of securities, whether in the form of stocks or bonds. Funds shall not issue any debt securities.

(b) (1) The assets (or any portion thereof) of the fund may not be loaned to a company which is the employer of any of the participants, or to an affiliated person of an employer of any of the participants, or to a labor organization representing any of the participants, at a rate of return which is lower than the greater of—

(A) the rate at which the prospective debtor could borrow money for the intended use from commercial banks, or

(B) the gross return on investment experienced by the entire fund during the most recent fiscal year.

(2) The assets of the fund may under no circumstances be loaned to—

(A) any present or past director, officer or employee of the fund, or

(B) any person or company affiliated with a present or past director, officer or employee of the fund.

(3) With respect to all unsecured loans extended by the fund, due attention shall be paid to the credit-worthiness of the prospective debtor, and loans shall be made only in accordance with sound financial principles.

(4) Prospective borrowers shall be informed, prior to the making of any loan, of the requirements of this section. Any loan made in violation of this section shall be voidable at the option of the fund. Any balance due on any such loan on the date on which it is voided shall be due and payable in full, with interest, not later than 30 days after that date.

(5) Any officer or director of a fund who is convicted of willfully causing a loan to be made in violation of this section or who is convicted of knowingly permitting such a loan to be made shall be fined not more than $50,000 or imprisoned for not more than five years, or both.

(c) (1) No licensee shall, unless authorized by a vote of a majority of the participants voting, deviate from its policy in respect to investments, specifically, in respect to concentration of investments in any particular industry or group of industries as recited in its original license application. The Commission shall promulgate such regulations as necessary to insure that the purposes of this section are carried out in a fair and equitable fashion.

(2) A licensee proposing to change its investment policy shall, before seeking a participant approval, submit a detailed analysis of the proposed change, with reasons therefor, to the Commission. If the Commission decides that the proposed changed investment policy is within the guidelines established in this Act regarding concentration, and that is is not contrary to the best interests of fund participants and beneficiaries and will not unreasonably endanger the fund assets, it shall permit the licensee to seek participant authorization for the change.

(3) Proxies shall be valid only to the extent that they authorize a representative to vote for or against the proposed changed investment policy.

(d) No fund shall so concentrate its investments in a single company or industry that—

(1) the stability of the fund would be threatened in the event of a drastic reduction in the value of such concentrated investments, or

(2) the fund has effective control over any company in which it has investments.

(e) Each year a percentage of total fund assets as the Commission may by regulation prescribe shall be allocated for administrative expenses, which expenses shall include but not be limited to all forms of remuneration paid to officers, directors and employees of a fund.

FIDUCIARY STANDARDS

SEC. 106. (a) Every fund shall be deemed to be a trust and shall be held for the exclusive purpose of providing benefits to participates and beneficiaries.

(b) Any person who exercises any power of control, management, or disposition with repsect to any monies or other property of a fund is a fiduciary and occupies a position or trust with respect to such fund, and to its participants and beneficiaries.

(c) A fiduciary shall discharge his or her duties with respect to the fund—

(1) solely in the interests of the participants and beneficiaries,

(2) with the care under the circumstances then prevailing that a prudent man acting in a like capacity and with a like concern for the income security of retirees would use in the conduct of an enterprise with similar aims, and

(3) in accordance with the documents and instruments governing the fund insofar as consistent with this Act.

(d) Nothing in this section shall be construed to prohibit any fiduciary from—

(1) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses incurred in the performance of his duties with the fund, but no fiduciary shall directly or indirectly accept or be the beneficiary of any fee, brokerage, commission, gift, or other consideration for or on account of any loan, deposit, purchase, sale, payment or exchange made by or on behalf of the fund;

(2) receiving any benefit to which he may be entitled as a participant of beneficiary in the fund;

(3) purchasing on behalf of the fund any security which has been issued by an employer whose employees are participants in the fund;

(4) making special allowance investments with up to 10 percent of the assets of the fund;

(5) voting shares held by the fund in accordance with voting preference questionnaires furnished to each participant or beneficiary pursuant to section 205 (f).

(e) (1) Any fiduciary who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this Act shall be personally liable to reimburse such fund an amount equal to any losses experienced by the fund resulting from such breach and to restore to such fund any profits accrued by the fiduciary resulting from his breach of duty.

(2) No fiduciary shall be indemnified by the fund in connection with such a breach.

(3) Any exculpatory provisions in the agreement establishing a fund under this Act or any resolution or agreement by the parties thereto which purports to relieve any fiduciary with relation to any such fund from liabilities for breach of the responsibilities, obligations, or duties declared by this section shall be void as against public policy.

(f) Directors and officers are required to disclose their securities holdings to the Commission and the participants of the fund. To the extent that their holdings coincide with holdings of the fund, those holdings shall be sold or placed in a blind trust for the duration of the director's or officer's tenure.

(g) A fiduciary shall not be liable for a violation of this Act committed before he became a fiduciary or violations committed after he ceased to be a fiduciary.

TITLE II—DISCLOSURE

INAPPLICABILITY OF PRIOR LAW

SEC. 201. The Welfare and Pension Plans Disclosure Act is not applicable to Retirement Benefit Funds established pursuant to this Act. The Commission shall have sole power to enforce the provisions of this title.

INFORMATION DISCLOSED

SEC. 202. (a) The chief executive officer of each fund shall cause to be published (1) a description of the fund, and (2) an annual report. Such description and such report shall contain the information required by sections 203 and 204 of this title in such form and in such detail as the Commission shall by regulation prescribe and shall be executed, published, and filed in accordance with the provisions of this Act and regulations of the Commission.

(b) The chief executive officer of a fund shall furnish to each participant and beneficiary covered thereunder in accordance with subsections (c), (d), and (e) of section 205—

(1) a summary of the annual report,

(2) a year-end statement,

(3) an investment preference questionnaire, and

(4) where appropriate, a voting preference questionnaire.

FUND DESCRIPTIONS

SEC. 203. (a) A description of any fund shall be published as required herein within 90 days after the establishment of such fund and shall be mailed to participants and beneficiaries in accordance with section 205(c)(1).

(b) (1) The description of the fund shall be comprehensive and shall include—

(A) the name of the fund,

(B) the name and address of all directors and officers,

(C) a description of the operation of the fund, written in a manner calculated to be understood by the average participant,

(D) the fiscal year of the fund,

(E) a statement of how participants' benefits are to be calculated,

(F) a statement of investment policies,

(G) a copy of mortality tables used in determining benefits

(H) the procedures to be followed in presenting claims for benefits under the fund and the remedies available for the review or appeal of claims which are denied in whole or part, and

(I) any other data or information which the Commission concludes is necessary if participants and beneficiaries are to have a clear understanding of the chief features of their fund.

(2) Any change in the information required by this subsection shall be reported in accordance with regulations prescribed by the Commission.

ANNUAL REPORTS

SEC. 204. (a) An annual report shall be published with respect to any fund established pursuant to this Act, as required under section 205, within 150 days after the end of the fiscal year of the fund.

(b) The chief executive officer of a fund shall cause an audit to be made annually. Such audit shall be conducted in accordance with generally accepted accounting principles by an independent certified or licensed public accountant. The auditor's opinion and comments with respect to the financial information shall be furnished in the annual report and shall form a part of such report. In addition the results of any special audits, including those that the Commission may by regulation prescribe, shall form a part of such report.

(c) A report under this section shall include—

(1) the aggregate amount contributed by the participants; the aggregate amount contributed by employers and the aggregate amount contributed by spouses; the amount of benefits paid to participants and beneficiaries; the number of participants; the number of beneficiaries; a statement of assets, liabilities, receipts, and disbursements of the fund; a detailed statement of the salaries, fees, commissions, and other administrative expenses charged to the fund, to whom paid, in what amount, and for what purposes; the name and address of each officer, director, consultant, and other fiduciary, his or her official position with respect to the fund, and any other office, position or employment he or she holds;

(2) a schedule of all investments of the fund showing, as of the end of the fiscal year—

(A) the aggregate cost and aggregate value of each security, by issuer; and

(B) the aggregate cost and aggregate value, by type or category, of all other investments, and separately identifying (i) each investment which exceeds $100,000 or 3 percent of the value of the fund, and (ii) each investment made pursuant to section 106(d)(4);

(3) a schedule showing the aggregate amount, by type of security, of all purchases, sales, redemptions, and exchanges of securities made during the reporting period a list of the issuers of such securities; and, in addition a schedule showing, as to each separate transaction with respect to securities held or acquired pursuant to section 106(d)(4), the issuer, the type and class of security, the quantity involved in the transaction, the gross purchase price, the date of purchase, and in the case of a sale, redemption, or exchange, the gross and net proceeds (including a description and the value of any consideration other than money), the dates of such sales, redemptions or exchanges, and the net gain or loss;

(4) a schedule of purchases, sales, or exchanges during the year covered by the report of investment assets other than securities—

(A) by type of category of asset the aggregate amount of purchases, sales, and exchanges; the aggregate expenses incurred in connection therewith; and the aggregate net gain (or loss) on sales, and

(B) for each transaction involving investments made pursuant to section 106(d)(4) and for each transaction involving over $100,000 or 3 percent of the fund, an indication of each asset purchased, sold, or exchanged (and, in the case of fixed assets such as land, buildings, and leasehold, the location of the asset); the purchase or selling price; expenses incurred in connection with the purchase, sale, or exchange; the cost of the asset and the net gain (or loss) on each sale; the identity of the seller in the case of a sale, and his or her relationship to the fund;

(5) a schedule of all loans made from the fund during the reporting period or outstanding at the end of the year, and a schedule of principal and interest payments received by the fund during the reporting period aggregated in each case by type of loan, and, in addition, a separate schedule with respect to all loans—

(A) made pursuant to section 106(d)(4),

(B) in default,

(C) written off during the year as uncollectible, and

(D) all other loans,

the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the obliger, a detailed description of the loan (include date of making and maturity, interest rate, the type and value of collateral, whether or not the loan is insured, and other material terms), the amount of principal and interest overdue (if any) and, as to loans written off as uncollectible, an explanation thereof;

(6) in addition to reporting the information required by this subsection, the directors and officers may furnish other information as to investments or reinvestments of the fund as additional disclosures to the Commission.

(d) Any annual report made under this section shall include—

(1) the number of participants, both retired and non-retired, covered by the fund during the fiscal year to which the report relates,

(2) the number of participants and beneficiaries receiving benefits and the dollar amount of such benefits paid during that year,

(3) the amount of all accumulated net assets as of the close of that year,

(4) the value of all accrued liabilities for benefit payments as of the close of that year,

(5) the total earnings of the fund for the reporting year in dollar amount, and the percentage rate of return on total assets, shown in terms of measurements prescribed by the Commission,

(6) the amount of insurance premiums paid to the Federal Insurance Corporation during that year,

(7) all amounts returned to the fund from the Federal Pension Insurance Corporation during that year, and

(8) such other information as the Commission may by regulation prescribe.

DISCLOSURE TO PARTICIPANTS

SEC. 205. (a) The Commission shall prepare forms for the fund descriptions, annual reports, annual statements, and investment and voter preference questionnaires required by the provisions of this Act and shall make such forms available to the directors and officers of such funds on request.

(b) The chief executive officer of all funds subject to this Act shall file with the Commission a copy of the fund description and each annual report and any other items the Commission may require. The Commission shall make copies of such descriptions and annual reports available for inspection, examination, and copying at the Commission.

(c) The chief executive officer of each fund shall publish plan descriptions and annual reports by—

(1) mailing copies of the fund description (including all amendments and additions thereto) and of annual reports to each participant or beneficiary upon request,

(2) making copies of the fund description (including all amendments and additions thereto) and the latest annual report available for public inspection in the principal office of the fund,

(3) furnishing to any person so requesting in writing a complete copy of the annual report, and charging the costs of copying and mailing the report to the requesting party, and

(4) furnishing to all fund participants and beneficiaries a summary of the latest annual report within 60 days after the end of the fiscal year, including, but not limited to, a schedule of all special allowance investments made during the preceding year and the return thereon during the preceding fiscal year.

(d) The chief executive officer shall mail within 60 days after the end of the fiscal year to each fund participant and beneficiary a year-end statement. The statement shall be written in a manner calculated to be understood by the average participant, and shall include the total contributions credited to his account for the reporting period, the source of the contributions, earnings on accrued contributions, the total amount credited to his account, a projection of yearly income at retirement produced by contributions paid in to date (exclusive of future payments), a projection of yearly income at retirement produced if contributions are made at the current rate at age 65, the assumptions used for any such projections, a statement of the manner in which pension benefits are reduced to provide for benefit payments to surviving beneficiaries, and such other information as the fund may deem appropriate or as the Commission may by regulation require.

(e) The chief executive officer shall furnish an investment preference questionnaire to each participant or beneficiary with his year-end statement. The questionnaire shall be in such form and contain such information as the Commission shall by regulation require and shall include but not be limited to requests for information regarding whether or not the fund should make special allowance investments (as defined in section 106(d)(4)), the percentage of fund assets to be so invested, and areas of special concern in which the fund should invest. The results of such questionnaires shall be furnished to all participants and beneficiaries in accordance with regulations promulgated by the Commission and such results shall be considered by, but shall not be binding upon, the directors, officers, or other fiduciaries of the fund.

(f) On the motion of one or more of the directors, there shall be furnished to each participant or beneficiary a voting preference questionnaire. Such voting preference questionnaire shall solicit information directly relating to the voting of shares held by the fund. The results of such voting preference questionnaires shall be furnished to all participants and beneficiaries in accordance with regulations promulgated by the Commission and must be considered by, but shall not be binding upon, the directors, officers or other fiduciaries of the fund.

(g) The books of the fund shall be open for inspection by any participant or beneficiary on 30 days' written notice.

(h) Upon conviction of willful violation of the provisions of this title, the chief executive officer of any fund shall be punish-

able by a fine of not more than $1,000, imprisonment for not more than 6 months, or both.

TITLE III—CONTRIBUTIONS; BENEFITS; INSURANCE

CONTRIBUTIONS

SEC. 301. (a) All pension contributions shall be made to funds selected by participants. Contributions may be made on behalf of a participant by the participant or by his or her employer or spouse but no participant may contribute on his or her own behalf during any calendar year amounts totalling in excess of 25 percent of the then current maximum taxable social security wage base, as determined under section 3121 of the Internal Revenue Code of 1954, reduced by all amounts contributed by the participant's employer and spouse. The Commission shall prescribe procedures designating the times and the manner in which contributions shall be made by employers, spouses and participants to funds. Nothing in this section shall limit the right of employers, labor organizations and participants to bargain as to the level of pension contributions to be provided by the employer.

(b) Each fund shall provide each participant with a passbook, indicating the amount of pension contributions paid to the fund on his or her behalf at the time of issue, and containing space for the inclusion of the annual year-end statements required to be furnished each participant under Title II, section 205 (d) of this Act. Upon submission by the participant of his or her passbook to the fund, the fund shall enter thereon a notation of all payments received plus all earnings accrued to date including, where appropriate, an indication of a participant's share of increments in the value of fund assets and of any amounts returned to the fund by the revolving fund of the Federal Pension Insurance Corporation established by section 305 of this title.

TRANSFERABILITY

SEC. 302. (a) No person shall have pension monies deposited with more than one fund at a time. Nothing in this section shall preclude a fund participant from acquiring rights as a beneficiary in monies deposited in another fund pursuant to section 304(b) if at the time of, or prior to, the filing of a declaration of retirement pursuant to section 304(a) the participant or beneficiary requests one or more fund transfers for the purpose of consolidating in a single fund all monies in which the participant or beneficiary has an interest.

(b) A participant or beneficiary may transfer all amounts accumulated in his or her account in one fund to another fund by filing a written transfer request with his or her fund. All funds shall honor transfer requests within 20 days of receipt, except that in no event shall amounts accumulated in the account of an individual participant or beneficiary be transferred more often than once per year, at times and under conditions to be prescribed by the Commission. The year-end statement furnished each participant and beneficiary under section 205 (d), shall specify his or her right to transfer pension monies and the terms on which he or she may do so.

SALES AND ADVERTISING

SEC. 303. (a) Except as provided in this section, no fund shall accept pension contributions from or on behalf of any participant without first furnishing such participant with a copy of its most recent solicitation prospectus and without receiving written notice from said participant that he or she has received and inspected the solicitation prospectus. A solicitation prospectus shall consist of a concise statement of information about a fund to assist a prospective participant in determining whether his or her pension contributions should be paid to that fund. Solicitation prospectuses shall include a fund's name, address, names of directors, officers and consultants, statements of operating results, projected earnings and investment policy, and any other information prescribed by the Commission. The Commission shall prescribe regulations with regard to the length and format of the solicitation prospectus, with regard for the need for information to assist prospective participants in choosing a fund, and the desirability of minimizing the administrative expenses of all funds so as to maximize the benefits to participants and beneficiaries. Every fund shall prepare a solicitation prospectus at times to be prescribed by the Commission.

(b) Notwithstanding the provisions of subsection (a) the Commission may provide during a period not to exceed two years following the effective date of this Act for alternate means by which prospective participants shall be informed about funds, if it appears unduly expensive and cumbersome to provide every prospective participant with a copy of the solicitation prospectus of every fund.

(c) The Commission shall promulgate rules to maximize the return to participants and beneficiaries, and it shall be the obligation of each fund to minimize costs incurred in advertising the nature and existence of said fund and in soliciting prospective participants. In any event, no fund shall employ any salesman, agent, or other representative on a commission or salary basis to solicit individuals or groups of employees to make pension contributions to said fund.

(d) It shall be unlawful for any fund or any representative thereof to make any materially false, falsely disparaging, or misleading oral or written statement or other representation of any kind with the intent to persuade any prospective participant to designate said fund as the depository of his or her pension contributions. The making of the following representations shall constitute prima facie evidence of a violation of this section:

(1) Any statement, suggestion, or intimation that a particular characteristic of a fund distinguishes it from other funds, when in fact such characteristic is common to many or most such funds.

(2) Any statement, suggestion, or intimation that a fund is an instrumentality of the United States Government.

(3) Any statement of past earnings performance of a fund unless it shall be followed immediately by the statement that "The preceding record of earnings represents *past* performance only. There can be no guarantee that the same performance will be repeated in the future."

(c) Whoever is convicted of violating the provisions of this section shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

BENEFITS AND PAYMENT

SEC. 304. (a) Pension benefits are payable to a participant or beneficiary as follows:

(1) At such time as each participant or beneficiary elects to retire, but only one time during his or her life, the participant or beneficiary shall file a "declaration of retirement" with his or her fund. Each fund shall make available declaration of retirement forms as prescribed by the Commission to all participants and beneficiaries. Upon receipt of a completed declaration of retirement form, such fund shall forward a copy to the Social Security Administration, where it shall be filed with the participant's or beneficiary's social security records. Upon filing a declaration of retirement with a fund a participant or beneficiary shall immediately become eligible to receive a lifetime pension benefit.

(2) A participant's lifetime pension benefit shall be an annuity, payable monthly, determined in accordance with nondiscriminatory actuarial standards and methods approved by the Commission and based on all amounts accumulated in the participant's account on the date the participant files a declaration of retirement.

(3) If participants married to each other and possessing separate accounts in the same fund file a joint declaration of retirement, they shall receive an annuity for their joint lives and for the life of the survivor based on the sum of all amounts accumulated in their respective accounts, determined in accordance with non-discriminatory actuarial standards approved by the Commission.

(c) A beneficiary's lifetime pension benefit shall be determined as follows:

(1) If a married participant dies after filing a declaration of retirement and has not stated that he or she does not want his or her spouse to become a beneficiary, the surviving spouse shall immediately become eligible to receive the lifetime pension benefit previously received by the deceased participant.

(2) If a married participant dies before filing a declaration of retirement, the surviving spouse shall automatically be eligible to become a beneficiary at such time as he or she files a declaration of retirement. The surviving spouse's lifetime pension benefit shall be an annuity payable monthly determined in accordance with non-discriminatory actuarial standards and methods and shall be based on all amounts accumulated in the deceased participant's account on the date the beneficiary files the declaration of retirement:

(3) If a married participant dies before filing a declaration of retirement and the participant's surviving spouse also dies before filing a declaration of retirement, each of the participants' surviving dependent children shall become beneficiaries and shall be entitled to receive an equal share of the amounts pension payment the surviving spouse would have received had he or she filed a declaration of retirement on the date of his or her death, until such time as the child becomes 22 years of age unless he is incapable of self-support. At such time as any surviving child becomes ineligible for benefits under this section, the amount to which other surviving children shall be entitled shall be recomputed based on the number of children then remaining eligible. Payments to children may be made directly or to a legal guardian.

(d) Except as provided in (2) and (3) of subsection (c), if a participant dies before retirement, all amounts accumulated in the participant's account shall be paid by his or her fund into the revolving fund of the Federal Pension Insurance Corporation established under section 305 of this title.

(e) The lifetime pension benefit of a participant who has filed a declaration of retirement may be reduced in accordance with non-discriminatory actuarial standards and methods in any case in which the participant's spouse may be entitled to receive the participant's pension benefit upon the death of the participant.

(f) In the event of any dispute between any person and any fund concerning an alleged right to receive a benefit or the amount of a benefit, such person may bring a civil action in the United States district court of the district where such person resides.

INSURANCE

SEC. 305. (a) There is hereby established a corporation to be known as the Federal Pension Insurance Corporation (hereinafter referred to as the "Corporation"). The Corporation shall be under the direction and control of the Federal Deposit Insurance Corporation.

(b) The Corporation shall insure rights of participants and beneficiaries to the extent of (1) all payments made to the fund by any employer or any participant on behalf of the participant or (2) a participant or beneficiary has filed a declaration of retirement pursuant to Section 304(a) the present value of his or her lifetime pension benefit. The Corporation shall insure funds against loss

from special allowance investments made pursuant to section 106(d)(4) of this Act to the extent of the principal of such special allowance investments plus interest equal to one-third the average rate of return achieved from investment of the fund's portfolio (exclusive of special allowance investment) in the year in which the special allowance investment is made.

(c) Each fund shall pay an annual premium for insurance under the program to be established by the Corporation. Premium rates established under this section shall be determined by uniform standards for all funds. The premium rates may be changed from year to year by the Corporation, when the Corporation determines changes to be desirable or necessary to give effect to the purposes of this title. Premiums under this title shall be payable at times to be specified by the Corporation.

(d) In carrying out its duties under this title, the Corporation shall establish a revolving fund into which shall be paid all amounts paid to the Corporation as premiums, and all amounts accruing from pre-retirement death of participants as provided in sections 304(d) and 304(c)(2) of this title.

(e) The Corporation shall from time to time when it determines that the amount remaining in the revolving fund will be adequate to serve the purposes of this section remit to funds a portion of the amounts accumulated in the revolving fund in order to maximize the benefits received by participants and beneficiaries. Such amounts shall be remitted in proportion to the amount of assets deposited with each fund at the time such remittance is made, and shall be apportioned to participants' accounts in proportion to the size of their accounts.

(f) The Corporation is authorized to borrow from the United States Treasury such amounts as may be necessary for deposit into the revolving fund to meet the liabilities of the Corporation. Monies borrowed from the Treasury shall bear a rate of interest determined by the Secretary of the Treasury to be equal to the average rate on outstanding marketable obligations of the United States as of the time such monies are borrowed. Such monies shall be repaid by the Corporation from premiums and pension monies accruing from pre-retirement death of participants paid into the revolving fund.

(g) Monies in the revolving fund not required for current operations shall be invested in obligations of, or guaranteed as to principal and interest by, the United States.

TITLE IV—TRANSITION PERIOD

RETIREMENT BENEFIT FUNDS

SEC. 401. Contributions to retirement benefit funds may be made by the following:

(a) Self-employed persons now making pension contributions pursuant to provisions of the Internal Revenue Code of 1954, may

(1) continue to make such contributions but contribute to a fund any difference between the contributions they make to their pre-existing plan and the maximum contribution authorized by section 301(a) of this Act, or

(2) transfer their accrued contributions to a fund.

(b)(1) Employed persons not covered by a pre-existing plan shall be permitted to contribute to a fund each year an amount not in excess of the maximum contribution authorized by section 301(a) of this Act.

(2) Employed persons covered by a pre-existing pension plan shall be permitted to contribute to a fund each year an amount

(A) not greater than 25 percent of the then current maximum taxable social security wage base,

(B) reduced by an amount equal to the employee's wage or salary multiplied by twice the ratio of the employer's annual pension cost to the employer's total annual payroll cost except that there shall be no such reduction in the event that an employer certifies to a fund selected by an employee that the employee's control will prevent the employee from receiving benefits from a pre-existing plan, and

(C) reduced further by amounts contributed to the fund on the employee's behalf by an employer or spouse.

(c)(1) Employers, some or all of whose employees are not covered by a pre-existing pension plan, who may make contributions on behalf of their non-covered employees if the amounts contributed are

(A) the same amount for each employee not covered by a pre-existing pension plan, or

(B) an amount equivalent to the same percentage of the wage or salary of each such employee, and if contributions are made on behalf of all non-covered employees over 25 years of age and on behalf of all non-covered employees under 25 years of age who have the equivalent of 3 or more years of service with the employer, whether such service is full-time, part-time or seasonal.

(2) Employers whose employees are covered by a pre-existing pension plan may decide pursuant to an affirmative vote of 70 percent of the covered employees and retirees, and in accordance with the terms of the pre-existing pension plan, to terminate such plan and distribute all plan assets to accounts for individual employees, retirees and beneficiaries in retirement benefit funds selected by the employees, retirees and beneficiaries.

(3) Employers whose employees are covered by a pre-existing pension plan with assets sufficient to cover all accrued liabilities for vested benefits shall, upon receipt of a petition signed by 3 percent of the covered employees and retirees, conduct an election to determine whether the pension plan should be terminated and its assets distributed to accounts for individual employees, retirees and beneficiaries in retirement benefit funds selected by the employees, retirees and beneficiaries. If 80 percent of the covered employees vote in favor of termination, the employer shall terminate the pre-existing pension plan in accordance with the terms of the plan. For the purposes of this subsection "liabilities for vested benefits" means the present value (determined in accordance with the actuarial standards and methods approved by the Commission) of the immediate or deferred benefits available at regular retirement age for participants and beneficiaries which are non-forfeitable and for which all conditions of eligibility have been fulfilled.

(4) The Commission shall prescribe procedures for the conduct of elections pursuant to subsections 401(2) and (3) and for the distribution of plan assets in the absence of plan termination schedules.

(d) A married person shall be permitted to make contributions on behalf of his or her spouse to a separate account in the spouse's own name in a fund selected by the spouse. Amounts contributed pursuant to this subsection each year shall not exceed 25 percent of the then current maximum taxable social security wage base, reduced by all amounts contributed by the spouse's employer or the spouse on the spouse's behalf.

(e) All amounts contributed to the fund in excess of the limitations contained in section 401 of this Act and in section 301(a) of this Act as well as all amounts contributed to a fund on behalf of a participant who has filed a declaration of retirement pursuant to section 304(a) of this Act shall be returned to the person who has made the contribution.

PRE-EXISTING PENSION PLANS

SEC. 402. (a) To ensure that participants in pre-existing plans who have become and will become entitled to pension benefits under those plans will receive such benefits, all employers with pre-existing pension plans shall adopt one of the following two transitional programs—

(1) Within 30 days of the effective date of this Act the employer shall file with the Commission a statement of intent to modify the pre-existing pension plan in accordance with Commission approved guidelines at the expiration of any applicable collective bargaining agreement or within 90 days, whichever occurs later. These guidelines shall include but shall not be limited to provisions requiring:

(A) The adoption of a schedule calling for the gradual reduction of vesting power over a period no longer than 30 years so that at the end of 30 years, or before, the pre-existing pension plan will provide that all employees over 25 years of age and all employees under 25 years of age with the equivalent of 3 years of service, whether full-time, part-time or seasonal, will acquire either

(i) immediate non-forfeitable rights to deferred defined pension benefits to be paid by the pre-existing pension plan or

(ii) rights to defined contributions of equivalent value paid by the employer on behalf of plan participants to individual accounts in retirement benefit funds selected by the employees. The term "vesting requirements" as used in this subsection refers to provisions requiring that employees work for one or more employers for a specified number of years and until they reach a specified age before acquiring non-forfeitable legal claims to immediate or deferred pension benefits;

(B) The adoption of a schedule providing for the elimination over a 30-year period of all unfunded liabilities accrued by the pre-existing pension plan at the time this legislation is enacted. The term "unfunded liabilities" as used in this subsection means the difference between the value of the accrued liability and the value of the assets of the pension plan as of the date of valuation of the plan. The accrued liability is the liability determined in accordance with actuarial standards and methods approved by the Commission,

(C) The adoption of a procedure whereby upon the written request of any employee with vested rights to a pension benefit, the administrators of the pre-existing plan will transfer an amount of money equal to the discounted value of the employee's vested rights to a retirement benefit fund selected by the employee.

(D) The adoption of a plan provision to the effect that benefit levels provided by the pre-existing pension plan will not be modified without express authorization by the Commission unless such benefit increases are financed entirely by increased employer contributions and by voluntary employee contributions and create no additional unfunded liabilities, as defined in subsection (B).

(E) The adoption of a plan provision to the effect that married participants' benefits will be automatically actuarially reduced (using the valuation standards and methods approved by the Commission) to provide benefits to surviving spouses unless a participant files a written statement with the plan administrator prior to retirement stating that he or she does not want to provide for a survivor;

(F) The adoption of a plan provision requiring the submission of individual statements to the Commission signed by each administrator of the pre-existing pension plan and by any other person who exercises any power of control, management or disposition with respect to the assets of the pension plan, acknowledging that he or she is a fiduciary with respect to such assets who has undertaken to act exclusively in the best interests of all plan participants and retirees and beneficiaries.

(b) Within 30 days after the effective

date of this Act the employer shall file with the Commission a statement of intent to allocate pension contributions paid after the expiration of any applicable collective bargaining agreement or after the close of the then current calendar (or if appropriate, fiscal) year, whichever occurs later, as follows—

(1) the employer shall allocate to an account established for each employee covered by the pre-existing pension plan a portion of the total annual amount to be paid to fund pension plan obligations except that

(A) the same annual amount for each employee or an annual amount equivalent to the same percentage of the annual wage or annual salary of every employee shall be allocated to each employee, and the entire annual amount to be used to fund pension plan obligations and shall be allocated among the covered employees, and that

(B) this subsection shall not apply to pre-existing pension plans terminated pursuant to subsections (c)(2) and (3) of this section.

(2) The amount allocated to each employee employed on the effective date of this Act shall be contributed to the pre-existing pension plan to fund its obligations.

(3) The amount allocated to each employee whose employment begins after the effective date of this Act and who is more than 35 years of age when his or her employment begins shall be contributed to an individual account in the employee's name in a retirement benefit fund selected by the employee.

(4) The amount allocated to each employee whose employment begins after the effective date of this Act and who is less than 35 years of age when his employment begins shall be contributed to the pre-existing pension plan to help fund its obligations. When such new employee becomes 35 years of age, all future contributions allocated to the new employee shall go to an individual account in a retirement benefit fund selected by the employee.

(5) The transition period prescribed by this subsection shall be completed within 30 years.

(A) Ten years from the effective date of this Act, the age limit in subsections (b)(3) and (b)(4) shall be lowered to 30 years. Those employees who at the end of 10 years come within the provisions of subsection (b)(4) and who are then between 30 and 35 years of age shall thereafter have all contributions allocated to them paid to individual accounts in retirement benefit funds of their choice.

(B) Twenty years from the effective date of this Act, the age limit in subsections (b)(3) and (b)(4) shall be lowered to 25 years. Those employees who at the end of 25 years come within the provisions of subsection (b)(4) and who are then between 25 and 30 years of age shall thereafter have all contributions allocated to them paid to individual accounts in retirement benefit funds of their choice.

(C) Thirty years from the effective date of this Act, all contributions for all employees shall be made to individual fund accounts in their names.

(D) At or before the conclusion of the thirty year transition period any deficit in the funding of obligations under a pre-existing plan shall be eliminated by employer contributions.

(3)(A) If a member of the Academy of Actuaries qualified in the evaluation of pension plans or an actuary determined by the Commission to have equivalent qualifications determines, before the end of the transition period, on petition of the employer, and the Commission subsequently certifies on the basis of his evaluation that a preexisting plan will be able to pay all promised benefits, the employer may cease making payments to the pre-existing fund and begin making contributions for all employees to retirement benefit funds.

(B) If an employer is making contributions to a preexisting fund from amounts allocated to employees not eligible for benefits from such fund, on petition of 3 per cent of such non-benefited employees the Academy of Actuaries shall determine whether the pre-existing plan will be able to pay all promised benefits. If the Academy determines that such a plan can pay all promised benefits any affected individual can request the Commission to order the employer to cease making contributions to such a pre-existing fund.

(4)(A) Until a pre-existing plan is terminated or certified by the Commission as able to pay all promised benefits, total employer contributions shall be at least as great a percentage of total employee remuneration as they were in the year during the 3 year period immediately preceding the effective date of this Act in which the lowest percentage of total employee remuneration was contributed to a pension fund. If such a plan has been in existence less than 3 years, the above period shall date back only to the time of establishment of the plan.

(B) An employer shall make no change in pension benefit levels without express Commission approval until a pre-existing plan is certified as able to pay all promised benefits or until 20 years after the passage of this Act, whichever comes first. Thereafter the level of pension benefits shall be freely determined by employer and employees.

(5)(A) Any employer subject to the provisions of subsection 402(b) of this Act may apply to the Commissioner for a hearing to determine a possible exemption from such provisions.

(B) The Commission may exempt an employer wholly or in part from the provisions of this subsection 402(b) if the employer establishes that his business operations will be substantially impaired by a full application of subsection 402(b) to his business. Employees of any employer making a request for exemption shall have a right to intervene in any such hearing as full parties.

(C) The employer or intervening employees may appeal any adverse decision rendered under this section to any federal district court. The determination of the Commission shall be upheld unless it is shown to be contrary to law or not based on substantial evidence.

FEDERAL, STATE AND LOCAL PENSION FUNDS

SEC. 403. No pension funds operated by or for any governmental agency, whether federal, state, or local shall be subject to any provisions of this Act unless the governmental unit elects to establish or modify a pension plan in accord with the provisions of this Act and if it does so shall become subject to all provisions of this Act.

RETIRED WORKERS INCOME SECURITY COMMISSION

SEC. 404. (a) There is hereby established a Retired Workers Income Security Commission which shall study the economic problems of presently and soon-to-be retired workers whose retirement needs will not be met by this legislation. The Retired Workers Income Security Commission shall propose to Congress, within one year of the effective date of this Act, means by which such workers and their survivors may receive a fair retirement income commensurate with their past contributions to the economic well being of the nation. The Secretaries of Labor, Treasury, Commerce, and Health, Education, and Welfare, and the Chairman of the Securities and Exchange Commission shall each appoint one member of the Retired Workers Income Security Commission.

(b) There are authorized to be appropriated $100,000 for the fiscal year ending June 30, 1974, for the purposes of carrying out the provisions of this section.

TITLE V—PENALTIES, ENFORCEMENT

CIVIL LIABILITY

SEC. 501. Any person who violates any section of this Act, whether willfully or negligently, shall be civilly liable for damages resulting from such violation. Actions for violations of this Act may be brought by injured participants or beneficiaries.

CRIMINAL LIABILITY FOR FRAUD AND CONVERSION

SEC. 502. Whoever in any document required by this Act to be submitted to the Commission, published, or kept as part of the records of any fund makes any false statement or representation of fact knowing it to be false or knowingly conceals, covers up or fails to disclose any fact the disclosure of which is required by this Act shall upon conviction thereof be fined not more than $10,000 or imprisoned for not more than five years, or both.

Criminal Liability for Fraud and Conversion

SEC. 503. Whoever—

(a) Embezzles, steals or unlawfully and willfully abstracts or converts to his own use or the use of another any of the assets of a fund; or

(b) by any scheme or device defrauds such fund or makes or submits a false statement of material fact to such fund or its officers, directors, agents, consultants, employees or counsel with the intent to cause such fund to make a loan of any of its assets or disperse the proceeds of such loan or otherwise transfer any of its assets to any person; or

(c) having obtained such a loan willfully converts the proceeds thereof to a use not approved by the fund which either adversely affects the value of any security for such loan or which is in furtherance of any act, plan, or scheme in violation of the laws of the United States or the State in which the proceeds are used, shall upon conviction be fined not more than $10,000 or imprisoned for not more than five years, or both.

INVESTIGATIONS

SEC. 504. (a) The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Act or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Commission is authorized in its discretion, to publish information concerning any such violations, and to investigate any such facts, conditions, practices, or matters which it may deem necessary or proper to aid in the enforcement of the provisions of this Act, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this Act relates.

(b) For the purpose of any such investigation, or any other proceeding under this Act, any member of the Commission or any officer designated by it is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, paper, correspondence, memoranda, or other records which the Commission deems relevant or material to the inquiry. Attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

(c) In case of contumacy by, or refusal to obey a subpoena issued to any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching

the matter under investigation or in question and any failure to obey such order of the court may be punished by such court as contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, paper, correspondence, memoranda and other records, if in his power to do so, in obedience to the subpoena of the Commission, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(d) Whenever it shall appear to the Commission that any person is engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this Act, or of any rule or regulation thereunder, it may in its discretion bring an action in the proper district court of the United States or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission shall transmit such evidence as may be available concerning such acts or practices to the Attorney General, who may, in his discretion, institute the necessary criminal proceedings under this Act.

(e) Upon application of the Commission the district courts of the United States, and the United States courts of any Territory or other place subject to the jurisdiction of the United States, shall also have jurisdiction to compel any person to comply with the provisions of this Act or any order of the Commission made in pursuance thereof.

(f) The Commission may order testimony to be taken by deposition in any proceeding or investigation pending under said sections at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Commission as provided herein.

(g) Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the case shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

UNANNOUNCED AUDITS

SEC. 505. The Commissioner shall have the power to order "unannounced audits" of any fund when he deems it proper. Such audits shall be carried out by certified or licensed public accountants in accordance with generally accepted accounting principles.

JURISDICTION

SEC. 506. An individual action brought by any single plaintiff to enforce any provision of this Act may be maintained in any state or federal court of competent jurisdiction by any participant or beneficiary. A civil action in any state court arising under this Act may not be removed to any district court of the United States unless the removal is assented to by the plaintiff. Each and every United States district court has original jurisdiction over any litigation arising under this Act regardless of the amount in controversy or the citizenship of the parties.

CLASS ACTIONS

SEC. 507. A class action may be maintained to enforce any provision of this Act by any participant or beneficiary in any United States district court and each United States court of a place subject to the jurisdiction of the United States. Such an action may be brought in any judicial district in the state in which the violation is alleged to have been committed, in the judicial district in which the fund's records relevant to such practice are maintained and administered, or in the judicial district in which the plaintiff is, or would have been a participant or beneficiary but for the violation alleged, but if the respondent is not found within any such district, such action may be brought within the judicial district in which the respondent has its principal office. For purposes of sections 506–511 of this title the judicial district in which the respondent has its principal office shall in all cases be considered a district in which the action might have been brought.

CLASS ACTION NOTICE PROVISIONS

SEC. 508. (a) Actions brought under section 507 of this title shall be brought in accordance with Rule 23 of the Federal Rules of Civil Procedure, except that notice shall be given the members of the class in accordance with the following provisions:

(1) At the time an action is instituted the court shall order a bifurcated trial on the substantive threshold issues, which shall take place after both parties have engaged in preliminary discovery.

(2) If the plaintiff prevails on the substantive threshold issues in the bifurcated trial then, and only then, shall the class be notified with the costs of notice borne by the plan.

(b) The Court shall order that such notice be provided to the class in the plan's annual statement, investment preference questionnaire in cases when this will not produce undue delay, and no provision of Rule 23 shall be interpreted by any court as requiring a specified number or percentage of the participants or beneficiaries of a plan to be named as plaintiffs before they can be deemed to adequately or fairly represent the members of a class.

APPOINTMENT OF ATTORNEYS

SEC. 509. Upon application by a participant or beneficiary and in such circumstances as the court may deem just, the court may appoint an attorney for such a participant or beneficiary and may authorize the commencement of the action without payment of fees, costs, or security. Upon timely application the court may, in its discretion, permit the Commission to intervene in such civil action if it certifies that the case is of general public importance.

ATTORNEY FEES

SEC. 510. The court shall award attorneys fees, costs and court fees to private plaintiffs who successfully bring actions under this Act.

BONDING

SEC. 511. (a) Every administrator, officer, employee of a fund subject to this Act who handles money or other property of a fund shall be bonded as herein provided. The amount of such bond shall be fixed at the beginning of each calendar, policy or other fiscal year, as the case may be which constitutes the reporting year of such plan. Such amount shall be not less than ten per cent of the amount of the money or other property handled, determined as herein provided, except that any such bond shall be in at least the amount of $1,000 and no such bond shall be required in an amount in excess of $500,000. The Commission, after notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of $500,000, which in no event shall exceed ten percent of the amount of money or other property handled. For purposes of fixing the amount of such bond, the amounts handled shall be determined by the amounts handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding year, or if the fund was not in existence during the preceding year, the amount of funds to be handled during the current reporting year, by such person, group, or class, estimated as provided in Commission regulations. Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of such administrator, officer, or employee, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury. Any bond shall be in a form or of a type approved by the Commission, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(b) It shall be unlawful for any administrator, officer, or employee to whom subsection (a) of this section applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the money or other property of any fund without being bonded as required by subsection (a) of this section and it shall be unlawful for any administrator, officer, or employee of such plan, or any other person having authority to direct the performance of such functions, to permit such function, or any of them, to be performed by any such person, with respect to whom the requirements of subsection (a) of this section have not been met.

(c) It shall be unlawful for any person to procure any bond required by subsection (a) of this section from any surety or other company or through any agent or broker in whose business operations such fund or any party in interest in such plan has any significant control or financial interest, direct or indirect.

(d) Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (c) of this section because he handles money or other property of a fund, to be bonded insofar as the handling by such person of the money or other property of such fund is concerned.

(e) The Commission shall from time to time issue such regulations as may be necessary to carry out the provisions of this section. When, in the opinion of the Commission a fund offers adequate evidence of the financial responsibility, or that other bonding arrangements would provide adequate protection of the participants and beneficiaries, it may exempt such fund from the requirements of this section.

(f) Any person who is convicted of willfully violating the provisions of subsections (b) and (c) of this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

TITLE VI—EFFECTIVE DATE

SEC. 601. The effective date of this Act shall be one year after enactment of this Act.

TITLE VII—AMENDMENTS TO THE INTERNAL REVENUE CODE

RETIREMENT BENEFIT FUNDS

SEC. 701. (a) Part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954 (relating to deferred compensation, etc.) is amended by adding at the end thereof the following new section:

"SEC. 408. RETIREMENT BENEFIT FUNDS.

"Notwithstanding any other provision of this title, a retirement benefit fund which is organized under, and licensed by the Securities and Exchange Commission as complying with, the Retirement Benefit Fund Act during any taxable year shall be held and considered to be a qualified trust under section 401 (a)."

(b) The table of sections for such part is amended by adding at the end thereof the following new item:

"Sec. 408. Retirement benefit funds."

TRANSFERS

SEC. 702. Section 402 (a) of the Internal Revenue Code of 1954 (relating to taxability of beneficiary of exempt trust) is amended by redesignating paragraphs (3) through (5) as (4) through (6), and by inserting after paragraph (2) the following new paragraph:

"(3) Certain transfers.—For purposes of this section, a transfer of any amount representing a participant's or beneficiary's interest in a participant's or beneficiary's account in a retirement benefit fund described in section 408 shall not be considered a distribution under paragraph (1) if the transfer is made by that fund to a participant's or beneficiary's account in another such retirement benefit fund."

EMPLOYER CONTRIBUTIONS

SEC. 703. (a) Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to items specifically excluded from gross income) is amended by redesignating section 124 as 125 and by inserting after section 123 the following new section:

"SEC. 124. EMPLOYER CONTRIBUTIONS TO RETIREMENT BENEFIT FUND EMPLOYEE ACCOUNTS

"No amount paid by an employer during the taxable year into the account of an employee in a retirement benefit fund described in section 408 shall be included in the gross income of that employee during that taxable year. This section shall not apply to the extent that the provisions of section 402 may require the inclusion of such amounts in the gross income of the employee for that taxable year."

(b) The table of sections for such part is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 124. Employer contributions to retirement benefit fund employee accounts.

"Sec. 125. Gross references to other Acts."

SEC. 704 (a) Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 219 as 220 and inserting after section 218 the following new section:

"SEC. 219. RETIREMENT SAVINGS.

"(a) IN GENERAL.—In the case of an individual there shall be allowed as a deduction amounts paid by him during the taxable year to his or his spouse's account in a retirement benefit fund described in section 408.

"(b) REGULATIONS.—The Secretary or his delegate is authorized to promulgate such regulations as may be necessary to carry out the provisions of this section."

(b) The table of sections for such part is amended by striking out the last item thereof and inserting in lieu thereof the following:

"Sec. 219. Retirement savings.

"Sec. 220. Cross references."

APPLICATIONS

SEC. 705. The amendments made by the title shall apply with respect to taxable years beginning after the effective date of the Retirement Benefit Fund Act.

DELEGATION

SEC. 706. The Secretary of the Treasury or his delegate shall, as soon as is practicable but in any event not later than 90 days after the date of enactment of this Act, submit to the Committee on Ways and Means of the House of Representatives a draft of any technical and conforming changes in the Internal Revenue Code of 1954 which are necessary to reflect throughout such Code the changes in the substantive provisions of law made by this title.

ARE THE INSTITUTIONS WRECKING WALL STREET?

"Like the curator of the National Zoo," said G. Bradford Cook, in his last days as chairman of the Securities & Exchange Commission, "I feel constrained to warn: The individual investor has acquired the status of an endangered species."

The individual investor is virtually gone from Wall Street these days—his place taken by the mutual funds, insurance companies, pension funds, and bank trust departments that buy and sell shares in colossal lots.

It is these institutions that dominate the nation's securities markets today, and if their dominance is forcing some long overdue changes in the basic structure of Wall Street, it is worrying a great many people who do not like what the institutions are doing with their enormous resources.

It is a fact that institutions trade stocks in such huge quantities that they accenuate price swings in the market—all the more so because institutions increasingly limit their investing to a relative handful of stocks. What has emerged is a highly volatile market in a few issues, a lack-luster market in most issues—and a closed door to many of the companies that want to take their shares public. Beyond all that—and one prime reason the small investor has deserted the market—are allegations that institutions, because of their huge holdings, are privy to inside information of which the small investor is left ignorant. One example: While institutions got the word about Equity Funding and took to the boats, not one single wirehouse warned retail clients to bail out.

The current state of Wall Street—stock prices down sharply, dozens of brokerage houses in financial distress, the flow of new issues down to a trickle—has spotlighted the dominance of the institutions. But the concern would be there even if Wall Street were booming, because the growing might of the institutions, and the way they use that might, have such profound implications for the future of not only the securities industry, but of U.S. business in general.

"The swing to institutional dominance," says John C. Whitehead, chairman of the Securities Industry Assn. and a Goldman, Sachs partner, "has changed the character of the markets, endangered their valuation capability, and demolished their liquidity." James M. Roche, until recently chief executive of General Motors Corp., frets about "the deplorable state of our capital markets—at the precise time in our national history when we face an extraordinary need for capital and for strong, vigorous capital markets." Roger G. Kennedy, vice-president for financial affairs at the Ford Foundation, says: "I don't believe you can call this a problem, because problem means an abnormality, something that will go away."

But the institutional domination of Wall Street will not go away. Rather, it is becoming more intense every day.

"In 1963," says Whitehead, "institutional investors accounted for 35% of the dollar value of New York Stock Exchange trading volume. That percentage today is over 70%. In some stocks, 90% of volumes is institutional." President Paul Kolton of the American Stock Exchange estimates the total equity holdings of financial institutions today at $310 billion. (Banks hold $170 billion of that, mutual funds $45 billion, insurance companies $42 billion, foundations, investment counsellors, and smaller institutions the rest.) Robert Soldofsky, professor of finance at the University of Iowa, calculates the institutional total will grow to $714 billion by 1980, and to $5 trillion by the end of the century.

THE PASSING OF THE "PRIVATE CLUB" EXCHANGE

There is a positive side to institutional dominance. The institutions have smashed the stock exchange's fixed commission rules that reward inefficiency by requiring all brokers to charge the same commission on a trade. Price competition is forcing Wall Street to change dramatically from what it used to be—a mélange of thousands of firms, most of them small, poorly capitalized, and badly managed. Tomorrow's Wall Street will mostly feature big, well-capitalized, professionally managed houses. The institutions, by seeking stock exchange membership, are forcing the exchanges themselves to change. No longer are exchanges the private clubs they had been. The institutions are forcing the exchanges to reexamine their basic operating practices, and the exchanges of the future—or, perhaps, the single, central, automated exchange of the future—will be more efficient than exchanges have been in the past.

But there is a price tag on all these changes, and it may prove to be a very high one. "If institutional dominance continues on its present course," warns Whitehead, "we can look forward in another decade to complete dominance of our markets and of our corporations by a relatively small handful of institutions—the kind of industrial society that currently exists in Europe and Japan."

The outstanding characteristic of markets overseas is their extraordinary lack of liquidity. In the U.S. today, such illiquidity is fast becoming the rule in the overwhelming majority of stocks. "In the name of playing safe with their clients' money," says chairman James Needham of the NYSE, "large institutional investors have been concentrating their activity in an ever-narrowing circle of investment choices"

To C. V. Wood, Jr., president of McCulloch Oil Corp. and chairman of the newly formed Committee of Publicly Owned Companies, this ever-narrowing circle consists of "70 sacred cows." President Paul Hallingby, Jr., of White, Weld & Co. thinks that "there are 200 or 300 stocks today in which liquidity is impressive." But a Boston executive puts the figure at only "25 to 40."

Morgan Guaranty Trust Co., with the biggest and often the boldest of the bank trust departments, holds 569 different stocks in its vaults, while the Ford Foundation owns 250 issues and Kennedy says, "I wish it were 1,000. If we could find that many well-managed companies that were well researched and carefully studied, we'd be in them."

Less important than what the institutions hold, though, is what they are buying today. Notes Whitehead: "One of our largest banks received over $1-billion in retirement and pension fund money to invest last year. It placed 65% of that in just seven stocks, another 20% in eight others, and the balance in just 15 more."

TWO-TIER WOES AND REWARDS

So there is a two-tier stock market today. In the top tier, says Hallingby of White, Weld, the interest comes from individuals as well as institutions. In the lower tier, by contrast, "we've got the institutions absent and the individual disinterested."

The vast majority of stocks—90% or more—fall into the bottom tier, and with the institutions disinterested and the public absent, the price performance of these stocks has been simply awful. Wood's Committee of Publicly Owned Companies notes that in the 12 months that ended last March, the price of an average NYSE share declined by 23%, while the average decline of an American Stock Exchange share was 33%. Fully 75% of listed companies increased earnings, but only 5% increased price/earnings ratios.

"Between 1968 and 1972," says Whitehead, "our gross national product was up 33%, personal income was up 36%, and personal savings were at an all-time record. Yet stock prices, as measured by key, unweighted indexes, are off 50% from their 1968 peak."

The two-tier market rewards a few companies lavishly. Because they are institutional favorites, they are free to tap the market for additional equity financing, to use

their stock for acquisitions, and to reward key people with valuable stock options. It penalizes a great many companies—shutting the door to additional equity financing and making stock options relatively worthless. Because there is market interest in only a relative handful of stocks, newer, smaller companies are finding it increasingly difficult to go public at all. And because the rewards of becoming an institutional favorite are so great, there is a temptation to do almost anything to achieve it—from cooking the books to lavishing favors on the analysts who recommended stocks and the money managers who buy them.

Institutional fascination with just a few issues is dangerous in other ways. When a stock falls out of institutional favor, it can plummet like a stone—with a disturbing impast on the over-all tenor of the market. A classic case is Levitz Furniture Corp., which plunged from $47 to $33 in less than a half-hour last Sept. 29—a fall of nearly 30%. Virtually all the selling was by institutions as it was when Wrigley was hit for 30 points in one day, and when Handleman Co. lost 51% of its value in a single trade.

Because of this "air-pocket syndrome," institutions often cannot get out of stocks they want to sell, and despite the enormous resources of the institutions, many are literally starved for liquidity—locked into stocks they cannot dispose of without suffering heavy losses. It is painfully apparent that a substantial share of the assets of some of the biggest institutions are frozen—especially when the market is as depressed as it has been the past four months.

Perhaps the most disturbing aspect of this is that innumerable pension funds, which look rich on paper, would look considerably poorer if the stocks they are invested in ever had to be sold: many would even be actuarially unsound.

Most of the bank money in the market represents pension fund assets, and most banks have been as guilty as anyone in running with the pack—in narrowing their investing to just a few high-multiple issues.

People have come up with plenty of ways of dealing wtih institutional dominance—from breaking up the institutions into smaller units to limiting the amount of an individual issue that an institution can own, or the amount it can sell. Speaking in New York last week, Donald T. Regan, chief executive of Merill Lynch and vice-chairman of the New York Stock Exchange, warned that "some restrictive formula about institutional sales may have to be worked out. If the number and amount of blocks dumped on the market at one time were reduced, large price swings would be minimized. That protection could only be realized at the cost of putting a limit on the institutions' right to instant liquidity. It may not be too high a cost."

NEW FACTS AND FIGURES

The conventional wisdom on Wall Street is that institutions are a stabilizing force in the market because they are mature, sophisticated investors, armed with plenty of solid research—in for the long haul and not likely to act precipitously. But much of that conventional wisdom is based on a report on institutional investors completed by the Securities & Exchange Commission two years ago, and already sadly out of date.

Whitehead was chairman of a Wall Street committee that provided technical advice to the group that did the study, and he observes that all the data came from 1969 and earlier. "Now there are new facts and figures," he remarks, "facts and figures that didn't exist in 1969, and they are both impressive and alarming."

Morgan Guaranty owns more common stock than any other institution on the face of the earth—$2-billion worth of IBM, $1.1-billion of Kodak, $500-million or more of Avon, Sears, and Xerox. And Morgan executives insist that they have figures showing that their bank still invests for the long haul—that it turned over only 11.5% of its $27-billion portfolio in 1972.

But Morgan also has figures showing that the average mutual fund turned over nearly half of its portfolio last year, and most institutions seem to be going after short-term trading profits more than ever before. That is worrisome because when the institutions trade, they do so in such enormous lots. Charles S. La Follette, senior vice-president of finance at Crown Zellerbach Corp., is concerned about "the pandemonium that would take place if, for example, three institutions sold all their Polaroid or Xerox."

Foreign investors seem particularly disturbed by this trend. In London, Duncan FitzWilliams of the Foreign & Colonial Investment Trust complains that U.S. institutions "are no better than the old odd-lotters. There are huge swings. If you get many institutions to sell one stock, it falls 20 points in one day."

There is nothing really inexplicable about the transformation of institutions, over the last decade, from investors to traders—and the growing tendency of institutions to trade just a very limited number of issues. "The funds all follow the recommendations of a few well-known research advisers," says Robert H. Lentz, vice-president and chief counsel of Litton Industries, Inc. A thoughtful answer also comes from Sidney Homer, now a limited partner at Salomon Bros., but for years its leading theorist: "There are strong structural reasons why institutions tend to go one way or the other massively and almost in unison. They talk together. They know what the others are thinking and doing. They know their fellows can dominate near-term market trends. Furthermore, if their mistakes are shared with the best people in the biggest institutions, they are not censured as severely as if their mistakes arose from bucking a generally accepted opinion."

THE CORPORATION'S HOMEMADE PROBLEM

While there is thus a reasonable rationale behind institutional movements and institutional portfolio concentration, it is of small comfort to the many corporations presently suffering. It is of equally small comfort that, in many cases the problem is of the corporation's own making.

Company pension plans are the fastest-growing sector of all the fast-growing institutional groups. Already, they account for around 10% of total U.S. equities, by the end of the century, in the estimate of Professor Soldofsky of Iowa, they will account for 26%, or $2.36-trillion.

Meanwhile, in their eagerness to contribute less of their earnings to their employee plans, corporations press their pension fund managers for pie-in-the-sky performance. In one tabulation of the instructions given managers by 40 corporations, 25 were insisting on "performance"; many ask their managers to outperform the S&P by 25% or more, a goal which would have called for a gain last year of nearly 20%.

To Roger Kennedy of the Ford Foundation, such claims appear unrealistic: "We see a total return of 9% or 10% a year as just fine: We think we'll be lucky to get 9% over the next five years."

But the demand for high performance is there, with banks competing against each other for pension fund business—and against insurance companies and investment advisory services as well. The failure to perform can result in the loss of valuable business, so portfolio managers struggle to outdo—or at least stay even with—their rivals. The result is the herd mentality that grips institutions today—presenting corporations with a plethora of problems.

Among the worst of these is the present worthlessness of previously prized stock options. Says McCulloch Oil's Wood: "My executives hold stock options between $12 and $25 a share, but the price of the stock is now less than $10. They've lost part of their compensation, and I don't know what to do about it. You can't give them new options until their old ones have expired. It has affected their morale, of course, but thank God everyone else has been whacked in the same way."

Indeed they have, unless they are lucky enough to own options in an institutional darling. "Employees have knocked their brains out to improve our profit position," laments Robert V. Luongo, senior vice-president finance, for Pennsylvania's Fischer & Porter Co., instrument and control manufacturers, who finds that rewarding them through stock options is now "hardly incentive." "We can no longer say, "Hey guys, you've done a great job, here's another stock 'option.' They'll just come back and say that they haven't been able to exercise their last ones. Some of our people are in their fourth year of holding on to options. They say, 'Don't offer us any more incentives.' We may have to turn around and compensate them through direct salary."

A somewhat similar problem is noted by William A. Buzick, Jr., chairman of Consolidated Foods Corp. He complains that "institutional investors can trade in and out of our stock, and some institutions are less investors than traders. Many of them will sell off a profitable stock to buy something else they see as a bargain." The result of this institutional practice can be, for many companies, a lackluster stock price.

"This," Buzick observes, "goes to the intangible of morale within the company. You have stock purchase plans and pensions, but more than that you've got pride. You want to see your contributions recognized."

WHEN THE P/E RATIO IS TOO LOW

The agony is even more intense for the company that wants to tap the stock market for money. Batten, Barton, Durstine & Osborn, one of the world's largest advertising agencies, made plans last May (when ad agency stocks were selling at an average 15 times earnings) to go public in the fall. By October, however, the average multiple was down to 10. It has now sunk to 7, and the agency, says chief executive Tom Dillon, has shelved its plan for going public. In Dillon's words, "There are manybe 20 people in the agency who are aching a bit" through not being able to become stockholders.

Many companies, today, hardly know where to turn for expansion funds: President William T. Gimbel, of Los Angeles' Reliance Steel & Aluminum Co., says company executives now spend "70% or 80% of our time" hunting for cash because they can't raise money in the stock market. Reginald Jones, Chairman of General Electric Co., recently examined price/earnings ratios of the Standard & Poor's 425 industrials and came up with some rather startling conclusions: 18 companies, with a composite multiple of 47, accounted for an increase equal to all the growth—$111-billion—of the stocks in the index between 1965 and the end of 1972.

"This means that, taken together," says Jones, "the composite stock market valuation of the other 407 companies hasn't increased, during that period, by a dime . . . and the aggregate multiple of these other 407 stocks were only in the nine to 10 range, at the high." Concluded Jones: "The great disparities in valuations cause concern about the ability of the basic industrial backbone of our economy to attract the risk capital needed to continue the economy's growth."

Wood of McCulloch gives a good explanation of the risks of raising equity capital with a low p/e stock: "If a company selling at 10 times earnings sells equity, it has to make a 10% return on that equity to avoid dropping earnings per share. If it's selling at 20 times, by contrast, it only needs to pro-

duce a 5% return. If it's selling at 30 times, only 3.3%. You don't mind taking the risk of selling new equity when your multiple is 20 or 30, but nobody in his right mind is going to raise capital through equity when his stock is selling at 10 times." Today, of course, most stocks are selling at 10 times earnings or less.

Speaking specifically of McCulloch, Wood says: "We had planned to raise $25-million in equity this year. We can't afford to sell equity now—so we'll have to raise that money another way. These days, though, a company has only one other choice: to ruin its debt/equity ratio, and once you do that lenders want so many sweeteners you'd better be selling stock."

Wood raises still another problem. "We have fears of being acquired," he says. "When your company gets down to selling around book, it scares the hell out of you. You're bound to be nervous."

Big Board Chairman Needham worries about low multiples bringing a rash of takeovers from abroad. Joseph E. Cole, chairman of Cleveland's Cole National Corp., is concerned about a rash of companies closing down—and resultant unemployment. Cole, who is also finance chairman of the Democratic Party, predicts that "companies are going to have to shut down operations, putting people out of work—unless the small investor can be brought back to the market and companies can raise capital."

Without the individual investor, most business and financial executives agree, the capital markets cannot do their job. Furthermore, it also seems generally agreed, the individual will not return as long as he has his present feelings about the domination of the markets by institutions. Former SEC Chairman Cook referred to the "frequently expressed feeling" that "the cards are stacked against the individual in the market: that institutions get all the good research, the best prices, and—sometimes—inside information." Moreover, quantitative research proves that this is not just a gut feeling. The great majority of investors, recent surveys show, still believe that the stock market has good long-term potential, and even that it remains a good hedge against inflation—though some statistics might indicate otherwise. But they also believe it is being manipulated against them—partly through the unfair advantages of the institutions.

A FIGHTING CHANCE FOR INDIVIDUALS?

What can be done to give the individual an equal opportunity—or, at the very least, a fighting chance? The question, clearly, is subject to deep debate—as indeed is the question of whether anything should be done at all. There are those—such as Dr. Richard M. Cyert, president of Pittsburgh's Carnegie-Mellon University, and Dr. James H. Lorie of the University of Chicago, one of the world's most celebrated market theoreticians—who believe it would be wrong to restrict the freedom of institutions. Others, including Morgan Guaranty, doubt that the problem is as pressing as it presently appears.

In Washington, however, in most parts of Wall Street, and among businessmen all over the country surveyed by Business Week, there is a strong feeling that something has to be done—and quickly.

On Capitol Hill, a House staffer warns: "What we have is a situation not unlike the 1920s. Institutions are basically just a lot of pooled money—and what we are seeing today is the impact of pooling." Adds John E. Moss (D-Calif.), chairman of the House subcommittee on commerce and finance: "I don't think we yet know the full impact of the institution on the markets. But this problem is key to what we will be doing to develop a central market system. It raises a serious question of the nature and depth of the auction market, if one continues to exist at all."

1. All institutions should be legally obliged to reveal their holdings, at least quarterly, and to disclose their trading during the quarter.

2. No institution should be allowed to sell more than a given amount of any given stock in one company.

4. Large institutions should be "broken up."

5. Institutions should be subject to the same restrictions as corporate insiders.

6. Capital gains treatment of small investors should be liberalized, as one means of redressing the balance between individuals and institutions.

There are a number of other suggestions, less widely supported, including limitations—as in commodity markets—on the amount a stock can move in one day; the idea that institutions should—as some are about to on the Philadelphia-Baltimore-Washington exchange—become market makers; a ban on private meetings between corporate managements and institutional shareholders; and a requirement that institutions give 30 days notice of their intention to buy or sell large quantities of any stock in their portfolios.

On Suggestion No. 1 there is near unanimity: This is overdue. Whitehead rather ruefully points out that "the most important recommendation of the SEC's 1971 Institutional Investor Study was that there should be legislation requiring the institutions to disclose their holdings, and their trading, every quarter. How anyone can oppose this sort of essential information gathering is beyond me." One institution that certainly does not oppose it is the Ford Foundation, whose Roger Kennedy says cheerfully: "Sure, we'll disclose as often as you like—every week, if necessary." But Kennedy cautions that too frequent disclosure could conceivably lead to a "follow my leader" type of derby—with everyone, institutions and individuals alike, racing along behind a few favorites. A similar argument is advanced by Morgan Guaranty: "If brokers know our position, and know Morgan is selling, our holdings can be destroyed. Disclosure would work to our client's advantage."

On balance, however, the benefits of disclosure would appear to outweigh heavily such possible drawbacks. For one thing, the revelation that many large institutions—such as the Ford Foundation and Morgan Guaranty—were *not* trading a given stock would probably serve to discourage panic selling (and panic buying) of a security. For another, disclosure would probably reveal that, in many cases, some distinguished institutions were buying what others, equally distinguished, were selling. (For example: While Morgan Guaranty's holdings of Polaroid were up $170-million last year, First National City Bank was selling—to the tune of $55-million.)

For a third reason, many portfolio managers try to follow the leaders, particularly the bank trusts, anyway, relying not on research but on guesswork and rumor as to what the leaders are doing. If they knew what the leaders were doing—and not doing—this argument goes, they would be less likely to react violently to rumors and to dump stocks on the slightest sign of weakness.

Finally, and perhaps most vital, disclosure would increase the confidence of individuals that the markets were not being manipulated by financiers in dark, small, smoky rooms. Says George L. Shinn, new president of Merrill Lynch: "The individual investor feels much more comfortable when he has more knowledge. When people don't know what's happening in the stock market, they either do nothing or they withdraw. We're seeing both symptoms."

Suggestion No. 2—that institutional dumping should be legally limited—is strongly favored, in one form or another, by powerful voices. It is also strongly disfavored by not a few others—notably from the stock exchanges. But in Business Week's survey, the pros seem to outnumber the cons strongly. John Whitehead's firm of Goldman, Sachs—with Salomon Bros., one of the two top institutional brokers—could be expected to suffer from any curbs on institutional trading. Whitehead, nonetheless, sees the situation as so serious that he questions not whether there should be curbs, but what form the curbs should take.

Shinn thinks the question needs more study, but he does think it is reasonable to put limitations both on the size of the blocks and the way they are sold. "The problem with institutions," he says, "is their desire for instant liquidity. They spend weeks or months accumulating blocks and then want to dump them in one day. Curbs should relate to the average daily volume in a stock and probably to its 'float.'"

More drastic are the ideas of the Committee of Publicly Owned Companies, whose Chairman Wood proposes: "Institutions should be kept from selling more than one-quarter of 1% of any company's outstanding stock in one month. An institution selling that much stock hurts, but we can live with it. It's when they drop those two and three percents that you get problems." Another approach comes from La Follette at Crown Zellerbach. He believes that trading could be limited—but by placing limits on daily price movements, as in the commodities markets.

Kolton of the AMEX goes a long way toward accepting the principle of limits on institutional trading. The key question, he feels, is whether institutions will come to grips with their responsibilities—"to their markets, as well as to their beneficial owners."

"If they'll face these responsibilities," Kolton reasons, "there are a number of ways their impact could be controlled." Among those the Amex might favor: the application to institutions of some of the rules it applies to its own registered traders. For instance, such traders must "stabilize" on 75% of their trades—selling on upticks, buying on downs.

INSTITUTIONS FORCE EXCHANGES TO CHANGE

Executives of other exchanges are a lot more enthusiastic about Suggestion No. 3, which would limit the size, or percentage, of institutional holdings. Thomas Phelan, president of the Pacific Stock Exchange, feels that the market is now at a crossroads: "If conditions get any worse, definite limits should be placed on institutional holdings." John G. Weithers, executive vice-president of the Midwest Stock Exchange, is thinking along similar lines: "If you can't get the institutional problem into equilibrium without curbs, curbs are better than not doing it at all."

The Committee of Publicly Owned Companies says bluntly: "The amount of securities of a particular company that an institution or affiliated group of institutions may hold should be strictly limited." Industrialist Jacob O. Kamm, who on June 1 returned to the presidency of American Ship Building Co., does not favor fixing limits on institutional ownership by percentages, but he does believe in legislation that would have another, not dissimilar objective: that of keeping institutions from loading up portfolios with a handful of stocks. The average mutual fund, Robert A. Levy, of Computer Directions Advisors, points out, puts 30% of its assets into 10 stocks, while many funds have more than 50% in only 10 securities.

Speaking for one of the largest institutions, Kennedy of the Ford Foundation mentions that the Tax Reform Act of 1969 imposed some fairly stringent restrictions on foundations. "If we can do it," he says, "so can other institutions." Kennedy does point out that any percentage limitation on ownership might be less beneficial if it were applied equally to companies of all sizes. "In a small company," he says, "an institution may need to own a larger share at the outset to provide the company with needed capital."

BRINGING THEM DOWN TO SIZE

Suggestion No. 4, concerning the size of institutions, has support. "I think the Eisenhower farewell address is an important document," says Kennedy. "I believe that power should be effective—but that it should also be diffused."

There is a strong undercurrent of feeling these days on Capitol Hill, but also out in the business community, that the institutions are just too big—that they should be broken up. Thomas Phelan believes that the size of an institution—as well as the size of its holdings in a company—should be limited. Whitehead notes that the largest U.S. insurance company controls $33-billion in investable funds—11 times the capital of the entire U.S. securities industry.

Representative Wright Patman (D-Tex.), chairman of the House Banking & Currency Committee, has long been in favor of forcing banks to spin off their trust departments. President Cyert of Carnegie-Mellon does not favor other sorts of restrictions on institutions, but he does feel that the regulation of institutional size may someday become necessary. He is not pushing for such a breakup, but he does say: "If the concern is concentration of power, then we should break up the institutions and bring them down in size, rather than try to regulate their freedom of choice."

Suggestion No. 5. Harold S. Coleman, senior partner of Bruns, Nordeman, the brokerage house, favors another approach: Treat institutions as corporate insiders are treated. As insiders, institutions would be obliged to disclose their holdings in stock, as well as their purchases and sales.

As insiders, they would also be discouraged from taking short-term profits in a stock—though Coleman is not ready to carry his idea that far. Should it happen though, the institutions, as insiders, would be forced to turn over any short-term profits to the company involved. And, as insiders, their responsibilities in regard to the use of information would be a good deal clearer than they are today.

In theory, at least, institutions would take big positions only on a long-term basis. Because they could no longer count on bailing out of a large position in a hurry, they would be encouraged to spread their wealth among a greater array of companies. This should also encourage the smaller investor to return to Wall Street—knowing that the major holders of a company's stock would be subject to a more rigorous set of standards.

As to Suggestion No. 6, the Committee of Publicly Owned Companies wants to get the tax laws changed as one means of bringing more small investors back into the market. "We believe," says the committee, "that the first $10,000 in capital gains by smaller investors should be exempted."

The Securities Industry Association would change the tax laws another way—scaling down the capital gains rate according to the length of time the stock has been held. If the stock were held long enough, the investor would pay only a very modest tax. That, says Whitehead, would unleash more than $200-billion—money now locked into positions by the potential capital gains tax bite. At the same time, he estimates, it would yield $20-billion in tax revenues. Meanwhile, the SEC has urged Congress to consider incentives that would encourage investment in small, young companies—the sort of ventures most institutions will not touch.

What all observers are convinced of is what Hallingby of White, Weld calls "the secular trend to institutionalization of savings."

Unless something quite unexpected happens, the flow of money into pension funds—and so into the banks and insurance companies—will continue to grow at a pretty rapid rate. In other words, the financial clout of the institutions will increase—not decrease—in the years ahead.

At the moment, it looks as if this will be allowed to happen without checks or controls: the securities legislation presently stalled on Capitol Hill does not even touch on the dangers of institutional dominance of the markets: Bradford Cook was well aware of the peril—but, since his resignation, the SEC is paralyzed.

If institutional influence increases uncontrolled, the consequences for the capitalist system may be disastrous. As Roche of General Motors has said, "Institutions do not serve the same function in our capital markets as do masses of individuals, and the *vitality* of these markets—based on the increased participation of the individual in corporate ownership—is the capitalist system's life blood.

"Without this vitality," Roche goes on, "many of the business enterprises in our nation . . . will be unable to obtain new public financing . . . to modernize . . . to provide the goods, services, and employment opportunities our nation needs; they could be targets for takeovers by foreign capital; they could face problems of crisis magnitude."

The leading institutional investors:

MOST OF THE TOP 10 ARE BANKS

[billions of dollars*]

Institution:	*Investment portfolios*
Morgan Guaranty Trust	$27.2
Bankers Trust	19.9
Prudential Insurance	18.3
First National City Bank	17.2
U.S. Trust of New York	17.0
Metropolitan Life Insurance	16.5
Manufacturers Hanover Trust	10.9
Mellon National Bank & Trust	10.5
Investors Diversified Services	9.7
Chase Manhattan Bank	9.2

*Excludes real estate investments.

Data: Money Market Directories, Inc.

SUMMARY OF PROVISIONS OF RETIREMENT BENEFIT FUND ACT

TITLE 1—RETIREMENT BENEFIT FUNDS

Section 101. Organization and General Provisions. This section gives the Securities and Exchange Commission rulemaking authority and establishes (and provides for the staffing and funding of) a Retirement Benefit Fund Division within the Commission.

Section 102. Licensing. This section provides for Commission licensing of Retirement Benefit Funds (funds). Persons interested in operating a fund are required to file a license application containing detailed information about the applicant and about the proposed fund. The Commission is directed to examine applications, paying particular attention to the financial condition and demonstrated expertise of the applicant. The Commission is also directed to determine whether there is a need for the services of the proposed fund and to provide opportunity for public comment. If the Commission is satisfied that issuance of a license would be in the interests of employees and in the public interest, it is to issue a license for a 12 year term. Licenses are renewable and the section prescribes detailed license renewal and revocation procedures.

Section 103. Directors and Officers. This section limits the number of persons affiliated with the fund, with other financial institutions, and with employer and employee organizations, who may serve as fund directors. It also precludes certain persons with possible conflicts of interest or who have been convicted of specified crimes from serving as officers or directors of a fund.

Section 104. Election of Directors. This section provides for fund boards of directors consisting of from 15 to 20 members, at least half of whom anticipate that the fund will be the source of the major portion of their non-governmental income. Fund licensees may select an initial board of directors but thereafter nominations for director are to come from fund officers and, by petition, from fund participants. Provision is made for the dissemination of campaign information, for cumulative voting and complaints of election irregularities. Directors serve 5 year terms.

Section 105. Investment Policy. This section limits the investments that may be made by a fund. Funds may not make loans to persons with present or past affiliations with a fund and may not make low interest loans to employers or labor organizations whose employees or members are fund participants. Funds may not deviate from their declared investment policies without Commission approval and a vote of a majority of fund participants and may not unduly concentrate their investments.

Section 106. Fiduciary Standards. This section applies fiduciary standards to persons exercising any power of control, management or disposition of fund monies, requires them to disclose their securities holdings and provides that such persons are personally liable for any breach of trust. The section specifically allows for such fiduciaries to make a limited number of investments likely to be of particular social utility and of long-range value to participants as retirees ("special allowance investments").

TITLE II—DISCLOSURE

Section 201. Inapplicability of Prior Law. This section states that the Welfare and Pension Plans Disclosure Act is not applicable to funds established under the Retirement Benefit Fund Act and empowers the Commission to enforce this Act's disclosure provisions.

Section 202. Information Disclosed. This section requires each fund to publish a fund description and an annual report and to furnish each fund participant with a summary of the annual report, a year-end statement, an investment preference questionnaire and where appropriate, a voting preference questionnaire.

Section 203. Fund Descriptions. This section specifies the information to be included in fund descriptions. Descriptions are to be written in a manner calculated to be understood by the average participant and are to contain information about benefits, investment policies, and claim procedures as well as other information required by the Commission.

Section 204. Annual Reports. This section provides that each fund must publish an annual report and specifies the information to be included, such as the number of participants and beneficiaries, the amount of assets accumulated and present value of accrued liabilities, fund earnings, amounts paid to and received from the Federal Pension Insurance Corporation, an auditor's report and detailed investment schedules.

Section 205. Disclosure to Participants. This section states that funds must file fund descriptions and annual reports with the Commission and that they must make them available in the fund's principal office and upon request. It also provides that funds must mail a summary of the annual report, a year-end statement (containing specified information relating to a participant's contributions and projected benefits) and an investment preference questionnaire to all participants and beneficiaries each year. The fund may also send a voting preference questionnaire on motion of one or more directors. Preference questionnaires must be considered by but are not binding on fund directors.

TITLE III—CONTRIBUTIONS, BENEFITS AND INSURANCE

Section 301. Contributions. This section provides that all fund contributions are to be made to funds selected by participants. Contributions may be made by the partici-

pant, or by an employer or spouse on behalf of the participant, but the section prescribes a limit on the amount that a participant may contribute on his or her own behalf in any given year. The section further requires funds to issue passbooks indicating the total value of a participant's account (contributions, earnings and other increments) and provides for periodic fund updating of passbook entries.

Section 302. Transferability. This section provides procedures for the transfer of monies among funds at the request of a participant and states that participants may have monies deposited with only one fund at a time.

Section 303. Sales and Advertising. This section limits the representations that can be made to prospective participants by a fund. Funds must provide prospective participants with solicitation prospectuses in a form approved by the Commission and containing information which will enable a participant to choose among competing funds, (such as past and projected earnings and investment policy.) Funds are required to minimize advertising expenses and may not employ salesman or other agents to solicit contributions from individuals or groups of employees.

Section 304. Benefits and Payment. This section provides for the payment of benefits to participants and their beneficiaries. At any time, but only once during a lifetime, a participant may file a "declaration of retirement," and shall immediately become eligible to receive a monthly annuity (calculated according to non-discriminatory standards and methods approved by the Commission and) based on the value of al. amounts accumulated in his or her account. The section also provides for the receipt of benefits by participants' surviving spouses. Married participants have the option of filing joint declarations of retirement and receiving a joint annuity for their lives and for the life of the survivor. In the absence of a joint declaration, a married participant's benefit is automatically reduced to provide for a surviving spouse unless the participant affirmatively elects not to provide for a spouse. Provision is also made for a surviving spouse of a married participant who dies before filing a declaration of retirement and, in the case of the pre-retirement death of a surviving spouse, for dependent children. The section confers jurisdiction on the federal district courts over all benefit disputes.

Section 305. Insurance. This section established a Federal Pension Insurance Corporation to insure all amounts contributed to a fund by or on behalf of a participant, the present value of the lifetime pension benefits of retired participants and beneficiaries, and, to a limited extent, certain ("special Allowance") investments. The section provides that annual premiums, to be determined by the Corporation, are to be paid by funds to the Corporation's revolving fund, (along with any additional amounts accruing to funds by virtue of pre-retirement deaths of participants without survivors) and that the Corporation is, in turn, authorized to remit any excess amounts to the funds on a proportional basis.

TITLE IV—TRANSITION

Section 401. Retirement Benefit Funds. This section permits certain persons to make contributions to funds. These include self-employed persons, employed persons and spouses, all within specified dollar limitations and employers whose employees are not covered by pre-existing plan or whose employees follow enumerated procedures to terminate an existing pension plan.

Section 402. Pre-Existing Plans. This section requires employers with pre-existing plans to adopt one of two transitional programs. The first of the two programs calls for the gradual elimination of plan vesting requirements and unfunded liabilities over a 30 year period and for an option available to all employees during the transition period to transfer a discounted amount of their vested pension monies to a fund of their choice. The second alternative involves an allocation of pension contributions in such a way that during the transition period new young workers are, in effect, paying for the promised benefits of older employees.

Section 403. Federal, State and Local Pension Funds. This section gives governmental pension plans the opportunity to contribute to funds established by this Act.

Section 404. Retired Workers Income Security Commission. This section establishes a Retired Workers Income Security Commission to study and make recommendations to Congress concerning means of providing a fair retirement income (commensurate with their past contributions to the economic well-being of the nation) for persons for whom this Act comes too late.

TITLE V—PENALTIES, ENFORCEMENT

Section 501. Civil Liability. This section provides civil liability for any willful or negligent violation of the Act.

Section 502. Criminal Liability for False Statements. This section provides penalties for the filing of false reports.

Section 503. Criminal Liability for Fraud and Conversion. This section provides penalties for fraud and the unlawful conversion of fund assets.

Section 504. Investigations. This section empowers the Commission to investigate possible violations of the Act.

Section 505. Unannounced Audits. This section gives the Commission power to order unannounced audits.

Section 506. Jurisdiction. This section confers original jurisdiction on the federal district courts in all cases arising under this Act.

Section 507. Class Actions. This section permits class actions to be brought to enforce the provisions of the Act.

Section 508. Class Action Notice Provisions. The section provide special notice provisions applicable to class actions arising under the Act.

Section 509. Appointment of Attorneys. This section permits courts to appoint attorneys for participants and beneficiaries in appropriate circumstances.

Section 510. Attorneys Fees. This section provides that a court may award attorneys fees, costs and court fees to private plaintiffs who bring successful actions under the Act.

Section 511. Bonding. This section sets for the bonding requirements for those persons affiliated with a fund who handle fund monies or property.

TITLE VI—EFFECTIVE DATE

Section 601. Effective Date. This section provides that the Act is to be effective one year after enactment.

TITLE VII—AMENDMENTS TO THE INTERNAL REVENUE CODE

Section 701. Retirement Benefit Funds. This section provides that retirement benefit funds are to be considered qualified trusts under Section 401(a) of the Internal Revenue Code.

Section 702. Transfers. This section provides that the transfer by a fund of amounts accumulated in a participant or beneficiary's account to another fund is not a taxable distribution.

Section 703. Employer contributions. This section provides that contributions by an employer to a fund on an employee's behalf are not taxable to the employee in the year paid.

Section 704. Retirement Savings. This section provides that individuals may deduct contributions to a retirement benefit fund made on behalf of the individual or his spouse.

Section 705. Application. This section provides that these amendments to the Internal Revenue Code are to apply to taxable years after the date of enactment of the Act.

Section 706. Delegation. This setcion requires the submission of technical and conforming changes in the Internal Revenue Code.

QUESTIONS AND ANSWERS ON RETIREMENT BENEFIT FUND ACT

Q. Why do you think that S. 4 and other pension reforms now under Congressional study are only partial solutions to retirement income problems?

A. They preserve the present "defined benefit" pension system which operates on an exclusionary principle.

Some people will always have to lose out.

Some people will always be excluded.

And there is built in discrimination against the more mobile worker. He can never do as well as the employee who stays with one job (or one union). For example, under a plan which gives 30% vesting after 8 years an employee who works 32 years for one employer would receive $300, while one working for 4 employers for 8 years each would receive only $90.

Also, because of new fiduciary standards and vesting and funding requirements, it will become increasingly difficult financially for a firm without pension plans to start one.

Q. Why, then are you supporting S. 4 at all?

A. S. 4 will protect the pension rights of millions of people now working who would otherwise be hurt by the present system. It is a very important and long-overdue piece of legislation for this generation of workers. My point is that pension reform should start, not end with S. 4.

Q. Why not leave the present private pension system as is, or at least with S. 4 type reforms, and concentrate on improving the social security system?

A. It seems to me that to leave the entire burden on social security, while continuing to subsidize the private system (to the tune of $4 billion a year) would be inordinately expensive. At least as the present social security system now operates, social security benefit levels would have to be increased for everyone, including those persons now receiving private pensions. It is important to note that pension plans "integrated" with social security do *not* solve this problem. The employer, not the employee, gets the benefit of the social security increase. He can reduce his contribution when social security benefits go up (for non-retired employees) and still pay the same promised benefit.

Q. Why not phase out the private system and rely entirely on social security?

A. This would make a great deal of sense from the point of view of employees and their survivors. It may make less sense from an economic standpoint. Pension funds are the largest single source of private investment capital, and our capital needs are immense. A social security take-over would mean either losing this source of capital entirely, or providing for government intervention in the market place, either by direct investment or by investment through a quasi-governmental organization. In my opinion, neither is as acceptable an alternative as a restructured private pension system.

Q. Won't the Administration's proposal allowing individuals to receive tax deductions for their own retirement savings largely take care of the problem of employees not covered by private pension plans?

A. Actually, our bill has a similar proposal. But no, it will not solve the problem. There is too much pressure on persons in this country to spend now. Any private retirement system in this country will have to rely primarily on employer contributions. (The Canadian experience is relevant here. Only 3 or 4 percent of their working population with average incomes or less take advantage of voluntary savings provisions. The Canadian experience is only slightly distinguishable on the ground that 80% of all

employees are required to contribute to employer pension plans.)

Q. Are you familiar with the proposal that every employer should be required to provide a minimum pension, based on a specified defined contribution? Those employers that can afford to provide more substantial pensions over and above the minimum could do so on a voluntary basis. This has been referred to as a 3-tier system. The first tier being social security, the second would be the minimum pension and the third tier would be the voluntary and unregulated pension system we now have.

A. While I have not studied that proposal, I have concern about the idea that it would be mandatory—some employers are just too hard pressed to set aside money for retirement (it would really be just a second social security tax). And I certainly don't think that the so-called third tier should be unregulated. Even if S. 4 type limitations were imposed on the third tier, it would still be an involuntary "lottery" and basically unfair and discriminatory. The basic idea of using a defined contribution approach for the second tier, and having an immediately vested, fully funded system is, of course, indistinguishable from our bill. I have been told that if the institutions were selected by employees rather than employers, the system might not add substantially to the economic concentration problem which has been generated by the present system (although since the third tier would continue to be invested as it now is, it would not diminish the problem). But at the same time, the institutions would not be in a position to invest in a manner responsive to the interests and needs of their contributors to the same degree as would a retirement income oriented institution, with contributors able to express their opinions on investment policies and vote on directors.

Q. How many of these retirement benefit funds do you think there will be at the end of the transition period?

A. I don't know. That would be up to the SEC. Perhaps something like 200.

Q. How would you describe these funds?

A. Possibly as something of a cross between a savings bank, a mutual fund and maybe a credit union. They are a bit like Canadian trust institutions (although these institutions also manage personal trusts). But actually the funds would be quite different from all of these.

Q. Wouldn't the same people who are now managing pension funds take over these institutions?

A. Yes, we hope they will, but with a difference. They will have no affiliation with any other financial institution and will be in a position both to seek maximum performance (which many because of their size are not able to do now) and at the same time be responsive to the interests of the people whose money they manage.

Q. What would happen if large numbers of participants suddenly transferred their money out of one fund and to another?

A. The funds will be under very close SEC scrutiny, and since it is more than likely that the cause for such an exodus would be evident long before, the SEC would be in a position to correct the problems leading to such actions. If not, there are provisions for SEC emergency trusteeship in appropriate situations.

Q. You say that an employee is supposed to choose where he wants his pension contributions to go. How does he make the selection? On what basis?

A. The employee will receive a "solicitation prospectus" from funds outlining investment policy and past earnings, among other things. He will also undoubtedly be subjected to fund advertising (limited to yield and investment policy—no salesmen). Some employees may make the decision on the basis of convenience or what their frends are doing. More sophisticated or concerned investors will take more care, and since ultimately almost everyone in the country will have a very substantial stake in one of these funds, the right to choose is likely to have a significant impact on investment policies. It only takes a few activists to make a very substantial effect.

Q. Why are employees limited to only one fund?

A. They are likely to have a much greater interest in the activities of an institution in which $80,000 or more has been invested into their retirement account.

Q. Aren't you asking employees to assume a rather substantial investment risk?

A. The SEC will keep close tabs on the funds (much more so than they do over mutual funds). Moreover, all contributions are insured, as are all annuities (for retirees) and some investments.

Q. Do you really expect employees to tell the fund that they'd like the fund to make low yield socially responsive investments?

A. No. There are investments, however, which serve the direct economic interests of participants, as potential retirees. Mr. Nadar has made the point that a large pension benefit won't do you much good if apartment rentals are higher than your monthly retirement income. Also trustees are frequently faced with choices among equal yield investments, some of which may be of more social benefit to a particular group or locality than others.

Q. Do you really mean to say that for the same contributions that employers are now making to pension funds they will be able to provide the same benefits to more employees?

A. The calculations that we have available are based on average contributions and average benefit levels. (4–5 percent employer contributions and $1654 current average benefit.) The system could not, of course, have produced a $1.7 million pension. And there may be problems in low wage industries which are only able to provide very low benefits to relatively few union members. We hope to get industry and labor cooperation in an entire series of representative calculations.

Q. That just doesn't make sense. How can the same amount of money provide more benefits? How does it work?

A. First of all, we're comparing contributions that employers are now making with the contributions that they would make under the proposed system. An employer's present costs typically include as a minimum all interest that he is paying on unfunded past service liabilities (liabilities incurred for the years that employees worked before a particular pension plan was established).

Second, and most important, we're positing a system in which employer contributions are held and invested for a much longer period of time, allowing for the compounding of very substantial amounts of interest.

Q. But is that a fair comparison? After all, won't the employees have to contribute making payments under the present system?

A. From the employer's perspective it is a fair comparison. His costs will remain constant. This is because the system is basically prospective in effect, calling for a very gradual phase-in over a 30-year transitional period.

Q. Can you explain how the transition you propose would work?

A. Actually, the bill offers two alternative transitional programs. One of the programs calls for the implementation of vesting and funding standards of the sort that would be mandated by S. 4 and similar legislation, followed by the gradual reducing of vesting and funding requirements over time so that, at the end of a 30-year period, there would be full vesting and funding. Contributions could then be made, without additional cost, to the new system. This approach would be most attractive to the larger employers with liberal pension plans who have indicated that S. 4 type standards would not add to their costs. This approach has the additional feature of allowing present plans to continue to cover new employees.

The second transitional program involves a reallocation of pension fund contributions. At present, the employer contributes a certain percentage of payroll to a pension fund each year. That amount is pooled, invested and allocated to pay the pension benefits of persons closest to retirement. Under the second approach, employers would be required to allocate pension fund contributions to individual accounts for employees. Either the same amount or the same percentage of pay would have to be allocated for each employee. This would be essentially a bookkeeping operation. The employer would then pay all amounts allocated to the accounts of employees working on the effective date of the Act to the pre-existent pension fund and that money would be pooled and paid as under the present system. The employer also would pay all amounts allocated to new employees who begin work after effective date of the Act to the pre-existing fund if the employees are less than 35 years of age. The amounts allocated to the accounts of employees 35 and over are to be allocated to individual accounts in Retirement Benefit Funds selected by the employees. Employees entering a pension program for the first time during the first ten years of the Act would not be able to accumulate more than 30 years of contributions. In effect, new workers would be paying for the benefits of older workers.

Employees entering a pension program during the next ten years of the Act could accumulate up to 35 years of contributions; in the final ten years of the transitional period, up to forty years, and all contributions would be made under the new system.

Q. Is there a limit on the amount that an employee can contribute to a fund?

A. There is no limit for employer contributions. But there is a limit for employee contributions. An employee (or individual participant) can contribute no more than an amount equal to one-fourth of the then current maximum social security wage base (now $10,800) reduced by all amounts contributed by his or her employer or spouse.

Q. Does the bill make any provision for housewives?

A. The bill allows any individual to make contrbutions on his or her own behalf or on behalf of a spouse.

Q. Does the bill make any provision for widows?

A. Yes. If a husband (or wife) dies before he has filed a formal declaration of retirement, the survivor will receive a benefit based on the amount in the deceased participant's account, but only at such time as she (or he) formally elects to retire.

And if the participant dies after he or she has retired, the survivor automatically gets the same amount that the participant was receiving, unless prior to retirement the participant stated that he did not want his survivor to benefit. (And did not want to take a reduction in his benefit to provide for a survivor)

Q. Does the bill cover self-employed persons? What about self-employed persons now contributing under a Keogh plan?

A. Yes, the bill covers self-employed persons. Persons now contributing under a Keogh plan could continue to do so if the amounts they were contributing were less than the dollar amount specified in the bill, could contribute the difference to a fund.

Q. Wouldn't people wanting to retire early be hurt by this system?

A. They would certainly have smaller accumulations than persons working longer, but 30 or 35 years could result in a sizable pension. Also persons wishing to retire early could contribute more to their fund, thus increasing the size of their pension at retirement.

Q. Could employees take their pensions with them when they change jobs?

A. Definitely. The system provides full "portability." An employee could keep his contributions in one fund throughout his lifetime regardless of where he works. And if dissatisfied with his fund, he could ask that his funds be transferred to another fund.

Q. Aren't the pension plans you propose very similar to deferred profit-sharing plans and thrift plans?

A. There are similarities but also critical differences. Money from profit-sharing and thrift plans is typically paid out in a lump sum. It does not serve as income function.

Also negotiated pension plans would require employers to contribute specifically defined amounts. Under a profit-sharing plan, amounts vary with profits.

Thrift plans tend to serve short term savings goals and emphasize employee rather than employer contributions.

Q. How would the system affect management-labor negotiations?

A. Unions would bargain for defined pension contributions rather than defined pension benefits.

Q. Isn't the problem of concentration of pension fund assets in bank trust departments being resolved in part by the movement of pension funds away from bank trust departments and to independent investment managers?

A. There is some dispersal of funds, particularly with the new interest split management of funds. But enormous amounts still remain in the bank trust departments. Also I'm not sure that this particular phenomenon is going to really meet the crux of the problem. Independent investment advisers are completely unregulated and are even less responsive to the interests of participants, being exclusively concerned with performance. I don't see that this is the way to reinject independent decision making reflecting a variety of differing objectives, preferences and values into the market.

Q. Are there precedents for the kind of deconcentration you propose?

A. Yes. The Public Utility Holding Act is one example. Probably a less persuasive example at this point is the breaking up of the Standard Oil Company.

Q. You have referred to conflicts of interest that prevent institutions from acting in the best interest of pension plan participants. What are these conflicts, what are their causes?

A. There are several different types of conflicts of interest situations that confront institutional managing pension fund assets. Most are inadvertent. A classic example is when a bank trust department invests pension fund assets 'belonging' to union members in non-union companies (this happens most often with pooled funds). But there are also conflicting situations generated by institutional considerations. For example, potential beneficiaries of a bank-trusted fund, may be adversely affected when the trust department decides to hold onto stock in a failing company, solely because the bank's commercial department would stand to lose substantial amounts if the company cannot afford to repay outstanding loans. (This has happened, despite a theoretical "wall of confidentiality" between trust and commercial departments.") Another different type of conflict which affects insurance companies as well as banks is that which comes about when an employer pressures an institution to act contrary to the interest of participants by the simple expedient elsewhere. A situation of this sort comes about when an employer wants the institution to vote employees pension stock in favor of a merger that may ultimately result in the loss of jobs (and pensions) by those employees.

Q. Wouldn't the concentration and conflicts of interest problems be solved in large part by simply limiting the size of institutions holding pension funds and limiting the amounts that institutions are allowed to invest at any one time.

A. These would certainly go a long way toward solving these problems, but they would not necessarily mean the restoration of a truly vigorous market economy. The individual investor would still remain at a disadvantage, there would still be a tendency for the institutions to 'run in packs', and there would still be no mechanism to bring back into the market the kind of independent judgement, values, preferences, geographical considerations that have traditionally characterized the market and which make it possible for a variety of different types of companies to compete effectively.

Q. The first private pension plans were the kind of defined contribution plans that your system contemplates (They are commonly called money purchase plans), and they, lost out to inflation. How does your system deal with that problem?

A. There are differences between our system and the proposed system. Most important, many of these plans did not invest in common stock. Those that did, didn't pass the increments in value on to the participants, but instead tried to meet certain defined benefits. They also provided for past service of employees working at the time the plan was established, and accordingly were not accumulating as much money for each participant for each year of service.

But there is a "money purchase" system that has worked and has worked well. This is the Teachers Insurance Annuity Association-College Retirement Equities Fund pension plan (TIAA-CREF). That plan covers college professors and other university personnel. It is universally rated as great success. Our proposed system differs in some respects from TIAA-CREF but its basic orientation is the same.

Our calculations are based on very conservative interest rate assumptions designed to discount the impact of inflation.

Also there are cost of living features worked into the system, and more can be added. For example, there might be a voluntary pooling approach for retirees.

Finally, because the funds will attract top-flight financial experts and will be small enough to be competitive, their performance should be considerably better than that of most pension funds today.

Q. Does your proposal require state and local pension funds to make contributions to these retirement benefit funds.

A. The bill makes participation by state and local agencies optional. There are several types of non-private funds that may well want to take advantage of the provisions of the Act. Police pension funds are one example. Pension funds' restrictions on mobility affect law enforcement. Top level police officers are unwilling to accept transfers, even with increased salary and status, when it means loss of a pension. Teachers are another group that require more mobility than most pension systems now afford.

Retirement Income Aspects of the Retirement Benefit Fund Act

(By Karen E. Ferguson, attorney, public interest research group)

Explanatory Notes

"The Retirement Benefit Fund Act" is designed to provide a meaningful supplement to social security for most members of the private work force and their survivors, while at the same time deconcentrating pension fund investments and making them serve the best interests of participants.

The bill is primarily directed toward younger workers and persons not now covered by the private pension system. At the same time it seems to preserve the pension rights of persons now covered by the pension sytem.

The bill proposes the establishment of a number of competitive retirement income institutions (Retirement Benefit Funds), licensed and closely regulated by the Securities and Exchange Commission. The number of funds to be licensed would be determined by the SEC in accordance, among other things, with the demand for fund services at a given time. There would be an increasing number of funds as the new system becomes fully operative, over a 30-year transition period.

Funds would be operated by persons with demonstrated financial expertise. Both because of their investment objectives and flexibility and because salaries of fund officers would be based on a percentage of the total amount of assets managed by each fund, the funds should be able to attract the best financial minds of the country.

Entire trust departments, willing to sever themselves completely from banks would be eligible to apply for licenses, as would an organization such as the Teachers Insurance Annuity Association—College Retirement Fund (TIAA-CREF), although slight modifications either in that organization, or in the bill. might be necessary, particularly to accommodate the variable annuity aspect of CREF.

Employees (also self-employed persons and spouses) would be permitted to select a fund of their choice on the basis of information contained in an SEC approved solicitation prospectus. Advertising would be limited to statements of investment policies and earnings. Funds would not be allowed to employ salesmen. An employee would be allowed to belong to only one fund at a time but could transfer his account to another fund. Although most employees might choose funds on the basis of geographical or other considerations and would not transfer their accounts, for persons concerned about investment policies and performance (and there could be a significant number of these since ultimately almost everyone would be a fund participant), the option to make the initial selection and to transfer could be extremely important.

Employers would be allowed to make contributions to funds on their employees' behalf, receiving a tax deduction. Pension contributions would be immediately vested (and necessarily fully funded). Employers would be spared the kind of administrative expenses (actuarial consulting fees, attorneys' fees, insurance agents' commissions) that are frequently a deterrent to employers wishing to provide benefits under the present pension system. Bookkeeping expenses would be minimal since most employees in a particular geographic area would tend to join one of a very limited number of funds and aggregate checks to these institutions could be mailed once or twice a year.

Employers and unions would be free to bargain about the level of employer contributions.

The bill also provides that employees could make contributions on their own behalf and on behalf of their spouses, within specified dollar limits. These contributions would be tax deductible when made and taxed to the employee or survivor at retirement.

Each employee would receive a passbook from his or her fund in which the employee could have entered all contributions, plus compound interest, and certain other amounts which may have accrued to his or her account (as a consequence of forfeitures resulting from pre-retirement death of participants without surviving spouses or dependent children). The employee would also receive a year-end statement showing the amounts in the account and the amount the employee could be expected to receive at several different projected retirement dates.

At any time, but at only one time during his or her lifetime, an employee could formally elect to retire and receive an annuity calculated on the basis of the amounts in his or her account and actuarially determined life expectancy as of that date, plus projected post-retirement earnings. This provision is

designed to resolve the problem of the mandatory retirement age which comes too early for some employees and too late for others.

The bill provides for survivors and for the insurance of contributions and annuities.

The bill establishes a 30-year transition period. Employees presently covered by pension plans would receive the benefits which they would receive under the present system. Their employers could opt to follow one of two transitional programs. Most employers with liberal pension plans would tend to select the program incorporating an approach similar to that contained in S. 4 and several of the other pending bills, except that it calls for a gradual phasing out of the present pension system. It would be possible to expand that section of the bill to incorporate virtually all provisions of S. 4.

The second program requires the reallocation of pension contributions in such a way that for a relatively brief period of time, new workers under 35 years of age would effectively pay for the promised pensions of older workers. This type of reallocation is not too different from what actually happens under the present system.

Employees would be given the opportunity to express their views on fund investment and stock voting policies, although their opinions would not be binding. This provision is designed to give fiduciaries the authority to make certain investments that many claim they now lack to make certain investments. It would, for example, give fund directors the authority to invest in a particular "special allowance investment," such as investment in FHA insured mortgages. "Special allowance investments" are defined in the bill as "an investment in an enterprise the advancement of which the fund directors deem likely to be of particular social utility and of long-range value to the participants as retirees, including investments tending to reduce expenses typically incurred during retirement (such as housing, medical and consumer expenses) which would not be justified solely in terms of their monetary return and the risk involved". Fund participants would also have the right to vote for fund directors.

Full disclosure and enforcement provisions are included in the bill.

The bill also provides for a commission to study the problems of providing an income supplement for persons now retired who will not benefit from the provisions of this bill, S. 4, or any other pending legislation.

* * * * *

The Retirement Benefit Act represents a frontal attack on the private pension system as presently constituted. Mr. Nader readily acknowledges the theoretical virtues of the system and—for those who actually receive adequate pensions—its practical virtues, but takes the position that these virtues are not sufficient to warrant the exclusion of so many millions of people from what has become the only meaningful supplement to our concededly inadequate social security system. Persons reaching retirement typically do not have adequate savings and cannot rely on children for support. Their expenses in retirement tend to go up rather than down, and they can't manage on social security checks which still, after all of the recent increases, average only $40 a week for a nonmarried person over 65. He takes the position that under these circumstances, an involuntary lottery, subsidized by all of us as taxpayers in an amount in excess of $4 billion a year, may be a luxury we cannot afford, particularly given the fact that the consequences of the system, at least as presently structured, may well be inconsistant with the requirements of a dynamic free enterprise economy. (These notes are limited to a discussion of the retirement income aspects of the bill. They are not addressed to the equally critical broader economic aspects of the bill.)

To understand Mr. Nader's proposal it is necessary to understand first, who is excluded from the private pension system and second, why they are excluded.

The present private pension system covers only two out of five members of the private non-agricultural work force. Pending pension reform legislation will not increase and may (because of added costs to small employers) diminish this number.

Of the two out of five persons covered by the system, presently at least a third and probably one-half will not receive any private pension benefits in the absence of reform legislation. With enactment of a bill such as Senator Williams and Senator Javits' S. 4 or similar legislation, many more persons covered by the system will benefit, but not enough. The system will continue to leave out persons who through no fault of their own and in response to economic or personal needs change jobs frequently. It will also continue to leave out many of their dependent survivors. In addition it will continue to put longer service mobile employees at a disadvantage since their private pension benefits will almost invariably be less than those of similarly situated employees who stay with one employer or union throughout their work life.

The exclusion of millions upon millions of people is inherent in the structure of the private pension system. The system is based on the premise that large numbers of persons must lose out if others are to benefit. What S. 4 and other reform proposals seek to do is simply reduce the number of persons losing out. They attempt to strike a balance between the interests of employees in more secure pensions and the cost to employers of providing such pensions. But they cannot do more.

To understand why these bills cannot do more it is necessary to understand the pooling (or insurance) principle on which the present pension system is based.

Now, when an employer sets up a pension plan he undertakes to make annual contributions to a pension fund sufficient to pay members of a pool of employees a defined fixed benefit at retirement *IF* they satisfy certain conditions and *IF* the pension plan continues in existence.

Typically, the pool consists of all the employees of an employer (although it may also be limited to only wage or only salaried employees, or may extend to all employees in an industry who are members of a particular union).

The fewer the number of pool members who satisfy the conditions of a particular plan, the less an employer will have to contribute to the pension fund (or, the more he can promise those who do benefit). Thus he has a built-in incentive to limit the number of pool members who can benefit. If he cannot adequately limit the number of employees who will benefit, he can always stop the plan, paying out what he has already contributed, plus earnings, but incurring no further liability. (Some have suggested that smaller employers will be forced to terminate their pension plans if S. 4 type legislation is passed, since that legislation increases the number of employees who will qualify for benefits. The legislation will have minimal impact on larger employers since the actual dollar amounts received by the increased number of beneficiaries will be extremely small.)

This approach is undeniably attractive to those members of the pool who satisfy the conditions and whose plans are not terminated. (and whose defined benefits provide a reasonable social security supplement not subsequently rendered valueless by inflation). They receive either a flat benefit or, more typically, a benefit based on both the number of years they have worked for the employer (or union), including service before the plan was established, and a percentage of their annual earnings—in the better plans, their earnings during the years just before retirement. The benefits are fixed even if the fund experiences investment losses and, occasionally, are increased after retirement.

The present pension system is extremely attractive to employers. Their pension contributions can be small relative to their promises. Also they (alone or in conjunction with a union) can determine the types of benefits (normal retirement, early retirement, disability, survivors benefits) and the categories of employees (within some limitations) who will receive those benefits. Moreover, if the costs of the plan become too onerous, employers can simply exercise their reserved right to terminate their pension plan at any time.

Employers can exert control, both direct and indirect, over fund investment practices and can use plan provisions to realize corporate objectives, for example, ensuring by the use of so-called non-compete clauses, that employees will either remain with the company or at least not be able to pay their skills elsewhere.

The system is attractive to some labor officials, who stand to benefit substantially from the system on a personal level. Also pensions tend to be a useful issue at the bargaining table, and, understandably, a useful means of ensuring continued union loyalty on the part of members without vested pension rights. And a few unions relish their effective control over pension fund assets, control which will not be seriously circumscribed by pending legislation.

Needless to say, the system is also attractive to the banks and insurance companies which manage so much of the pension money.

And, of course, the host of pension actuaries, employees benefit communications specialists, insurance agents who sell pension plans, and pension lawyers, whose livelihoods depend on the continuation of the present system, find it most attractive.

The only people who do not find the system attractive are those whom it hurts or excludes.

These are the people who stand to benefit most from the Retirement Benefit Fund Act. They are unorganized, without a single full-time advocate and it is reasonable to expect that any bill drafted primarily in their interests will meet with little outside support and with massive opposition. Nonetheless, these people are the vast majority of our working population and their dependents, and their interests, demand full and fair consideration.

The Retirement Benefit Fund Act rejects the exclusionary principle of the present private pension system and in its stead offers most members of the private work force the chance to receive a private pension which would roughly approximate the average benefits received under the present pension system—at the same average costs to employers.

The proposed system's ability to pay the same average benefits at the same average costs, to many more employees, needless to say, does not come about by magic.

For one thing, the system is prospective in effect. It ultimately applies only to new young employees (and their survivors) coming into the work force. It thus avoids the necessity of having to give credit to workers who have worked long years prior to the establishment of the pension plan, a major cost to the present system.

Also, employees will get only what has been put in for them (or what they or their spouses have put in for themselves), plus earnings and small additional amounts accruing from forfeitures, and will have no assurance that they will receive a specifically defined benefit, although they will, of course, be continuously apprised as to what sort of retirement income they can reasonably expect under a variety of different assumptions.

In addition, to a minor degree, employees rather than employers will bear the risk of investment loss, but since the funds will be under continuous scrutiny by the SEC (and by participants) and since contributions and

annuity payments (and certain investments) are insured, the risk is minimal.

The system works on the assumption that contributions are made on an employee's behalf almost every year of his work life, the contributions are invested, and that earnings are added and compounded for an extremely long time. The system facilitates retirement savings both by making it easy for employers, spouses and employees to make contributions and also be establishing a large number of institutions with a substantial interest in countering this country's overwhelming consume-now orientation.

The system does not mandate contributions. Mr. Nader has suggested that it may be considerably less expensive to raise minimum social security benefits to deal with the specific problem of employees of marginal employers than to continue indefinitely on our present course of substantial annual social security increases for everyone.

Calculations that have been on the benefits likely to be produced by this kind of defined contribution pension system are extremely encouraging, particularly when juxtaposed with the current average private pension benefit figure of $1654 a year.

The following calculations are illustrative. They are based on simplified assumptions, not all of which mirror the provisions of the bill.

(1) Assumptions:

An employee with an annual income of $10,000 payable semi-monthly. The salary remains level for the balance of the employee's working life or until attainment of age 65.

An employer contributes an amount equal to 5% of the employee's pay.

The total employer contribution is retained by the employer until the end of of each calendar year and is then paid to a Retirement Benefit Fund selected by the employee on January 1 of the next year.

The investment expenses of the fund are $30 per participant for the first year of participation and $20 for each year thereafter. (This is based on statements submitted to the New York Insurance Department for collectively bargained pension funds).

Each participant joins a fund as of January 1, with the first payment into the fund made one year later. The participant is age 30 years at the date of joining the fund.

Annuity benefits are payable monthly commencing on the attainment of age 65 years. The present value of the annuity benefits are determined on the basis of the 1971 Group Annuity Mortality Table with interest at 5% a year compounded annually and with 5% added to allow for expenses and for mortality improvement. (For purposes of these calculations, although not provided in the bill, separate present values are used for men and for women).

In the event of death of a participant before age 65 years, his or her accumulated sum is applied to purchase annuities for survivors or is paid in cash to the participant's estate. (This assumption is made to simplify calculations, it differs from the provisions of the bill.)

Calculations:

The account for the participant will accumulate as follows:

End of year	*Accumulation*
5	$2,664
10	6,053
15	10,378
20	15,897
25	22,941
30	31,932
35	43,406

At age 65 (35 years after entry at age 30), the accumulated amount of $43,406 will provide the following monthly payments, with the first payment at age 65 years:

Sex	*Monthly Payment*
Male	$346.44
Female	291.79

Annual payments would equal $4,157.28 for a man and $3,501.48 for a woman. This, of course, does not include social security payments. If the employee had also made a 5% contribution the annual payments would be $8,472.36 for a man and $7,136.04 for a woman.

(2) Assumptions:

An employer contributes 4% of an employee's pay at the end of each year.

The net investment income of the fund is 3% a year.

The employee has a life expectancy of 15 years after age 65.

In the event of death of the employee before age 65, his or her accumulated sum is returned to a beneficiary.

CALCULATIONS

Age contribution starts	Annual pension benefit based on annual wages of— $9,000	$10,000	Annual payout a percentage of wages
20	$2,751	3,057	30.57
25	2,237	2,486	24.86
30	1,795	1,994	19.94

(3) Assumptions:

An employer contributes 4% of an employee's pay.

The employee works 40 years.

The employee receives a salary raise of 3.5% a year.

The net investment income of the fund is 5% a year.

Calculations:

Annual payout as a percentage of final pay equals 17%.

Annual payout assuming final pay equal to $10,800 equals $1,836.

This third set of calculations was put forward by a pension actuary highly critical of Mr. Nader's proposal on the ground that the system would sacrifice the concept of adequate pensions for the concept of a more equitable pension system. What his self-styled "realistic" calculations suggest, however, is that had the proposed system been in effect during the past 40 years, the average employee would be receiving a benefit of $182 more than he is now receiving.

These calculations are rough and are based on averages—they do not accurately suggest the probable pension benefits of a low wage garment worker or a highly paid engineer. They do, however, suggest the general viability of a defined contribution approach to pensions.

There is precedent for following a defined contribution approach to pensions. One of the most successful pension plans—at least in terms of participant satisfaction—is the Teachers Insurance Annuity Association-College Retirement Equities Fund (TIAA-CREF) plan. There are, of course, differences between TIAA-CREF and the proposed Retirement Benefit Funds and TIAA-CREF participants, mostly college professors, are in many respects an a typical group, but in basic orientation there are important similarities.

In addition, although a defined contribution approach is characteristically disparaged by the pension actuaries who are the self-constituted spokesmen of the pension industry, several pension actuaries themselves have advocated adoption of a defined contribution system. Their proposed system would not, to be sure, replace the present defined benefit system, but rather would supplement that system as a way of providing a minimum (and possibly mandatory) private pension for everyone. Their suggestion is that above the minimum, the present pension system should remain completely unregulated.

The defined contribution approach to private pensions is anything but radical. In fact, the most often repeated objection to it is that it is an old-fashioned idea, incorporated in many of the first private pension plans, which didn't work and which, in most instances was subsequently replaced by the present system. This objection, of course, ignores the marked success of TIAA-CREF and the many, some quite substantial differences between the original so-called money purchase plans and the system contemplated by the Retirement Benefit Fund Act. But most important, it begs the question.

The success of most defined benefit plans depends on their ability to exclude. The issue is not whether in theory a money-purchase (i.e. a defined contribution system is able to provide better benefits than *some* persons receive under *some* defined benefit plans. The issue is whether such a system can provide those people who are now receiving and will receive benefits under the defined benefit system with the same benefits and at the same time provide many more equally hard-working, equally deserving people with similar benefits.

Another objection, perhaps more to the point, is that enactment of the Retirement Benefit Fund Act might generate too much saving. If so, the only alternative may be the social security approach. But it may also be that whatever negative effects might ordinarily flow from this kind of accumulation of capital would more than offset by the fact that the capital needs of the nation are immense, and are increasing, and that the institutional structure established by the Act would be sufficiently flexible to be fully responsive to those needs.

These are not the only objections to the bill. Retirees are quite reasonably concerned that the bill only provides for the establishment of a commission to study the problems of persons who have already lost out. They, understandably, want help now. Union officials are concerned that the provisions in the bill designed to expedite the transition to the new system are unduly restrictive. They point to the bill's limitation on negotiated benefit level increases under pre-existing plans and to provisions which provide for the termination of pre-existing plans if specified percentages of plan participants opt for termination. At least one older employee not covered by a pension plan objects to the fact that if he were to go to work for a new employer whose employees are covered under a pre-existing plan (and that employer had opted for the second rather than the first of the two transition programs) he would be excluded from the pre-existing plan and would have too few years of coverage to accrue a substantial benefit under the new system. The proposed system presents cost of living problems (similar to those faced by most pension plans under the present system) that, as presently constituted, the funds will resolve only in part. And there is the basic problem inherent in the defined contribution concept that it will be harder for employees whose salaries increase markedly over their career to achieve a benefit commensurate with their final salary under the proposed system than they would, in theory, assuming they met all plan qualifications, achieve under the present system.

Most of these problems are susceptible to resolution with appropriate technical assistance. Only one, the last, is a problem inherent in the system, and that affects relatively few employees since the average employee's real earnings (discounting inflation) tend to level off fairly early in his career.

As with any proposal in this extremely complex pension area, the Retirement Benefit Fund Act is essentially a blueprint for action. At the least it will engender productive controversy, as did the first several versions of what have now, six years and a million dollars later emerged as S. 4 and its Finance Committee counterpart. At the most

it will provide us with a truly equitable and adequate retirement income system.

By Mr. CURTIS:

S.J. Res. 138. Joint resolution to amend the Economic Stabilization Act. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. CURTIS. Mr. President, last Wednesday, July 18, 1973, was a dark day for hundreds of citizens of my State. It was a date that had been awaited for some time—the announcement of phase IV of the Economic Stabilization program.

Many employees of meat packing plants in my State had already been laid off because of the effect of the price ceiling on the ability of meat packers to pass along increased costs. However, the announcement of phase IV brought only the word that the beef processing industry must continue to operate on a loss basis if it operates at all between now and September 12.

Notwithstanding the deplorable financial situation of the meat industry as a result of the ceiling and price freeze to which it has been subjected, Mrs. Housewife is the real loser. Her opportunity to choose among a selection of meat products is rapidly diminishing. Soon she will have to stand in line and hope that there is still some meat available when she gets to the head of the line.

This is not a fairy tale, Mr. President. If the American consumer is to have a choice of meat products in the future this Government will have to get out of the price manipulation business.

The time has come to abandon ill-advised, short-term goals and strive for realistic long-range objectives. The cure for meat prices may result in higher prices in the immediate future but will assure reasonable prices and adequate supplies in the years ahead.

Mr. President, I am today introducing a joint resolution to amend the Economic Stabilization Act and require the President to permit the passthrough of increases in raw agricultural product costs on a dollar-for-dollar basis for beef as is permitted in the case of other meats and food products.

As I have just pointed out, Mrs. Housewife will be the loser if this action is not taken swiftly.

Mr. President, I send the resolution to the desk and ask that it be appropriately referred, and printed in the RECORD.

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

S.J. RES. 138

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 203 of the Economic Stabilization Act of 1970 is amended by adding at the end thereof the following new subsection:

"(k) In exercising the authority conferred by this section prior to September 12, 1973, with respect to the price level of beef, the President or his delegate shall permit the passthrough of increases in raw agricultural product costs incurred since June 8, 1973, on a dollar-for-dollar basis in the same manner and to the same extent as a passthrough of such increases is permitted in the case of meat and food products other than beef."

ADDITIONAL COSPONSORS OF BILLS

S. 1353, S. 1478, S. 1479, AND S. 1480

At the request of Mr. MANSFIELD (for Mr. MAGNUSON), the Senator from New Hampshire (Mr. COTTON) was added as a cosponsor of the following bills:

S. 1353. A bill to deduct from gross tonnage in determining net tonnage those spaces on board vessels used for waste materials;

S. 1478. A bill to amend the Communications Act of 1934, as amended, with respect to commissioners and Commission employees;

S. 1479. A bill to amend subsection (b) of Section 214 and subsection (a) (1) of section 222 of the Communications Act of 1934, as amended, in order to designate the Secretary of Defense—rather than the Secretaries of the Army and Navy—as the person entitled to receive official notice of the filing of certain applications in the common carrier service and to provide notice to the Secretary of State where under section 214 applications involve service to foreign points; and

S. 1480. A bill to amend the Communications Act of 1934, as amended, with respect to penalties and forfeitures.

S. 1581

At the request of Mr. HATFIELD, the Senator from South Dakota (Mr. ABOUREZK) was added as a cosponsor of S. 1581, to require the payment of interest on overpayments of tax without regard to date of refund.

S. 1604

At the request of Mr. BROCK, the Senator from Kentucky (Mr. COOK) was added as a cosponsor of S. 1604, the "Fair Housing Amendments of 1973".

S. 1605

At the request of Mr. BROCK, the Senator from Kentucky (Mr. COOK) was added as a cosponsor of S. 1605, the "Equal Credit Opportunity Act."

S. 1830

At the request of Mr. RIBICOFF, the Senator from Connecticut (Mr. WEICKER) was added as a cosponsor of S. 1830, the Youth Camp Safety Act of 1973.

S. 1982

Mr. TOWER. Mr. President, I am pleased that the retirement test under social security has again been increased. However, the increase to $2,400 is insufficient to meet the needs of our elderly citizens who now work or would like to obtain gainful employment.

Senator DOMINICK and I have introduced S. 1982 which would raise the earnings ceiling to $3,000 and would reduce the age of applicability of the test from 72 to 70. This legislation represents a reasonable starting point in an effort to eliminate the retirement test sometime in the future.

Since the bill was introduced the following Senators have joined as cosponsors: Senators YOUNG, PASTORE, DOMENICI, THURMOND, EASTLAND, DOLE, COOK, HOLLINGS, BARTLETT, BENTSEN, SCHWEIKER, GOLDWATER, and SCOTT of Virginia. I ask unanimous consent that these Senators be added as cosponsors of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

S. 2069

At the request of Mr. EAGLETON, the Senator from Alaska (Mr. GRAVEL), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Maine (Mr. HATHAWAY), the Senator from Rhode Island (Mr. PASTORE), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Utah (Mr. MOSS), the Senator from Nevada (Mr. BIBLE), and the Senator from New Jersey (Mr. WILLIAMS) were added as cosponsors of S. 2069, the National Reading Improvement Act.

SENATE RESOLUTION 150—SUBMISSION OF A RESOLUTION IN ANTICIPATION OF A RECOMMENDED PAY RAISE

(Referred to the Committee on Post Office and Civil Service.)

Mr. HANSEN submitted a resolution (S. Res. 150), which reads as follows:

S. RES. 150

Resolved, That the Senate disapproves the recommendations of the President with respect to rates of pay transmitted to the Congress during calendar year 1973, pursuant to section 225(h) of the Federal Salary Act of 1967.

ADDITIONAL COSPONSORS OF A RESOLUTION

SENATE RESOLUTION 144

At the request of Mr. HANSEN, the Senator from Ohio (Mr. TAFT), the Senator from Wisconsin (Mr. PROXMIRE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Illinois (Mr. STEVENSON), and the Senator from Nebraska, (Mr. HRUSKA), were added as cosponsors of Senate Resolution 144, expressing the Senate's opposition to an increase in salary during fiscal year 1974 for Members of Congress, the judiciary, and top-level employees of the executive branch.

AMENDMENT OF EXPORT ADMINISTRATION ACT OF 1969—AMENDMENT

AMENDMENT NO. 405

(Ordered to be printed, and referred to the Committee on Banking, Housing and Urban Affairs.)

Mr. TOWER submitted an amendment, intended to be proposed by him, to the bill (S. 2053) to amend the Export Administration Act of 1969, to permit the President to use export controls to curtail serious inflation in domestic prices, and for other purposes.

FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1973—AMENDMENTS

AMENDMENT NO. 406

(Ordered to be printed, and to lie on the table.)

PUBLIC FINANCING FOR FEDERAL ELECTIONS

Mr. KENNEDY. Mr. President, on behalf of Senator HUGH SCOTT and myself, I send to the desk an amendment

to S. 372. The purpose of the amendent is to provide public financing for Senate and House elections, and to prohibit private financing for major party candidates in all Federal elections, Presidential as well as congressional.

Under the terms of the amendment, public funds will be available to candidates of major parties in Senate and House elections, based on a formula allocating 20 cents for each voter in the jurisdiction in which the election is to be held. Candidates of minor parties will be entitled to public funds under two approaches—either in proportion to the party's showing in the past election, or retroactively on the basis of its showing in the current election.

The provision prohibiting private financing by major party candidates allows minor party candidates to use private funds to reach the level of spending of major party candidates. In addition, the amendment applies only to general and special elections, not to primaries and runoffs, which will continue to be financed by private funds.

Under existing law, future Presidential election campaigns will be financed by public funds through the so-called "dollar checkoff," by which taxpayers indicate on their tax forms that $1 of their tax liability, or $2 on a joint return, is to go into a general fund for financing Presidential campaigns. The amendment I am introducing with the distinguished Senator from Pennsylvania does not involve the tax form, but in other respects, our proposal for Senate and House elections closely follows the law already applicable to Presidential elections.

Mr. President, the most obvious lesson of Watergate is the corrosive power of money in politics. At a single stroke, by enacting a program of public financing for Federal elections, we can shut off the underground rivers of private money that pollute politics at every level of the Federal Government. If Watergate has taught us anything, it is that disclosure is not enough, that sunlight is not an adequate disinfectant for the infectious power of money in political campaigns.

As everyone knows, the United States has the best political system that money can buy, and it is a disgrace to the principles on which our Republic stands. Congress has already gone part way. Already, public funds will be available under existing law to finance the Presidential election campaign in 1976. The time has come to take the next great step toward open and honest government. The time is now ripe—indeed over-ripe—to eliminate private financing in our national elections and to apply the clear, simple principle of public financing to all Federal elections. Only in that manner can we drive the money-changers from the temple of Federal politics.

I am honored and delighted to work with Senator HUGH SCOTT in a bipartisan effort to reach this goal. The Senator from Pennsylvania has been an outstanding leader on legislation in many areas of election reform. I am pleased to join with him on this new effort, which offers such enormous benefit to Americans concerned about the quality of our Government, and I urge the Senate to accept the amendment we are introducing.

Mr. President, I ask unanimous consent that, following the remarks of the Senator from Pennsylvania, a summary of the principal provisions of the amendment may be printed in the RECORD, and that the text of the amendment itself may also be printed at that point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SCOTT of Pennsylvania. Mr. President, I am pleased to join the senior Senator from Massachusetts (Mr. KENNEDY) in sponsoring this amendment to provide public financing, through appropriated funds, for general and special congressional elections. The proposal we have drafted is particularly important insofar as it contains a provision, which I suggested, to bar the option of private financing. The absence of this provision in the previous public financing proposals was the reason for my earlier opposition to such plans.

Under the Kennedy-Scott plan, bona fide candidates for the Senate, for example, would be entitled to a Treasury Department payment of the sum to which they are entitled under the spending formulas contained in S. 372; namely, 20 cents per eligible voter or $175,000 whichever is the greater. Primary and runoff congressional elections would continue to be financed by private funds. Presidential candidates would continue to be funded under the so-called checkoff provision in the tax laws.

Our proposal is drafted to utilize the machinery of a Federal Election Commission, which I have been advocating personally for several years. The Senate agreed to such a commission in 1971 only to have it knocked out in conference with the House. The new Commission, if finally enacted, would be charged with the administration of the public funds to be used by congressional candidates. The Commission would also have generous authority to enforce the law, through its own general counsel, in the Federal courts.

As I have previously indicated in testimony before my Committee on Rules and Administration, I think it is worth it to every taxpayer to do something to get a little better election reform in this country. The taxpayers themselves should be condemned if they are not willing to put up a buck for honesty. I would like to see it. I think it is a good thing. Since the Kennedy-Scott proposal would be effective on January 1, 1975, it would be utilized during the congressional elections in the following year.

The Presidential election checkoff provisions in the tax law do not now have a prohibition on the option of private financing. This has always been of great concern to me since I think both political parties should be bound by the act or neither. That should be in the law, rather than an allowance for either party to exercise an option of not being included. At my request, such a provision has been included in the Kennedy-Scott amendment. It would conform the ban on private financing to candidates for all Federal offices.

S. 372, the Federal Election Campaign Act Amendments of 1973, to which the Kennedy-Scott proposal will be offered, contains a number of provisions which were included in bills I sponsored earlier this year. In addition to the Federal Election Commission to monitor and enforce the law, the bill waives the so-called equal time provisions of the broadcasting law for candidates for all Federal offices. If enacted, this will enable broadcasters to grant more free time to bona fide candidates, thus further reducing the cost of campaigning for office. The bill also provides that each candidate have a central campaign committee which would report all contributions and expenditures on behalf of the candidate, regardless of the number of "allied" or "subordinate" committees working on the candidate's behalf.

The use of cash is also severely restricted in the Rules Committee bill. No cash payments, or contributions, in excess of $100 can be made. This restriction is both necessary and enforceable, since the Federal Election Commission has the full power to enforce it.

The Kennedy-Scott amendment blends in nicely with S. 372. It does what must be done. I urge the support of my colleagues.

EXHIBIT 1

AMENDMENT NO. 406

On page 49, between lines 3 and 4, insert the following:

"SEC. 16. The Federal Election Campaign Act of 1971 is amended by inserting at the end thereof the following new title:

"'TITLE V—PUBLIC FINANCING OF CONGRESSIONAL ELECTION CAMPAIGNS

"'Sec.
"'501. Short title.
"'502. Definitions.
"'503. Condition for eligibility for payments.
"'504. Entitlement of eligible candidates to payments.
"'505. Certifications by Federal Election Commission.
"'506. Payments to eligible candidates.
"'507. Examinations and audits; repayments.
"'508. Information on proposed expenses.
"'509. Reports to Congress; regulations.
"'510. Participation by Comptroller General in judicial proceedings.
"'511. Judicial review.
"'512. Criminal penalties.
"'513. Congressional Election Campaign Fund Advisory Board.
"'514. Authorization of Appropriations.
"'515. Effective date of title.

"'SHORT TITLE

"'SEC. 501. This title may be cited as the "Congressional Election Campaign Fund Act".

"'DEFINITIONS

"'SEC. 502. For purposes of this title—

"'(1) The term "congressional office" means the office of Senator or Representative in, or Resident Commissioner or Delegate to, the Congress of the United States.

"'(2) The term "congressional election" means a general or special election for congressional office.

"'(3) The term "Commission" means the Federal Election Commission established under section 308.

"'(4) The term "authorized committee" means, with respect to a candidate of a political party for congressional office, any political committee which is authorized in writing by such candidate to incur expenses to further the election of such candidate. Such authorization shall be addressed to the chairman of such political committee, and a copy of such authorization shall be filed by

such candidate with the Commission. Any withdrawal of any authorization shall also be in writing and shall be addressed and filed in the same manner as the authorization.

"'(5) The term "candidate" means, with respect to any congressional election, an individual who (A) has been nominated for election to congressional office by a major party, or (B) has qualified to have his name on the election ballot in the area in which the election is to be held. For purposes of paragraphs (8) and (9) of this section and purposes of section 504(a)(2), the term "candidate" means, with respect to any preceding congressional election, an individual who received popular votes for congressional office in such election.

"'(6) The term "eligible candidate" means a candidate of a political party for congressional office who has met all applicable conditions for eligibility to receive payments under this title set forth in section 503.

"'(7) The term "fund" means the Congressional Election Campaign Fund established by section 506(a).

"'(8) The term "major party" means, with respect to any congressional election, a political party whose candidates for congressional office in the preceding election for such office received, as the candidate of such party, 25 per centum or more of the total number of popular votes received by all candidates for such office.

"'(9) The term "minor party" means, with respect to any congressional election, a political party whose candidate for congressional office in the preceding election for office received, as the candidate of such party, 5 per centum or more but less than 25 per centum of the total number of popular votes received by all candidates for such office.

"'(10) The term "new party" means, with respect to any congressional election, a political party which is neither a major party nor a minor party.

"'(11) The term "political committee" means any individual, committee, association, or organization (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals to congressional office.

"'(12) The term "qualified campaign expense" means an expense—

"'(A) incurred (i) by the candidate of a political party for congressional office to further his election to such office, or (ii) by an authorized committee of a candidate of a political party for congressional office to further the election of one or more such candidates to such office;

"'(B) incurred within the expenditure report period (as defined in paragraph (13)), or incurred before the beginning of such period to the extent such expense is for property, services, or facilities used during such period; and

"'(C) neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which such expense is incurred or paid.

An expense shall be considered as incurred by a candidate or an authorized committee if it is incurred by a person authorized by such candidate or such committee, as the case may be, to incur such expense on behalf of such candidate or such committee. If an authorized committee of a candidate of a political party for congressional office also incurs expenses to further the election of one or more other individuals to Federal, State, or local elective public office, expenses incurred by such committee which are not specifically to further the election of such other individual or individuals shall be considered as incurred to further the election of such candidate for congressional office in such proportion as the Commission prescribes by rules or regulations.

"'(13) The term "expenditure report period" with respect to any congressional election means—

"'(A) in the case of a major party, the period beginning with the first day of September before the election, or, if earlier, with the date on which such major party nominated its candidate for election to congressional office, and ending thirty days after the date of the election; and

"'(B) in the case of a party which is not a major party, the same period as the expenditure report period of the major party which has the shortest expenditure report period for such election under subparagraph (A).

"'CONDITION FOR ELIGIBILITY FOR PAYMENTS

"'SEC. 503. (a) IN GENERAL.—In order to be eligible to receive any payments under section 506, a candidate of a political party in a congressional election shall, in writing—

"'(1) agree to obtain and furnish to the Commission such evidence as it may request of the qualified campaign expenses with respect to which payment is sought;

"'(2) agree to keep and furnish to the Commission such records, books, and other information as it may request;

"'(3) agree to an audit and examination by the Commission under section 507 and to pay any amounts required under section 508.

"'(b) MAJOR PARTIES.—In order to be eligible to receive any payments under section 506, a candidate of a major party in a congressional election shall certify to the Commission, under penalty of perjury, that—

"'(1) such candidate and his authorized committees will not incur qualified campaign expenses in excess of the aggregate payment to which he is entitled under section 504; and

"'(2) no contributions to defray qualified campaign expenses have been or will be accepted except to the extent necessary to make up any deficiency in payments received out of the fund on account of the application of section 506(d), and no contributions to defray expenses which would be qualified campaign expenses but for subparagraph (C) of section 502(12) have been or will be accepted by such candidate or any of his authorized committees.

Such certification shall be made within such time prior to the day of the congressional election as the Commission shall prescribe by rules or regulations.

"'(c) MINOR AND NEW PARTIES.—In order to be eligible to receive any payments under section 506, a candidate of a minor or new party in a congressional election shall certify to the Commission, under penalty of perjury, that—

"'(1) such candidate and his authorized committees will not incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidate of a major party in such election is entitled under section 504; and

"'(2) such candidate and his authorized committees will accept and expend or retain contributions to defray qualified campaign expenses only to the extent that the qualified campaign expenses incurred by such candidate and his authorized committees certified to under paragraph (1) exceed the aggregate payments received by such candidate out of the fund pursuant to section 506.

Such certification shall be made within such time prior to the day of the congressional election as the Committee shall prescribe by rules or regulations.

"'(d) Except as provided in subsections (b)(2) and (c)(2) of this section, no candidate of a major party, minor party, or new party, or any of the authorized committees of such candidate shall accept contributions to defray qualified campaign expenses.

"'(e) Except as specifically provided by law, no candidate for election to the office of President of the United States or the office of Vice President of the United States who is or may be eligible to receive payments of public funds to defray qualified expenses of his campaign shall accept contributions to defray such expenses.

"'ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS

"'SEC. 504. (a) IN GENERAL.—Subject to the provisions of this title—

"'(1) An eligible candidate for a major party in a congressional election shall be entitled to payments under section 506 equal in the aggregate to the greater of—

"'(A) 20 cents multiplied by the voting age population of the geographical area in which the election for such office is held, as determined by the Secretary of Commerce under the Federal Election Campaign Act of 1971, as amended; or

"'(B) (i) $175,000, if the congressional office sought is that of Senator, Delegate, Resident Commissioner, or Representative from a State which is entitled to only one Representative, or (ii) $90,000, if the congressional office sought is that of Representative from a State entitled to more than one Representative.

"'(2) (A) An eligible candidate of a minor party in a congressional election shall be entitled to payments under section 506 equal in the aggregate to an amount which bears the same ratio to the amount computed under paragraph (1) for a major party as the number of popular votes received by the candidate for such office of the minor party, as such candidate, in the preceding election for such office bears to the average number of popular votes received by the candidates for such office of the major parties in the preceding election for such office.

"'(B) If the candidate of one or more political parties (not including a major party) for congressional office was a candidate for such office in the preceding election for such office and received 5 per centum or more but less than 25 per centum of the total number of popular votes received by all candidates for such office, such candidate, upon compliance with the provisions of section 503 (a) and (c), shall be treated as an eligible candidate entitled to payments under section 506 in an amount computed as provided in subparagraph (A) by taking into account all the popular votes received by such candidate for such office in the preceding election for such office. If the eligible candidates of a minor party are entitled shall be reduced by the amount of the entitlement allowed under subparagraph (A).

"'(3) An eligible candidate of a minor party or a new party in a congressional election whose candidate in such election receives, as such candidate, 5 per centum or more of the total number of popular votes cast for such office in such election shall be entitled to payments under section 506 equal in the aggregate to an amount which bears the same ratio to the amount computed under paragraph (1) for a major party as the number of popular votes received by such candidate in such election bears to the average number of popular votes received in such election by the candidates for such office of the major parties. In the case of an eligible candidate entitled to payments under paragraph (2), the amount allowable under this paragraph shall be limited to the amount, if any, by which the entitlement under the preceding sentence exceeds the amount of the entitlement under paragraph (2).

"'(b) LIMITATIONS.—The aggregate payments to which an eligible candidate of a political party shall be entitled under subsections (a) (2) and (3) with respect to a congressional election shall not exceed an amount equal to the lower of—

"'(1) the amount of qualified campaign expenses incurred by such eligible candidate and his authorized committees, reduced by the amount of contributions to defray qualified campaign expenses received and expended or retained by such eligible candidate and such committees, or

"'(2) the aggregate payments to which the eligible candidate of a major party is entitled under subsection (a)(1), reduced by the amount of contributions described in paragraph (1) of this subsection.

"'(c) RESTRICTIONS.—An eligible candidate of a political party shall be entitled to payments under subsection (a) only—

"'(1) to defray qualified campaign expenses incurred by such eligible candidate or his authorized committees, or

"'(2) to repay loans the proceeds of which were used to defray such qualified campaign expenses, or otherwise to restore funds (other than contributions to defray qualified campaign expenses received and expended by such candidate or such committees) used to defray such qualified campaign expenses.

"'CERTIFICATIONS BY COMMISSION

"'SEC. 505. (a) INITIAL CERTIFICATIONS.—On the basis of the evidence, books, records, and information furnished by the eligible candidates of a political party and prior to examination and audit under section 507, the Commission shall certify from time to time to the Secretary for payment to such candidates under section 506 the payments to which such candidates are entitled under section 504.

"'(b) FINALITY OF CERTIFICATIONS AND DETERMINATIONS.—Initial certifications by the Commission under subsection (a), and all determinations made by it under this title, shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under section 507 and judicial review under section 511.

"'PAYMENTS TO ELIGIBLE CANDIDATES

"'SEC. 506. (a) ESTABLISHMENT OF CAMPAIGN FUNDS.—There is hereby established on the books of the Treasury of the United States a special fund to be known as the Congressional Election Campaign Fund. The Secretary shall, as provided by appropriation Acts, transfer to the fund such amounts as Congress may appropriate to insure that moneys in the fund will be adequate to meet the entitlements of eligible candidates.

"'(b) TRANSFERS TO THE GENERAL FUND.—The Secretary is authorized to transfer to the general fund of the Treasury such amounts of moneys in the fund as he determines from time to time are in excess of the amounts which eligible candidates are or will be entitled to receive.

"'(c) PAYMENTS FROM THE FUND.—Upon receipt of a certification from the Commission under section 505 for payment to the eligible candidates of a political party, the Secretary shall pay to such candidates out of the fund the amount certified by the Commission. Amounts paid to any such candidates shall be under the control of such candidates.

"'(d) INSUFFICIENT AMOUNTS IN FUND.—If at the time of a certification by the Commission under section 505 for payment to the eligible candidates of a political party, the Secretary or his delegate determines that the moneys in the fund are not, or may not be, sufficient to satisfy the full entitlements of the eligible candidates of all political parties, he shall withhold from such payment such amount as he determines to be necessary to assure that the eligible candidates of each political party will receive their pro rata share of their full entitlement. Amounts withheld by reason of the preceding sentence shall be paid when the Secretary or his delegate determines that there are sufficient moneys in the fund to pay such amounts, or portions thereof, to all eligible candidates from whom amounts have been withheld, but, if there are not sufficient moneys in the fund to satisfy the full entitlement of the eligible candidates of all political parties, the amounts so withheld shall be paid in such manner that the eligible candidates of each political party receive their pro rata share of their full entitlement.

"'EXAMINATIONS AND AUDITS; REPAYMENTS

"'SEC. 507. (a) EXAMINATIONS AND AUDITS.—After each congressional election, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of the candidates of each political party for congressional office.

"'(b) REPAYMENTS.—

"'(1) If the Commission determines that any portion of the payments made to an eligible candidate of a political party under section 506 was in excess of the aggregate payments to which the candidate was entitled under section 504, it shall so notify such candidate, and such candidate shall pay to the Secretary an amount equal to such portion.

"'(2) If the Commission determines that an eligible candidate of a political party and his authorized committees incurred qualified campaign expenses in excess of the aggregate payments to which an eligible candidate of a major party was entitled under section 504, it shall notify such candidate of the amount of such excess and such candidate shall pay to the Secretary an amount equal to such amount.

"'(3) If the Commission determines that an eligible candidate of a major party or any authorized committee of such candidate accepted contributions (other than contributions to make up deficiencies in payments out of the fund on account of the application of section 506(d)) to defray qualified campaign expenses (other than qualified campaign expenses with respect to which payment is required under paragraph (2)), it shall notify such candidate of the amount of the contributions so accepted, and such candidate shall pay to the Secretary an amount equal to such amount.

"'(4) If the Commission determines that any amount of any payment made to an eligible candidate of a political party under section 506 was used for any purpose other than—

"'(A) to defray the qualified campaign expenses with respect to which such payment was made, or

"'(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses,

it shall notify such candidate or the amount so used, and such candidate shall pay to the Secretary an amount equal to such amount.

"'(5) No payment shall be required from an eligible candidate of a political party under this subsection to the extent that such payment, when added to other payments required from such candidate under this subsection, exceeds the amount of payments received by such candidate under section 506.

"'(c) NOTIFICATION.—No notification shall be made by the Commission under subsection (b) with respect to a congressional election more than three years after the day of such election.

"'(d) DEPOSIT OF REPAYMENTS.—All payments received by the Secretary under subsection (b) shall be deposited by him in the general fund of the Treasury.

"'INFORMATION ON PROPOSED EXPENSES

"SEC. 508. (a) REPORTS BY CANDIDATES.—A candidate of a political party for congressional office in a congressional election shall, from time to time as the Commission may require, furnish to the Commission a detailed statement, in such form as the Commission may prescribe, of—

"'(1) the qualified campaign expenses incurred by him and his authorized committees prior to the date of such statement (whether or not evidence of such expenses has been furnished for purposes of section 505), and

"'(2) the qualified campaign expenses which he and his authorized committees propose to incur on or after the date of such statement.

The Commission shall require a statement under this subsection from such candidates of each political party at least once each week during the second, third, and fourth weeks preceding the day of the congressional election and at least twice during the week preceding such day.

"'(b) PUBLICATION.—The Commission shall, as soon as possible after it receives each statement under subsection (a), prepare and publish a summary of such statement, together with any other data or information which it deems advisable, in the Federal Register.

"'REPORTS TO CONGRESS; REGULATIONS

"'SEC. 509. (a) REPORTS.—The Commission shall, as soon as practicable after each congressional election, submit a full report to the Senate and House of Representatives setting forth—

"'(1) the qualified campaign expenses (shown in such detail as the Commission determines necessary) incurred by the candidates of each political party and their authorized committees;

"'(2) the amounts certified by it under section 505 for payment to the eligible candidates of each political party; and

"'(3) the amount of payments, if any, required from such candidates under section 507, and the reasons for each payment required.

Each report submitted pursuant to this section shall be printed as a Senate document.

"'(b) REGULATIONS, ETC.—The Commission is authorized to prescribe such rules and regulations, to conduct such examinations and audits (in addition to the examinations and audits required by section 507(a)), to conduct such investigations, and to require the keeping and submission of such books, records, and information, as it deems necessary to carry out the functions and duties imposed on it by this title, including the coordination of this title with other titles of this Act.

"'PARTICIPATION BY COMMISSION IN JUDICIAL PROCEEDINGS

"'SEC. 510. (a) APPEARANCE BY COUNCIL.—The Commission is authorized to appear in and defend against any action filed under section 511, either by attorneys employed in its office or by counsel whom it may appoint without regard to the provisions or by counsel whom it may appoint without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard of the provisions of chapter 51 and subchapter III of chapter 53 of such title.

"'(b) RECOVERY OF CERTAIN PAYMENTS.—The Commission is authorized through attorneys and counsel described in subsection (a) to appear in the district courts of the United States to seek recovery of any amounts determined to be payable to the Secretary as a result of examination and audit made pursuant to section 507.

"'(c) DECLARATORY AND INJUNCTIVE RELIEF.—The Commission is authorized through attorneys and counsel described in subsection (a) to petition the courts of the United States for declaratory or injunctive relief concerning any civil matter covered by the provisions of this title. Upon application of the Commission, an action brought pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

"'(d) APPEAL.—The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court for certiorari to review, judgments,

or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section.

"'JUDICIAL REVIEW

"'SEC. 511. (a) REVIEW OF CERTIFICATION, DETERMINATION, OR OTHER ACTION BY THE COMMISSION.—Any certification, determination, or other action by the Commission made or taken pursuant to the provisions of this title shall be subject to review by the United States Court of Appeals for the District of Columbia Circuit upon petition filed in such Court by any interested person. Any petition filed pursuant to this section shall be filed within thirty days after the certification, determination, or other action by the Commission for which review is sought.

"'(b) SUITS TO IMPLEMENT TITLE.—

"'(1) The Commission, the national committee of any political party, and individuals eligible to vote in an election for congressional office, are authorized to institute such actions, including actions for declaratory judgment or injunctive relief, as may be appropriated to implement or construe any provision of this title.

"'(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subsection and shall exercise the same without regard to whether a person asserting rights under provisions of this subsection shall have exhausted any administrative or other remedies that may be provided at law. Such proceedings shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

"'CRIMINAL PENALITIES

"'SEC. 512. (a) EXCESS CAMPAIGN EXPENSES.—

"'(1) It shall be unlawful for an eligible candidate of a political party for congressional office in a congressional election or any of his authorized committees knowingly willfully to incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under section 504 with respect to such election.

"'(2) Any person who violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than one year, or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than $5,000, or imprisoned not more than one year, or both.

"'(b) CONTRIBUTIONS.—

"'(1) It shall be unlawful for an eligible candidate of a major party in a congressional election or any of his authorized committees knowingly and willfully to accept any contribution to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received out of the fund on account of the application of section 506(d), or to defray expenses which would be qualified campaign expenses but for subparagraph (C) of section 502(12).

"'(2) It shall be unlawful for an eligible candidate of a political party (other than a major party) in a congressional election or any of his authorized committees knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses in an amount which exceeds the qualified campaign expenses incurred with respect to such election by such eligible candidate and his authorized committees.

"'(3) Any person who violates paragraph (1) or (2) shall be fined not more than $5,000, or imprisoned not more than one year, or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than $5,000, or imprisoned not more than one year, or both.

"'(c) UNLAWFUL USE OF PAYMENTS.—

"'(1) It shall be unlawful for any person who receives any payment under section 506, or to whom any portion of any payment received under such section is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion for any purpose other than—

"'(A) to defray the qualified campaign expenses with respect to which such payment was made, or

"'(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

"'(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

"'(d) FALSE STATEMENTS, ETC.—

"'(1) It shall be unlawful for any person knowingly and willfully—

"'(A) to furnish any false, fictitious, or fraudulent evidence, books, or information to the Commission under this title, or to include in any evidence, books. or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission or an examination and audit by the Commission under this title; or

"'(B) to fail to furnish to the Commission any records, books, or information requested by it for purposes of this title.

"'(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

"'(e) KICKBACKS AND ILLEGAL PAYMENTS.—

"'(1) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense of an eligible candidate or his authorized committees.

"'(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

"'(3) In addition to the penalty provided by paragraph (2), any person who accepts any kickback or illegal payment in connection with any qualified campaign expense of an eligible candidate or his authorized committees shall pay to the Secretary, for deposit in the general fund of the Treasury, an amount equal to 125 per centum of the kickback or payment received.

"'(f) UNAUTHORIZED EXPENDITURES AND CONTRIBUTIONS.—

"'(1) Except as provided in paragraph (2), it shall be unlawful for any political committee which is not an authorized committee with respect to an eligible candidate of a political party for congressional office in a congressional election knowingly and willfully to incur expenditures to further the election of such candidate, which would constitute qualified campaign expenses, if incurred by an authorized committee of such candidate, in an aggregate amount exceeding $1,000.

"'(2) This subsection shall not apply to (A) expenditures by a broadcaster regulated by the Federal Communications Commission, or by a periodical publication, in reporting the news or in taking editorial positions, or (B) expenditures by any organization described in section 501(c), which is exempt from tax under section 501(a) in communicating to its members the views of the organization.

"'(3) Any political committee which violates paragraph (1) shall be fined not more than $5,000, and any officer or member of such committee who knowingly and willfully consents to such violation and any other individual who knowingly and willfully violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than one year, or both.

"'(g) UNAUTHORIZED DISCLOSURE OF INFORMATION.—

"'(1) It shall be unlawful for any individual to disclose any information obtained under the provisions of this title except as may be required by law.

"'(2) Any person who violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than one year, or both.

"'CONGRESSIONAL ELECTION CAMPAIGN FUND ADVISORY BOARD

"'SEC. 513. (a) ESTABLISHMENT OF BOARD.—There is hereby established an advisory board to be known as the Congressional Election Campaign Fund Advisory Board (hereinafter referred to in this section as the 'Board'). It shall be the duty and function of the Board to counsel and assist the Federal Election Commission in the performance of the duties and functions imposed on it under this title.

"'(b) COMPOSITION OF BOARD.—The Board shall be composed of the following members:

"'(1) the majority leader and minority leader of the Senate and the Speaker and minority leader of the House of Representatives, who shall serve ex officio;

"'(2) two members representing each political party which is a major party (as defined in section 502(8)), which members shall be appointed by the Commission from recommendations submitted by such political party; and

"'(3) three members representing the general public, which members shall be selected by the members described in paragraphs (1) and (2).

The terms of the first members of the Board described in paragraphs (2) and (3) shall expire on the sixtieth day after the date of the first biennial congressional election following January 1, 1975, and the terms of subsequent members described in paragraphs (2) and (3) shall begin on the sixty-first day after the date of a biennial congressional election and expire on the sixtieth day following the date of the subsequent biennial congressional election. The Board shall elect a Chairman from its members.

"'(c) COMPENSATION.—Members of the Board (other that members described in subsection (b)(1)) shall receive compensation at the rate of $75 a day for each day they are engaged in performing duties and functions as such members, including traveltime, and, while away from their homes or regular places of business, shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons in the Government service employed intermittently.

"'(d) STATUS.—Service by an individual as a member of the Board shall not, for purposes of any other law of the United States, be considered as service as an officer or employee of the United States.

"'AUTHORIZATION OF APPROPRIATIONS

"'SEC. 514. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

"'EFFECTIVE DATE OF TITLE

"'SEC. 515. The provisions of this title shall take effect on January 1, 1975.'"

On page 49, line 4, strike "SEC. 16." and insert in lieu thereof "SEC. 17.".

On page 50, line 8, strike "SEC.. 17," and insert in lieu thereof "SEC. 18.".

On page 50, line 19, strike "SEC. 18." and insert in lieu thereof "SEC. 19.".

KENNEDY-SCOTT AMENDMENT TO S. 372 PUBLIC FINANCING FOR FEDERAL ELECTIONS PRINCIPAL PROVISIONS

1. The amendment adds a new title, the "Congressional Election Campaign Fund Act," to the Federal Election Code. The new

Act provides public financing for Senate and House elections, and is modeled closely on Senator Russell Long's Presidential Election Campaign Fund Act, passed by Congress in 1971 and amended in 1973, which provides public financing for Presidential elections under existing law.*

2. It provides public funds for general and special elections for the Senate and House, but not for primaries or run-off elections.

3. It makes public financing mandatory for Senate and House elections. Thus, it bars the option of private financing by major candidates. However, a candidate of a major party may use private funds to make up a deficit in his entitlement of public funds. A candidate of a minor party or a new party may use private funds only to reach the level of entitlement of major party candidates.

4. It also bars the option of private financing for Presidential elections. This is the only change made by the amendment in the operation of the dollar check-off in existing law, which offers public financing as an alternative to private financing for Presidential elections.

5. Constitutional and parliamentary considerations indicate that specific amendments to the Internal Revenue Code may not be in order on Senate-originated bills such as S. 372. Therefore, the amendment simply applies the basic principles of the provisions of the dollar check-off to Senate and House elections. Except as provided in this summary, the provisions of the amendment for Congressional elections are essentially identical to the provisions of the dollar check-off applicable to Presidential elections.

6. The amendment establishes a Congressional Election Campaign Fund on the books of the Treasury, to be funded out of general appropriation acts of Congress, and from which public funds will be made available to eligible candidates.

7. Unlike the dollar check-off, the fund for Congressional elections does not involve the tax form. However, amendments to the check-off on the Debt Ceiling Act of July 1, 1973, have now eliminated the so-called "special" accounts, and have left only a "general" account to be allocated by formula among Presidential candidates. As a result, the Presidential Election Campaign Fund in present law is now closely similar to the Congressional Election Campaign Fund to be established by the amendment.

8. The amendment follows the basic formula in the dollar checkoff for allocating public funds among candidates of major and minor parties, but changes the entitlement to 20c a voter, in accord with the spending ceilings in S. 372.

9. A candidate of a "major party"—a party that received 25% or more of the total number of popular votes received by all candidates for the office in the preceding election—is entitled to receive public funds in the amount of 20c per eligible voter.

10. A candidate of a "minor party"—a party that received more than 5% but less than 25% of the popular vote in the preceding election—is entitled to receive public funds in proportion to his share of the vote in the preceding election. A candidate of a minor party may increase his entitlement on the basis of his performance in the current election.

11. A candidate of a "new party"—a party that is not a major party or a minor party—is entitled to receive public funds in proportion to his share of the popular vote in the current election, if he receives more than 5% of the vote in the election.

12. Public funds will be available for expenditures made by a candidate of a major party during the period beginning with the date on which the party nominates its candidate and ending 30 days after the election. Public funds will be available for candidates of other parties during the shortest period in which they are available to a candidate of a major party.

13. Individuals or committees not authorized by a candidate may not spend more than $1,000 during the campaign on behalf of the candidate of a party eligible for public funds.

14. The program will be administered by the new Federal Election Commission, to be established by S. 372. A Congressional Election Campaign Fund Advisory Board is created to advise the Commission in the performance of its duties.

15. The program will go into effect for the 1976 Congressional elections.

* See the "Presidential Election Campaign Fund Act," P.L. 92-178, 85 Stat. 497, 562-575 (December 10, 1971), as amended by the Debt Ceiling Act, P.L. 93-53, 87 Stat. 134, 138-139 (July 1, 1973).

AMENDMENTS NOS. 407 AND 408

(Ordered to be printed, and to lie on the table.)

Mr. CHILES. Mr. President, I am submitting amendments today to S. 372, the campaign reform bill.

The first is an effort to limit the length of the campaign itself by putting a limitation on the time period during which communications media can be used for campaign purposes. It would prohibit any expenditure made by or on behalf of and candidate for media purposes in connection with his general campaign for election to Federal office before September 1 of the year of the election.

The second amendment is intended to prevent a campaign during which one or more of the candidates for the Presidency avoids direct confrontation with his or her opponent. This amendment would require the candidate to agree in writing to appear in person with his opponent for 2 half-hour broadcasts prior to the date of the election. These broadcasts would be provided to the candidate without charge and the format would be left to the candidates' determination. The candidates would be prohibited from spending any money on their own behalf for broadcast time in connection with their campaign for nomination for election or for election unless they agree to appear in person with their opponent or opponents during the 60 days preceding the election.

I believe both these amendments have great appeal to the American people. The first, limiting campaigns in terms of time, would have the effect of measurably reducing campaign costs. During a specified time only a certain amount of TV and radio commercials or newspaper ads can be run and if we are successful in reducing the time for running them, we would be successful in reducing campaign costs. I realize that certain constitutional questions may arise in this limitation on expenses for political campaign activities, but I believe the issue ought to be raised and debated because it is in the best interests of the voting public and the candidates themselves since it would result in a reduction in campaign costs and would keep the politicians from engaging in exhaustive, lengthy campaign that can sometimes become downright boring to the American people.

During the hearings on S. 372, concern was expressed over requiring Presidential candidates to appear jointly on television or radio. It was expressed, however, that "confrontation" or "debate" between the candidates seemed to be the most effective and desirable manner to discuss important campaign issues.

Some form of joint participation is, I believe, the most effective way of attracting the audience and getting the issues before the people. I just do not feel a man or woman ought to run for the presidency and then be allowed to duck the issues, avoid interaction with the opponent, and "hide-out" during the campaign. Senator PASTORE made the effective point during the hearings that there are rare instances where one must understand that the character of the situation is such that one of the candidates can be put at a serious disadvantage because of certain peculiar circumstances, but I am most interested in raising this issue for debate.

It is a complex question, but one, I feel, that needs thorough discussion. We need to be mindful not only of the freedom Presidential candidates should have to decide how best to present their candidacies, but how best to conduct a campaign in the best interests of all American citizens—how best to be mindful as well of their freedom to make a real choice between candidates when they vote—a choice based in their understanding of their candidate's position on the current issues.

NOTICE CONCERNING NOMINATIONS BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. EASTLAND. Mr. President, the following nominations have been referred to and are now pending before the Committee on the Judiciary:

Thomas K. Kaulukukui, of Hawaii, to be U.S. Marshal for the District of Hawaii for the term of 4 years. (reappointment)

Edward J. Michaels, of Delaware, to be U.S. marshall for the district of Delaware for the term of 4 years. (reappointment)

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in these nominations to file with the committee, in writing, on or before Monday, July 30, 1973, any representations or objections they may wish to present concerning the above nominations, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

NOTICE OF HEARING ON THE MICRONESIAN CLAIMS ACT

Mr. JACKSON. Mr. President, I wish to announce for the information of the Members of the Senate and other interested persons that the Subcommittee on Territories and Insular Affairs has scheduled an open hearing for August 3, 1973, on H.R. 6628, to amend section 101(b) of the Micronesian Claims Act of 1971 to enlarge the class of persons eligible to receive benefits under the claims program established by that act.

This hearing will be held in room 3110 of the Dirksen Senate Office Building and will begin at 10 a.m. on that day.

Anyone wishing to testify or submit a statement for the record in connection

with this legislation should so advise the Interior Committee staff.

NOTICE OF HEARINGS ON BILLS TO CODIFY, REVISE, AND REFORM THE FEDERAL CRIMINAL LAWS

Mr. McCLELLAN. Mr. President, I wish to announce for the information of the Members and the public that the Subcommittee on Criminal Laws and Procedures will hold open hearings on July 25 and 26, 1973, to continue the study of S. 1 and S. 1400, bills to codify, revise, and reform the Federal criminal laws.

The hearings will commence at 10 a.m. on July 25 and 11 a.m. on July 26 in room 2228, Dirksen Senate Office Building. Subjects to be covered on these days include insanity defense, scheme to defraud, coercion, Indian law, sentencing practices, business law, death penalty, abortion, and corrections.

Additional information on these and further hearings is available from the staff in room 2204, Dirksen Senate Office Building, telephone 202–225–3281.

ADDITIONAL STATEMENTS

EDDIE RICKENBACKER

Mr. BUCKLEY. Mr. President, the death of Eddie Rickenbacker comes as a great shock to all Americans and to all those who love freedom. He was a genuine American hero, a man who graced every area of life he entered into, from his early days as a champion race car driver, to his amazing exploits as an "ace" in the skies over France in World War I, to his outstanding record as a leader in the aeronautics industry. His courage was legendary, as was his outspoken love of our country. Perhaps we can best appreciate what he meant to this country by reviewing his life and asking ourselves this simple question: Where are the Eddie Rickenbackers of today?

Eddie Rickenbacker was a unique American hero. The phrase "a legend in his own time" seems to have been created for this great American. But perhaps more important than his diverse and outstanding record of accomplishment is the underlying quality of character that transformed all he ever undertook. He believed in the American dream when others derided it and he believed in it because he had made it come true in his own life.

Whether he was engaged in a dogfight with enemy planes in World War I or surviving the ordeal of exposure in an open raft in the Pacific Ocean in World War II, the great fighting spirit of the man was always present. Along with his great spirit was an undying faith in God, faith in country; a faith we need more than ever today when it has become fashionable in the many circles to deride the virtues and beliefs he symbolized: an unabashed patriotism, self-reliance, a principled integrity, a deep sense of duty as soldier and citizen, and that tenacious courage he always displayed in the discharge of his responsibilities.

I plan to say more about this great American. But on the day of his death I want the record to show that America has suffered a great and irrevocable loss.

DÉTENTE: SOME REASSESSMENTS

Mr. JACKSON. Mr. President, as the Congress considers the issues that bear directly on Soviet-American relations, nothing is more important than a balanced assessment of recent developments in this area. In the past several weeks, many articles and editorials have appeared which analyze the results of recent Soviet-American negotiations and which ask whether these negotiations are proceeding in accordance with the principle of reciprocal advantage. For we need genuine cooperation—genuine détente. And genuine détente must be a two-way proposition that serves the interests of both sides.

I have gathered a sampling of recent comment for reprinting in the RECORD. There is no unanimity of opinion, but the considerations raised by these writers are helpful points of departure for evaluating the current management of East-West relations.

I ask unanimous consent to have these articles printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, May 25, 1973]

DÉTENTE AND HUMAN RIGHTS

(By Stephen S. Rosenfeld)

"People in both of our countries will be interested, I am sure, to see and listen to the best works of literature, music, theater and fine arts of the country."

—Leonid Brezhnev, May 21, 1973.

The Soviet leader, speaking in Bonn, has rarely uttered truer words. People in Germany and elsewhere are indeed interested in the Soviet Union's best creative works, and many Russians are similarly interested in the best works of the West.

But Mr. Brezhnev fudged. He skipped mentioning that his government does everything it can to ensure that the best Soviet works—"best" by every measure but its narrow own—are kept from Soviet as well as foreign audiences, and that the best Western works are kept out of the Soviet Union, too.

There is no indication the Kremlin is coming to feel that international relaxation and Soviet power now make it safe to let Soviet creative artists decide for themselves what they wish to create or to let Soviet audiences decide what they wish to read and hear. Westerners might imagine such a policy change would flow logically from detente. The Kremlin evidently sees it as a threat to its own power.

For all that Mr. Brezhnev and other spokesmen indicate that the Soviet Union is assuming its proper place in the company of cultured nations, their determination to keep closed the eyes and ears and minds of their subjects may even have been strengthened by fear of the internal unraveling effects of detente. Foreign radio broadcasts are still jammed; KGB heavies still shepherd Soviet groups traveling abroad; Solzhenitsyn goes unpublished and demeaned in his own land.

This is, of course, old stuff. What is new is the reaction some Westerners now get when they point it out. They are told in effect that such reminders of the reality of Soviet life are relics of the cold war, and that the cause of detente is too precious and fragile to bear such reminders, even if they are true.

The copyright issue is a current case in point. The Russians had never signed the "Universal Copyright Convention" (UCC), choosing instead simply to pirate the works of foreign authors. Last February, under American prodding, they agreed to sign; the effective date is Sunday. Cheered at first to find the Russians finally deciding to play by the international rules, some foreigners soon awoke to the possibility that Soviet officials would abuse the UCC to block foreign publication of unauthorized literature.

McGraw-Hill's Curtis G. Benjamin visited Moscow in April and, on his return, told Publishers Weekly, "As expected, we found Soviet officials annoyed by the several speculative stories that have appeared in the American press"—stories on the theme that by joining the UCC, the Kremlin opens to itself new possibilities of extending internal censorship to all countries adhering to the UCC. Mr. Benjamin added that it makes little sense to argue that the main Soviet motive for adhering to the UCC is to further suppress dissident writers.

No doubt it does make little sense for an American publisher who hopes to do business with the Soviet Union to so argue. But this does not prevent others from noting that in the name of the needs of the time and international good manners, the United States is being asked to condone a Soviet gambit that is anathema to anyone concerned with artistic integrity and the other broader purpose of the UCC.

Many Americans, to be sure, fear that if the United States presses "too much" on such human right issues—copyright, artists, dissenters, nationalities, emigration and so forth—then further political improvements will be jeopardized. Naturally Soviet officials cultivate this fear when they can.

In the West, moreover, it is always a minority which is interested in any particular human rights issue, and that minority is always under at least a tacit burden to show that its concern will not undermine the "larger" cause. This can seem unjust and unfeeling to those supporting a particular issue, but it is a fact of political life.

My own view is that it is not only wrong but politically unjustified to shy away from human rights issues out of apprehension over the impact on political ties. The Soviet leaders do not always respond in full or even halfway satisfactory measure on human rights, but they do respond in some measure. They do for the simple reason that they wish to reap the considerable economic and political fruits of detente.

To ask the ruling Soviet elite to, say, surrender its power is surely "too much." But human rights issues are invariably softened before that stark point is reached. No human rights issue in sight poses anywhere near the bald challenge to the Kremlin that Mr. Nixon posed by mining Haiphong. It is only reasonable to expect the Soviet Union to observe some of the common decencies of the international community it is trying so eagerly to join.

[From the University of Washington Daily, June 18, 1973]

RUSSIAN SAILORS

We were visited briefly last week by a group of ten Russian sailors whose freighter was taking cargo at a Seattle pier. They were on a tour of Port City and this campus was one of their highlights between Pioneer Square and Ballard. Having lost most of the Russian we learned as a freshman, our conversation with the Russians was limited to smiles, handshakes and the exchange of press cards for Vladivostok city pins.

Pictures were taken, the group left for other parts of its tour. When we drove down to the dock the next day to see them off, their boat had already slipped into the early afternoon.

There remains from this meeting a feeling that, well, it's better to exchange trinkets than to trade threats and lethal hardware. If President Nixon and Russia's Brezhnev meet soon to barter over wheat deals, disarmament and new bilateral unities—we hope that one issue close to this University will be included in the discussions.

Just last month University Prof. Edward Stern invited two Russian physicists to teach here in the Fall as visiting professors. But last week, as we were shaking Russian hands, these two and five other Soviet scientists were beginning a hunger strike directed against their government's obdurate and criminal denials of exit visas.

Each of them has been stripped of position and salary, and each has been denied the right to emigrate to Israel. By requesting what must be an honest freedom, these seven, because of the valuable knowledge which they hold, wait hapless and unproductive for an easing of tyranny.

There is a scene in "The Hunchback of Notre Dame" where Charles Laughton, as Quasimodo, saves the fair-skinned Ezmarelda from death at the hangman's noose. Laughton gurgles an ugly "Sanctuary!" as he sweeps her to safety, befuddling the lust of a despot. So has Nixon the opportunity to find a niche in liberty's church.

[From the Evening Star & Washington Daily News, June 21, 1973]

DÉTENTE MUST BE A TWO-WAY PROPOSITION

(By Crosby S. Noyes)

At this stage of the summit meeting between President Nixon and Soviet Party Secretary Leonid Brezhnev, we still do not know the scope and importance of the agreements that may be reached. We do know, however, the essential fact that the meeting is designed to dramatize.

The United States and Western Europe it seems, are embarked on an irreversible course toward detente with the Soviet Union and no one, including the Russians, seems to know what lies at the end of the road. So far as the West is concerned, even the most general objectives still are undefined.

The necessity for the move almost always is explained in negative terms. The alternative, it is said, is an indefinite continuation of the cold war—meaning, presumably, vocalized antagonism in terms of propaganda, strong ideological tension, the active prosecution of conflicting interests in various parts of the world and a continuing arms race.

Stated in these terms, the alternative of detente seems obviously preferable, almost regardless of what it is. The lowering of voices and tension is accepted in itself as a good thing. It is assumed that the more we talk with each other, the less dangerous the conflicts of interest will become. It is hoped that in time, agreements can be reached that serve the mutual interests of both countries, including, notably, an agreement on strategic weapons systems.

The validity of these assumptions depends, of course, on the extent to which they are shared by the Soviet leaders. And the evidence on this score is not entirely reassuring.

The Russians, indeed, talk a good deal about the need for "peaceful coexistence" with the West, but not very much, if at all, about the relaxation of tensions. Indeed, it has been made clear in all recent Soviet pronouncements on the subject that the renunciation of war as a means of attaining national objectives should intensify the ideological conflict between the "Socialist" and "capitalist" communities. Whatever temporary agreements of convenience may be reached, it by no means implies an end to the inherent antagonism between the two systems which is accepted by every Communist leader as an enduring reality.

So there is another, somewhat more hard-boiled interpretation of the current detente with Russia and the reality behind the summit talks now in progress. Its chief proponent is Sen. Henry M. Jackson, D.-Wash., who is denounced by some as the last of the cold warriors and judged by others to be one of the few public figures who are making much sense at this point on a number of important issues.

The Jackson thesis is quite simple. The Russians, he says, are not seeking closer relations with the West because they have suddenly turned amiable, but rather because they are in serious trouble. The Soviet economy is in critical condition, with severe shortages in many important areas, including food supplies.

In their new contracts with the West, the Soviet leaders are seeking things which they desperately need: increased trade, including large amounts of food grains; scientific know-how and technology for the improvement of their industrial plant and money for the development of their resources in raw materials. They want these things, furthermore, on the best terms they can get, preferably heavily subsidized by American taxpayers, as in the case of the recent wheat deal.

Jackson is not saying that the United States and other Western countries should not do business with the Russians. Indeed, he thinks they should, but on terms that are less one-sided than they have been in the past. He believes, in short, that the Russians should be willing to make important concessions in a number of areas in return for advantageous—and indeed essential—economic exchanges.

One notable example is the second round of the Strategic Arms Limitation Talks which now are in progress. The first round, completed in the course of Nixon's visit to Moscow ast year, represented a victory for the Russians in the form of a substantial numerical advantage in missiles and missile-carrying submarines. In phase two of the SALT negotiations, Jackson believes, the United States should hold out for a rough numerical parity with the Soviet Union in all forms of nuclear weaponry, preferably at somewhat reduced levels.

Other concessions include the coming negotiations on mutual force reductions in Central Europe and—most important in Jackson's view—the freedom of Soviet Jews to emigrate to Israel. The essential point that the senator makes is that a detente with the Soviet Union, to have any real meaning in Western terms, must be a two-way proposition which serves the interests of both sides. This is the yardstick against which the results of the Nixon-Brezhnev meeting should be judged.

[From the Wall Street Journal, June 21, 1973]

CELEBRATING DÉTENTE

Leonid Brezhnev comes to the United States as the living symbol of Soviet-American detente, and the public side of his visit has been one long celebration of a new era of eased tensions. While we are quite willing to join in the festivities, we do not think the celebration should be an uncritical one.

Unquestionably the new spirit of accommodation Chairman Brezhnev and President Nixon have built is an accomplishment of major importance to the world. Apparently it is more important than even Watergate in the eyes of the Senate leadership and the Ervin committee, which has postponed its public hearings because of the Soviet leader's visit. It is certainly true that if actually achieved, a web of enduring understandings between the United States and the Soviet Union could achieve one of mankind's dreams, a world without war, or at least without major war, for a long time to come.

Despite all the atmospherics of summitry, though, it remains terribly difficult to judge whether such a web of understandings is in fact being built. It is of course possible to view the products of Mr. Nixon's detente as the foundation of something lasting, as the first steps in making peaceful negotiation the accepted and natural method of resolving Soviet-American differences. Unfortunately, it is equally possible to view the concrete results as a series of offers even the most malevolent Soviet leadership would acept as short-run victories.

The strategic arms agreement, for example, allows the Soviet Union to retain its numerical lead in land-based missiles while matching and then overcoming the present American lead in submarine missiles. It also prevents the U.S. from exploiting its lead in antimissile technology, and if the Soviets can catch up in multiple-warhead technology, where their deficiencies leave them at a qualitative disadvantage, they might be capable of wiping out the American Minuteman force with a surprise attack. There are plenty of reasons beyond a thirst for good relations to explain Soviet enthusiasm for this agreement.

The wheat sales are similarly disproportionate. The Russians, faced with crop failures and a serious food shortage, managed to buy up a major share of the American wheat crop at guaranteed prices, in some cases even subsidized by the American government. The Soviets are walking away with their grain, using it to avoid a crisis in their society, and the American housewife is footing the bill through higher prices resulting from reduced supplies.

Now we are faced with the possibility of natural gas deals, no doubt one subject of the Nixon-Brezhnev talks. American companies have already begun serious planning on how to tap Siberian fields to help with the American energy crisis, and up to a point this may be all to the good. But apparently the Russians have even larger plans, dependent on credits now to be paid off with gas later. Even ignoring the potential for danger in speculating on future political attitudes, we wonder whether U.S. money and resources could be more wisely employed to develop clean and efficient ways to use the vast American reserves of coal, an even larger store of potential energy than the Middle East's coveted oil.

The pattern seems to be trading short-run specifics for long-run hopes. The notion might be put as giving the Soviets enough bait to bring them into today's deal and then tomorrow's, in the expectation that as they get hooked on the habit they will become less demanding negotiators. If it works the costs will not matter; most of them are only money. But for our part, we very much doubt that any truly enduring relationship can be based on a series of unequal bargains. If detente is to last, it seems to us, it will have to be based on true reciprocity.

We are all for pushing ahead with the detente that has been started; we see no other way for a lasting solution to the problem of nuclear war. But we are also for pushing harder against Mr. Brezhnev and his comrades; the fate of Senator Jackson's Senate-approved resolution calling for equality in intercontinental weapons in the ongoing SALT II negotiations is perhaps the best single test of whether the Americans push and the Soviets respond.

Only after such a test will we learn whether the Soviets are in fact interested in detente for its own sake, and are accordingly willing to bargain on the basis of equality. And only then will we know whether this week's celebrations are fitting or premature.

[From the Worcester Telegram, Worcester, Mass., June 23, 1973]

BEYOND THE BUBBLY

Americans are basically a friendly and trusting people, so it is relatively easy to get carried away with the atmospherics of the Nixon-Brezhnev summitry. Still, pomp and circumstance shouldn't be confused with substance. The big smiles on the Communist chief's face may not be prompted by his genuine fondness for his new capitalist friends alone.

Encouragingly, some sober voices tend to filter through the sound of the 21-gun salutes. One belongs to Sen. Henry Jackson, an advocate of equal U.S.-Soviet trade.

He wisely realizes that the Russians need us more than we need them; Brezhnev simply must have American economic and technological assistance to fulfill some of his re-

gime's promises. Because the list of goods the Soviets may offer in exchange for our help is very short—even if we include energy sources—it is not unreasonable to expect political concessions as part of the deal.

Sen. Jackson is calling for equality in intercontinental weapons in the ongoing SALT II negotiations—something SALT I failed to guarantee. And he suggests that this country withhold "favored nation" privileges from Russia until the Kremlin revises its inhuman and oppressive emigration policies.

Indeed, a true nuclear parity is essential—despite the Brezhnev-Nixon declaration calling for talks that might lead to a ban on offensive weapons. Existing missiles are much more tangible than promises of future accords.

The emigration issue is equally valid. World War II was fought, to a large degree, to defend the right of self-determination, and the same principle has been the focal point of the Indochina conflict. After World War II, a United Nations legal panel investigated the emigration question, concluding that the free and unrestricted movement of individuals is the most basic of natural laws.

Despite the argument that "whether the Russians let the Jews and other minorities go is an internal matter," freedom is a universal concern. If the so-called free world abandons all concern for the oppressed minorities, everybody's liberty may be soon endangered.

SALT and emigration are only a couple of many possible tests of whether the Soviets really altered their long-range goals. If they have, they should not hesitate to listen to reason.

So far, the detente pattern seems to be trading short-run specifics (American grain, missiles, easy credit and computer know-how) for long-run hopes (Russian gas and good will). We ought to do better than that. We ought to achieve reciprocity.

True, handshakes are better than threats, and a smiling Brezhnev is preferable to a menacing Stalin or a shoe-wielding Krushchev. A truly enduring relationship between the two super-powers would be in everybody's interest. But it cannot be based on banter and bad bargains.

[From the Economist, July 7, 1973]

IF YOU THOUGHT THE WALL WAS DOWN, LOOK AGAIN

Robert Frost once reminded the world, in a well-known poem, that something there is that does not love a wall. At Helsinki this week the division between those who like walls and those who do not emerged as the main feature of the meeting of 35 governments, known to the world as the Conference on Security and Co-operation in Europe and to its Finnish hosts, briefly, as Etyk. President Urho Kekkonen struck the keynote in his opening address of welcome when he cited a modern Finish aphorism: one obtains security, said Mr. Kekkonen, not by building fences but by opening gates.

The Finlandia hall, Helsinki's new pride and joy, was designed by Mr. Alvar Aalto for both concerts and conferences, and although there are inevitably quips circulating about this week's assemblage of foreign ministers being a new concert of Europe (and although some local Sibelius devotees complain about the acoustics) the building is in some ways better adapted for music than for diplomacy. To reach the podium on Tuesday the Finnish president found he had to teeter along a rather narrow ledge at the side of the stage. As ever, Mr. Kekkonen kept his balance. As ever, his success in doing so was observed with relief and admiration by Finland's western well-wishers.

But his open-gate doctrine was promptly spurned by Mr. Gromyko who, making the first of the inescapable series of 35 ministerial speeches that are grinding on through the soporific stickiness of a very hot Helsinki week, managed to sound like a verbose cousin of Robert Frost's stubborn New England hill farmer—the one who said so curtly that "Good fences make good neighbors". The Soviet foreign minister's long oration was a tedious reprise of old tunes, even including a reference to Potsdam. One would not have been surprised to hear him evoke Metternich or Tsar Alexander, for his theme was the nailing down of the established European order and no nonsense about such disturbing things as freedom for Europeans to swap ideas. It was in fact the west German foreign minister, Herr Scheel, who finally evoked the Congress of Vienna, by quoting Talleyrand's judgment: "Too frightened to fight each other, and too stupid to agree".

In Mr. Gromyko's speech and in the Polish, Bulgarian and east German echoes that dutifully followed it, the walls that Mr. Valerian Zorin had doggedly defended in the long talks that preceded this meeting were built up all over again. A grudging acceptance of the necessity for a tightly controlled amount of "contacts between institutions, organizations, and people" (a singularly revealing order of priorities) was heavily qualified by insistence that Europeans must have no dealings with each other except on the basis of "strict observance of each state's laws and customs".

This would all have been depressing news if it had been news. The governments of democratic Europe—both allied and non-allied—approached this week's meeting, the formal first stage of a conference that will go on for months, well aware that it will go on for months, well aware that the only chance of getting the Russians to open any gates will be to nag away at them during the long committee sessions that are to be held at Geneva through the winter. The present signs are that they will keep up this nagging without flagging.

Their basic points were well stated by the first western speechmaker at Helsinki, Mr. Anderson, the Danish foreign minister. The time is long past, he said, for "mere declarations of goodwill" (which are all that the Russians are offering). Real results in terms of more freedom of movement and information are, he went on, essential for the success of the conference in terms of both security and co-operation; this kind of progress could "make detente a living reality, not just a lofty subject for congratulatory statements". When Mr. William Rogers, the American Secretary of State, spoke on Thursday he deliberately tried to assuage any unspoken fears that America and Russia would try to settle everything over the heads of the others. It needed saying.

So the long haul is on. What might once have provided a dramatic opening chord for this concert of Europe—the east German government's international debut—has been muted. Accepted as participants without argument or excitement, the east Germans found themselves at once drawn into procedural tangles of a kind that gave them little chance to play a starring role. Their foreign minister, Herr Otto Winzer, was taking his turn to preside when Mr. Dom Mintoff, Malta's prime minister, captured the spotlight on the opening day by pressing his demand for guest appearances by Algerian and Tunisian spokesmen. After one hour's delay the Maltese proposal was shunted into a special committee. But the episode brought forth the suggestion that this conference, which as yet has no pictorial symbol, might fitly choose a Maltese Cross.

[From the Los Angeles Times, July 7, 1973]

DÉTENTE AND NATO

(By Joe Alex Morris, Jr.)

BRUSSELS.—Outside the sprawling headquarters of the North Atlantic Treaty Organization here stands a huge bronze sculpture representing the four-pointed symbol of the alliance. Birds are nesting in it. They are neither doves nor hawks but their busy and aimless presence is wryly noted by NATO officials, who are increasingly looking at their own role as one of inconsequential fluttering in a world of changing relationships.

This feeling has been growing for a long time, not only at NATO but throughout Europe. It was capped by the visit of Soviet leader Leonid Brezhnev to the United States and the agreement on the "Prevention of Nuclear War" he signed with President Nixon.

Despite American assurances to the contrary, many European leaders are concerned that the growing American-Soviet cooperation is eroding the basis of the Atlantic Alliance. French Foreign Minister Michel Jobert said the danger is "a condominium of superpowers."

NATO officials were caught by surprise by the nuclear agreement. They were not consulted beforehand, as the Americans were pledged to do, and were only informed of the impending agreement a mere six hours before it was announced. This despite the fact that the so-called "nuclear umbrella" is the keystone of NATO defense strategy.

This budding partnership of the U.S. and the Soviet Union has led to new doubts and questioning in Western Europe. An American here described it as a "tremendously volatile" situation, in which the European allies worry about American intent, and doubt American credibility.

Lujo Toncic-Sorin, the Austrian general secretary of the Council of Europe in Strasbourg, warned that U.S.-Soviet cooperation could lead to "a new Yalta." This was a reference to the historic wartime meeting in the Crimea where Roosevelt, Stalin and Churchill settled the fate of post-war Europe.

Europeans are looking at the nuclear agreement in this light. They see the U.S. and the Soviet Union setting themselves up as, to use Jobert's phrase, a super-power condominium exercising their paternal influence to keep the world in order. The result they fear is increased pressures from within for a more neutralist policy to replace the Atlantic Alliance.

NATO officials are puzzled by the American role in two major efforts toward international detente now going on—the European Security Conference which opened July 3 and the negotiations on troop reductions in Central Europe, which are scheduled to start on Oct. 30 in Vienna. In preparations for the security conference, one delegation head here said the Americans played the role of "a friendly observer. They did not lead the West."

The same official said the Americans were so anxious to get troop reduction talks started before Congress orders a unilateral cutback in American forces in Europe that they were ready to give away the principle of a "balanced" reduction on both sides. This is sharply contested by Americans here, who say the intent of balance is still alive. But the word itself was dropped at Soviet insistence.

Other recent developments on the American side have added to this concern. Presidential adviser Henry Kissinger, in a recent speech, stressed that the U.S. has global interests as opposed to the regional interests of Europe. To some Europeans, he seemed to be relegating Europe to the status of the Mideast or Vietnam, an important part of the world but only one of several insofar as American strategy interests were concerned.

What the Europeans fear is the reaction at home to these signals, however cloudy, of big-power collusion and a decreasing credibility of American security guarantees. This concern focuses on West Germany, where the temptation to make a private deal with the Soviet Union at the expense of the alliance is growing with the expansion of Chancellor

Willy Brandt's Ostpolitik, or growing friendship with the Communist world.

Brandt denies this. But there is growing pressure in this direction within his Social Democratic Party.

NATO's problems have been around a long time. The question worrying NATO leaders is whether this new concern about the American commitment will spur the other NATO nations into greater efforts on their own behalf, to take up the slack in the balance of power they fear as the result of U.S. domestic problems and the growing detente with the Soviet Union. There is little optimism here on this score. Instead, the talk is of Finlandization spreading into Central Europe, with the Soviet Union and its massive superiority in conventional arms playing an increasingly dominant role in the geopolitical power game.

In an era of detente, in which the U.S. and the Soviet Union assign themselves the role of joint referees of the game, some responsible Europeans feel it could happen here.

[From the Washington Post, July 11, 1973]

FREE COMMUNICATION AND DÉTENTE

The debate over whether to continue in a new and public form Radio Free Europe and Radio Liberty, the formerly CIA-run stations broadcasting to East Europe and the Soviet Union, crystalizes a basic issue of "detente." Does that goal require the United States to alter old practices simply because the Soviet Union objects to them, or does "detente" permit or require the United States to take certain steps which it may consider right and essential, even though Moscow objects? The RFE–RL question is made all the sharper by the fact that people who agree on the general desirability of improving East-West relations are on different sides of it. Senator J. William Fulbright (D-Ark.), for instance, has long regarded the stations as "irritants" and "relics of the cold war." But in hearings on a bill to put RFE and RL on a new independent footing, the stations have been supported by the likes of elder statesmen Averell Harriman, writer David Halberstam, and Milton Eisenhower, who chaired a presidential commission set up to study the stations' usefulness in these times of Soviet-American change.

We are persuaded that the stations are now, in a sense, more important than ever. They operate essentially as "home services," providing news and comment that Soviet-bloc governments withhold from their own people. In so doing, RFE and RL express the fundamental Western values of free and open communication—values which it would be a travesty to deny in the name of improving relations with a totalitarian society. It is not, after all, as though anyone in Russia or East Europe is forced to listen to RFE or RL broadcasts. For the United States to join the governments of those countries in censoring the material available to their citizens should be regarded as unthinkable.

Moreover, to the extent that the growth and expression of public opinion are possible in the Soviet bloc, RFE and RL play an undeniable if hard-to-measure role. The guiding assumption is that public opinion in those countries will almost always be a liberalizing and moderating force on their regimes, strengthening the hands of those in the leadership who wish to pursue humane domestic goals. Of course the broadcasts amount to interference in the domestic affairs of the countries receiving the broadcasts but, we would argue, it is interference of a perfectly legitimate sort—no less legitimate than, say, Leonid Brezhnev's meeting with the Senate Foreign Relations Committee. The potential political "cost-benefit ratio" of radio broadcasts as against defense expenditures surely makes the radios an excellent speculative investment.

A purposeful effort has been carried forward in recent years to purge RFE and RL of the more violent exile elements responsible for incitement to revolt and other excesses for which the broadcasts were formerly all too well known. That these stations now operate in public view, not under CIA cover, makes the necessary task of ongoing surveillance all the easier. In the Congress, the House has authorized $45 million of a requested $50 million for RL and RFE. In the Senate, the relevant bill is in the Foreign Relations Committee; opponents of the stations, while they may lack the votes to kill them altogether, may be able to enforce a severe budget cut. We trust that floor majorities in both houses will have enough understanding of the value and utility of free communication to fund RFE and RL at an effective level.

[From the New York Times, July 11, 1973]

HASTE IN EASTERN EUROPE

The rather synthetic good fellowship and less than fully credible mutual cordiality that President Nixon and Leonid I. Brezhnev exhibited toward each other during the latter's visit here last month are apparently symptoms of a contagious diplomatic disease. At any rate Secretary of State Rogers seems to have developed a similar syndrome in his recent contacts with the two most unsavory of Moscow's satellites, East Germany and Czechoslovakia.

In Helsinki last week Mr. Rogers discussed possible diplomatic recognition with East Germany's foreign minister. Mr. Rogers at least had the grace to be embarrassed about the necessity of making this approach public, and claimed unconvincingly that the conversation had taken place because the two men sat near each other at a diplomatic dinner. East Germany, after all, is the country which is still given to murdering its citizens when they try to escape, say over the Berlin Wall from East to West Berlin.

East Germany, it is also worth remembering, is now legally recognized as one of the two successor states to the Nazi Germany ruled by Adolf Hitler. As such it shares a good part of the responsibility for the crimes and damage inflicted by the Nazis upon their victims, among whom the Jews of Europe were tragically prominent. West Germany long ago recognized its responsibility in this area and voluntarily paid substantial reparations to Israel and individual Jewish victims. East Germany has still not seen fit to pay a penny or a kopeck toward meeting its heavy share of the debt for Hitler's crimes against the Jews.

From Helsinki, Mr. Rogers flew to Prague, thus becoming the first American Secretary of State to visit there since the 1948 coup that instituted the Communist dictatorship. Mr. Rogers was warmly enthusiastic about helping "to open a new chapter" in Washington-Prague relations. But the Soviet army of occupation that ousted Alexander Dubcek less than five years ago still holds ultimate power in Czechoslovakia, and there is no sign that that most abnormal chapter in Moscow-Prague relations is about to end.

[From the Christian Science Monitor, July 14, 1973]

DÉTENTE—WITH ALL DELIBERATE ALERTNESS

(By Roscoe Drummond)

WASHINGTON.—There is no doubt that the 35-nation European security conference, including the United States, Soviet Union, and Canada, is one of the most exhilarating and promising diplomatic initiatives of this century.

It has taken years to come and now it will be ongoing at a time when much else is also being done to lay the building blocks of a better world.

It comes at the right time and is headed in the right direction.

It is ambitious in its goal, and its goal is to bury the vanishing vestiges of the cold war.

That's good, but it would be a grave mistake to gloss over the fact that there are still deep differences between what the Soviet Union wants detente to mean and what the Western nations want detente to mean.

Soviet Foreign Minister Andrei Gromyko said that Moscow wishes detente to produce very limited East-West "human contacts." He put the Soviet position in pleasantly fuzzy diplomatic language but the thrust of his words was amply clear to the Western foreign ministers. He said:

"This (the idea of widening human contacts between the Communist and non-Communist countries) above all concerns the question of respect for the principles of sovereignty and nonintervention. A departure from this would be rightly considered an attempt to intervene in the affairs of others. This means strict observance of the laws, customs, and traditions of each other. The Soviet Union will proceed from this."

Let's parse that a little. What Mr. Gromyko is really saying is:

That the Soviet Union is willing to expand cultural exchange as long as the Western nations don't invite visits from Russians whom the government wants to keep home.

That the Soviet Union wants scientific and technological expertise in large gobs but doesn't want any free flow of ideas and information which can't be effectively censored from the Soviet population.

That the Soviet Union wants a one-way respect for national frontiers; that is, Western Europe must recognize and respect the frontiers of the Communist countries in Eastern Europe but Soviets may trample the borders of European satellites at will. They do not put it that bluntly, but what they mean is that nonintervention must control Western policy but Soviet intervention in Eastern Europe (as in Czechoslovakia in 1968) is just fine and not to be questioned.

A spokesman for the Soviet foreign ministry dealt with this point gingerly and misleadingly at Helsinki. He was asked if the proposed new guarantee of frontiers would prevent a repetition of the Czech invasion and he said no it wouldn't—in these words:

"In the case of Czechoslovakia there was no interference in the internal affairs but a request by the Czechoslovak Government was met by the Warsaw Pact governments to give it aid. The question of intervention *did not* arise."

The Soviet spokesman did not mention that Alexander Dubcek, the chief of the Czech Government, was waylaid and kept prisoner by the Soviets until others in Prague, obedient to Moscow, could call for the Red Army to come in and rescue them from their own leaders.

These differences may not prevent the conference from making some further headway in dissolving the causes of the cold war. Much has already been done. But the Foreign Minister of West Germany, Walter Scheel, wisely pleads that candor would be better than obfuscation.

"If it were to be shown clearly in the course of our discussions," he said, "that the gap between our views is still too wide, then I think it would be a dictate of honesty to say say so unambiguously."

Robert Conquest, the British Sovietologist, contends that the basic aim of Chairman Brezhnev "is to secure the diplomatic and technological fruits of detente while intensifying ideological and national repression within the Soviet bloc."

Detente will come—in stages—and it will be best to pursue it with all deliberate alertness.

[From the Washington Post, July 14, 1973]

MANY U.S. ALLIES WORRIED BY RECENT SUMMIT

(By Marilyn Berger)

A high State Department official, challenged by a West German legislator to explain just what the United States had gotten out of the two summits with the Russians, had this to say at a conference held in Washington recently.

"I can cite a number of particular areas . . . some specific benefits . . . (Before the summit) we couldn't agree on the amount of rent—how many rubles—we should pay for trade offices and apartment space. We reached agreement on this at the summit."

Although he was being quite serious, this official drew a laugh from an audience of Canadians, West Europeans and Japanese. But the laughter was uneasy. For to some of the audience, this just about summed up what good they thought the summit had accomplished. The damage they believed it had wrought became a prime subject for the conference.

The State Department official went on to talk about the improved atmosphere and the relationship between the two leaders, which, he said, should "promote understanding." Over and above everything, he said, the summit was "part of the process of bringing the Soviets into more normal relations with the rest of the world."

This balm did little to soothe the nervousness exhibited by the government officials, legislators and academicians representing some of America's closest allies. The just-completed summit provided a backdrop for discussions that were supposed to be devoted to "the interactions of trade, monetary, energy and security issues in North American-European-Japanese relations." Concern over the impact of the superpowers dealing over the heads of the allies, with little or no consultation, was an undercurrent of the conference, arranged by the Georgetown Center for Strategic and International Studies.

The new summit agreements, complained Roberto Duccia, a high official in the Italian foreign ministry, create superpower condominium. But, he said, "I see no opportunity for the United States to operate in Eastern Europe while there is a lot of opportunity for the Soviets to operate in Western Europe."

Manfred Worner, a Christian Democrat in the West German parliament, was among the most outspoken. The shadow defense minister, for example, was concerned over the new terminology to describe forthcoming negotiations on reduction of forces in Europe. The word "balanced", which the West had always insisted upon, had disappeared. "I'm not quite sure," he said, "that the omission does not mean a substantial change in U.S. policy."

On strategic arms limitations, he complained, the allies were not consulted, but informed two to three hours before the agreement was announced. "If I am to state it simply," he summed up, "I cannot see any advantages in what you got out of the talks with (Leonid) Brezhnew outside of atmosphere. You accepted parity on the strategic level and you have decided to help the Soviets in the field of technology and economy. What have you gotten in exchange?"

When the answer from the U.S. official—who declined to be identified—did not satisfy, Etienne Davignon, director-general of the political section in the Belgian Ministry of Foreign Affairs, tried to give some measure of the impact of the summit in Europe.

"What is the agreement to prevent nuclear war" Davignon asked. "Is it a code of nuclear conduct for the world. If it's not an agreement to manage the world, is it an agreement to manage world peace?" These issues, he said, were all related to "very delicate questions of European integration" which he said was at a critical point. "We know Soviet Russia is not very favorable to European cooperation in defense. We fear the Soviets will use this (agreement) to explain to Western Europe that there is no need for defense."

At such a delicate time, Davignon argued, "consultation is necessary. It is not useful to go out and explain that the agreement is not very important and won't affect NATO. If it's not so important why cannot one tell us beforehand."

Former Under Secretary of State George W. Ball, a late arrival at the conference and a consistent critic of summitry, said that the spectacle of the Brezhnev-Nixon meeting makes it difficult for Americans and Europeans to hate the Russians. "It makes it hard to remember the realities of the power struggle, which is still continuing." He said: "Brezhnev's public words are indistinguishable from any American politician's. It creates confusion and a tendency to think that the struggle of the past is ended."

Ball, who supported the administration in its 1971 successful effort to thwart congressional moves to cut American troop strength in Europe, expressed concern that "the sordid events of the past few weeks" will undercut the administration's position this year. If the United States cuts its strength, West Germany would follow suit, he said, "and you can reach a point where the preponderance of strength is on the Soviet side." This, he said, would have great political impact on Europe.

"There will be no war in Europe," said Professor Walter Laqueur. "There will most probably not even be a threat of war . . . Yet Soviet overwhelming strength will make itself felt in many ways . . ."

The theme, repeated over and over at this conference, was that the summit and its related agreements can interfere with European political integration precisely at a time when the whole purpose of the Western alliance has come under question. Klaus Goldschlag, a senior official in the Canadian foreign ministry explained the problem of dealing with detente today.

"We are now living with a generation that was not present at the creation (of the Western alliance) that asks to be convinced that arrangements we made 25 years ago maintain their validity," said Goldschlag. "There is no question that detente . . . leads to questioning the use of resources for defense. Public opinion questions the purchase of power that is largely unusable. . . . Priorities are different. Now quality of life is considered a higher goal and it is asked whether there might not be as high a return on security through expenditures on development as through expenditures on defense.

"Unless we convince some of those who were not present at the creation . . . that there are, in fact, common interests, it will be hard to justify not only defense expenditures but the alliance itself."

A Japanese university professor, Michimasa Irie, put it succinctly: "The public mood in Japan has changed. There are no adversaries."

The problem, said Pierre Hassner of the French National Foundation for Political Science, is in moving "from cold war to hot peace." He told his European colleagues that "we shouldn't kid ourselves that we will have the same level of (U.S.) troops in Europe . . . We have to think about how to go to the Europeanization of NATO."

Francois Duchene, director of the London-based Institute for Strategic Studies, saw a "very dangerous trend" in a force cutback by the West. He called for a "spectacular reassertion of relations between the Western countries" and for a multilateral fund to remove balance of payments issues from the stationing of American troops in Europe.

But even without the troop question, trade issues loomed large as an adversary problem between the allies.

While the American Congress is trying to develop trade legislation, many of the European participants made it clear that U.S. negotiators would be in for some tough bargaining. Pierre Uri of the Atlantic Institute said that the European Economic Community's common agricultural policy—a major target for American negotiators—would have to change because it hurts the Europeans themselves. But the Europeans in the seats of power saw things differently. Dr. Hans Herbert Weber of the West German Ministry of Finance replied to Uri: "The EEC ministerial council thinks rather along other lines . . . they do not think of ways of changing variable levies or prices in the system."

A similar attitude was displayed by Rep. Joe D. Waggonner (D-La.) who said the United States was providing a "free ride" for countries like France on defense matters which exacerbated an already angry mood in Congress that is based on a perception of not having gotten a fair shake in the Kennedy Round trade negotiations of the sixties.

Another aspect of the problem was brought up by Weber, "Was it really wise," he asked, "for the U.S. to talk about export quotas while the EEC was thinking about a (negotiating) mandate? In Europe there are already comments to the effect that the Americans don't need to export so much to Europe. They have export controls themselves."

A main goal of the U.S. negotiators was to open European markets to American agricultural products. The export controls appear to have confused the issue. Rene Foch of the EEC delegation to the Organization for Economic Cooperation and Development predicted that control of exports would bring an argument within the European community. "Are we going to rely for purchases on a market which depends on the state of agriculture in Russia," he asked, alluding to U.S. grain sales to the Soviet Union.

The answer, to problems of defense and to problems of trade, was more consultation, in the view of the members of this conference. The high American official, who got the message over and over, provided little assurance. "On the question of consultation," he said, "all I can say is we do our best. We do what we can, what we think is appropriate."

AMENDMENT OF YOUTH CORRECTIONS ACT NEEDED

Mr. BEALL. Mr. President, recently there was an article printed in the Star-News concerning the use of the Youth Corrections Act under guidelines established by the Court of Appeals for the District of Columbia. I believe this article bears out my contention that amendment of the Youth Corrections Act is urgently needed to prevent its abuse. There is no question that when the act was first introduced it was intended to be used at the discretion of the trial judge in cases where he felt the young man could benefit from its provision. It has now turned into a loophole through which the most serious offenders escape punishment which would normally be imposed on them. I ask unanimous consent that a copy of the article be printed in the RECORD.

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

[From the Washington Star, July 6, 1973]

COLLEAGUES DESTROYING YOUTH ACT, JUDGE SAYS

Judge George E. MacKinnon accused some of his colleagues on the U.S. Court of Appeals yesterday of destroying the Youth Corrections Act program here by requiring judges to sentence "roughnecks and sophisticated criminals" to facilities for youthful offenders.

MacKinnon's remarks came in a dissent

in a case in which the majority—Chief Judge David L. Bazelon and Judge J. Skelly Wright—ruled that a 19-year-old who pleaded guilty to charges of armed robbery and attempted armed robbery should have been sentenced under the Youth Corrections Act.

Under the act, a convicted criminal who is less than 22 years old can be given an undetermined sentence in a federal youth corrections facility.

The convicted person can be released whenever authorities feel he has been "rehabilitated."

This contrasts with adult sentences under which a person must serve a specified minimum term in jail.

Bazelon and Wright vacated the concurrent adult sentence of two to 10 years' imprisonment and one to three years' imprisonment which the defendant, Anthony A. Riley, had received from District Court Judge John Lewis Smith, Jr. in March 1972 and ordered that he be resentenced under the youth act.

The judges held that the adult sentence violated recent appeals court rulings requiring that youthful offenders under 22 years old be sentenced under the youth act unless detailed reasons could be given why they could receive "no benefit" from such rehabilitative treatment.

MacKinnon said in his dissent that Riley had an "extensive criminal record" dating back to 1965, consisting of 13 charges that include petty larceny, housebreaking, disorderly conduct, robbery, attempted second degree burglary and armed robbery.

MacKinnon said that "we cannot continue to herd hardened criminals (with records such as Riley's) with eligible youth offenders. To do so harms both the eligible offender and the ineligible offender because neither gets the treatment and supervision he requires."—Mary Ann Kuhn.

HARRY SCHWEIKERT RETIRES FOLLOWING 25 YEARS OF SERVICE TO PARALYZED VETERANS

Mr. RANDOLPH. Mr. President, as chairman of the Subcommittee on the Handicapped, I call attention to the retirement of Mr. Harry A. Schweikert, Jr.—after 25 years of service—from the Paralyzed Veterans of America.

Mr. Schweikert, who is a paraplegic himself, has been an inspiration to other veterans who are themselves handicapped. He has been gainfully employed and has led an active, dignified, and useful life. He opened the Washington office of the Paralyzed Veterans of America nearly a decade ago; has served this organization in many capacities; and has worked closely with the Congress to make its Members more aware of and sensitive to the problems and needs of handicapped veterans.

Harry Schweikert's concern, however, does not stop with veterans; it includes all handicapped persons. For instance, 2 years ago Mr. Schweikert developed an excellent paper on the right of the handicapped traveler to air transportation and presented it to the Civil Aeronautics Board. It is a document upon which the CAB and Federal Aviation Administration could have based a policy and rulemakings for the travel of handicapped persons. Today, CAB and FAA could still use Mr. Schweikert's proposal as a basis for rulemaking, if they will only do so.

In April of this year he authored an article which appeared in Paraplegia News and which pointed out that certain airlines were becoming more restrictive in both attitude and policy toward transporting disabled individuals. As a result of this article, I took steps outlined in the June 12, 1973, CONGRESSIONAL RECORD, which included contacts with the Air Transport Association of America and the Civil Aeronautics Board to urge a speedy resolution of the problems concerning the air transportation of handicapped individuals. Needless to say, it was gratifying to learn that FAA had issued an advance notice of proposed rulemaking on the safety aspects of air travel for the handicapped. For those of us working in this critical problem area, Mr. Schweikert's counsel and assistance have been invaluable. If the new FAA action leads to a national standard, as I hope it will, it will be attributable in large degree to Harry Schweikert's perseverance and ability.

This represents just one small segment of Mr. Schweikert's activities. His work has encompassed vocational rehabilitation and employment of the handicapped a well as transportation and architectural barrier elimination. It is an understatement to say that he will be missed, not only by veterans but by everyone who is concerned with the rights of the handicapped. I can think of no more fitting tribute to him than to continue his work until every disabled man, woman, and child will have opportunities equal to their peers, to live happy, dignified, and productive lives.

MUTUAL BALANCED FORCE REDUCTION NEGOTIATIONS AND HUNGARY

Mr. THURMOND. Mr. President, recently the preliminary phase of the Mutual Balanced Force Reduction—MBFR—negotiations ended at Vienna and the full conference was agreed on for October 30, 1973.

The preliminary phase of the negotiations was focused on deciding who the participants should be and what forces would be included in a future agreement.

Five NATO powers made a temporary compromise which excluded Hungary from these talks and reduced her to an observer status. The compromise was, however, made without prejudice to Hungary's status at the main conference, according to NATO spokesman Bryan Quarles van Ufford, both at the time of the compromise and at the conclusion of the preliminary talks on June 28.

The exclusion of Hungary appears at best an unwise maneuver. Any MBFR agreement would have a direct bearing on the already precarious military balance in Central Europe and the omission of 40,000 crack Soviet troops in Hungary from the troop reductions would make little sense.

This key point was made recently by Gen. Lyman L. Lemnitzer, former NATO Supreme Commander and former Chairman of the Joint Chiefs of Staff, speaking at the June 14 luncheon of the American Institute on Problems of European Unity in Washington, D.C.:

It is very difficult to understand from a military point of view the exclusion of Hungary. It is the opinion of many military people with whom I am associated that if accepted permanently, Hungary's exclusion would gravely affect the situation in Central Europe. It certainly does not spell any hope for the satellite countries to achieve a greater degree of sovereignty, and particularly it would not spell hope for Hungary. It gives the Red Army and Red tactical forces a beachhead, or as I would put it, a sanctuary right at the crossroads of Europe where they can move forces and equipment into, and still be excluded from the area of an MBFR agreement.

Mr. President, in view of these circumstances, I am joining my colleagues in both Houses of Congress in urging the administration to stand firm on the temporary character of the compromise and to use its diplomatic influence to grant Hungary the status of a full participant so that the Soviet Union forces in Hungary will also be included in the projected mutual and balanced force reduction.

FOOD PRICES

Mr. RIBICOFF. Mr. President, one thing is certain about phase IV. Prices will continue to skyrocket. Eggs and meat—basic staples in the American diet—are quickly becoming delicacies. Prognosticators are now predicting that beef will soon cost $2 a pound and eggs will soar to $1 a dozen.

The American grocery shopper is reaping the dubious rewards of decades of ill-considered agricultural policy.

The new farm bill now in conference will not only aggravate the situation, but could lock in a new high cost farm policy for 5 more years. In choosing between the House bill and the Senate farm bill there is no choice at all. They are both detrimental to the American consumer and the family farmer.

I urge President Nixon to veto the farm legislation when it comes before him.

I ask unanimous consent that an editorial from the Sunday, July 21, 1973, New York Times be printed in the RECORD.

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

ASSURING FARM INFLATION

With food prices rocketing upward this past year, profits of commercial crop growers have been soaring at a fabulous rate. Department of Agriculture statistics tend to minimize the rate of enrichment of large farmers, but even they give important clues. This year, for example, the department estimates farm profits will exceed $22 billion, i.e., they will be 40 per cent higher than they were as recently as 1970.

Meanwhile in Congress, the still-potent farm bloc—with the support, incredibly, of many Representatives from urban working-class districts—has been succeeding in a drive to assure permanent super-prosperity for the nation's commercial farmers by defining inflation-swollen prices as the new norms for future Government subsidies.

An unconscionable new system of farm price supports is contained in the omnibus farm bills that have now passed both houses of Congress and which await reconciliation in conference. For example, a system of "target prices" has been set at levels far beyond any normally known in the past. At any time the market price fell below these inflated "targets," the Government would be required to make good the deficiency by direct payments. This economically expensive inflationary device provides that the "target

prices" must be increased regularly in accordance with an index based on production costs.

To the shame of the liberal and pro-labor elements in both branches of Congress, it is only the Nixon Administration and its supporters in Congress who have been trying to stem this potential raid on the Federal Treasury. Until this week it had seemed that the threat of a Presidential veto might force some restraint on the greedy appetite of the farm bloc. But now a deal between liberal and farm bloc representatives has raised the danger that this profit insurance scheme for the country's large farmers will become veto-proof because it will have enough votes to override in both chambers.

There is in effect an alliance for inflation now riding high in Congress. The farm bloc wants and is close to getting guaranteed high prices in the future, building much of this past year's inflationary surge in food prices permanently into the profit structure of American agriculture. Liberal and pro-labor Congressmen want higher minimum wages. The two groups are supporting each other.

There is little comfort to be had in the apparent approval both houses have finally given for a $20,000 ceiling on farm subsidy payments per recipient. Rather, the rush toward appeasing the farm bloc suggests that before the final bill is passed, either the limitation will have been removed or enough loopholes will have been supplied to make its impact negligible.

HOW TO TEACH THE YOUNG ABOUT DEATH

Mr. BEALL. Mr. President, as a member of the Senate Labor and Public Welfare Subcommittee on Children and Youth, I have come to realize that now more than ever one of the greatest natural resources of our country is our younger persons. To say that the future is literally in their hands is an understated truth, for they must be the leaders of tomorrow. As such, they should be provided with the facts to deal with the challenges which will surely confront them in the next decades.

Often an individual is faced with the task of relating information on relatively unpleasant subjects. One of these is death. This subject is dealt with in a remarkably sensitive manner by Jan Peter Ozga and Peter G. Miller in an article entitled "Mommy, What Happens When I Die?" which appears in the spring 1973 issue of Mental Hygiene. I highly commend this brief but enlightening article to my colleagues and ask unanimous consent that it be printed in the RECORD.

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

[Source: Spring 1973 issue of MH (Mental Hygiene), Journal of the National Association for Mental Health]

HOW TO ANSWER THE QUESTION: "MOMMY, WHAT HAPPENS WHEN I DIE?"

(By Peter G. Miller and Jan Ozga)

DEATH SHOULD NOT BE CONCEALED FROM THE CHILD

Although many enlightened parents are prepared to answer the question, "Where did I come from?", few will discuss another query from their children, "What happens when I die?"

Even as questions relating to birth and sex have been shrouded in fantasy or avoided, the concept of death has frequently been treated with equal irresponsibility. The consensus of many authorities is that death has replaced sex as the taboo subject of our times.

The single greatest problem in discussing death, religious concerns aside, is that it represents the unknown. A Gallup poll taken several years ago indicated that only a quarter of those surveyed believed in life after death.

Today, there is a new awareness of death. In fact, several observers maintain that drug usage (escape and mortality transcendence) is a means of psychologically escaping death. Communal living (strength in numbers) is also viewed as a form of death avoidance.

Most studies reveal that children think of death, but within various conceptual boundaries. They also accept it in several stages.

For instance, before the age 3, children do not have intangible or abstract ideas and so do not understand the concept of death. From 3 to 5, they learn to distinguish between animate and inanimate objects. Although a child may have a limited understanding of death at this time, he will deny its existence.

Children in the 5 to 9 age group become aware of both death and the sorrow it can bring. They observe living things, such as flowers, pets or people dying, and they will agree to the finality of death (getting old, body decay) but not to the universality of it ("not to me"). During this age period, death becomes personified, and children identify such concepts as the *boogey man* or the *angel of death*.

By age 9, or soon thereafter, most children have witnessed death and wondered about its causes and life afterwards. At this time the child finally accepts the fact that he will die. Even so, he continues to believe that the event is so distant that, in effect, it is impossible. Not until children reach the age of 12, do they understand the generality and impersonality of death.

Parents can help their children understand death, an understanding that is important in the development of any child. Regardless of the motivation for inquiry, be honest. No fairy tales. Be objective but not too technical. A child may not be ready for biological or philosophical explanations. Complex discussions may only confuse him. Only answer what is asked.

Often children will ask about death in relation to a specific experience, such as the death of a pet or insect. Parents should sympathize with the child's loss. In explaining death, physical contact should be maintained, while the parent reassures the child that he is loved and that those who care for him will live together for a long time.

In discussing death there are some things parents should avoid.

Never tell a child that a dead person went to sleep. Children hearing this explanation may refuse to go to bed for a long while thereafter or develop other psychological disturbances, such as a fear of the dark.

Never tell a child that God took someone away because He loved them. The child may develop a distorted sense of motivation (reward and punishment), values and morality.

Never use death-related threats to motivate a child. Comments such as "the boogey man will get you" may disturb him, particularly in the personification state of development.

Most authorities agree that by age 7—the accepted age of reason—children are old enough to attend a funeral. A parent's reaction is transmitted to his children and, depending on his understanding of the process, a child should participate in the mourning process.

Children tend to view death as an aggressive act. Shielding the child from the event may cause him to think that he was in some way responsible for the occurrence and the temporary sorrow that followed. Grieving is considered a healthful, natural experience.

Dr. Daniel Leviton, a professor at the University of Maryland, suggests that information should be germane to the child's experience and perception.

In the instance of a terminally ill child, Professor Leviton feels that parents should retain close contact with the child and allow him to use his own mechanisms—verbal or symbolic (drawings, acting, others)—to express his ideas about death.

Dr. Leviton, who teaches *Death Education and Suicide Behavior*, one of 10 such university-level courses in this country, says: "The skillful listener should help him vent his fears and tell him that death need not be painful, for everyone dies."

Dr. Elizabeth Kubler-Ross, considered the world's leading authority on death, believes that children who have ominous feelings about their fate and express them in word and action tend to view their death more positively, more serenely, after they are allowed to express their feelings. As a result, these children adjust to their condition and live their remaining days in relative peace.

"Telling the child he is going to die depends on his ego strength," according to Professor Leviton. Not all children are capable of coping with the truth. If the child does not pursue the subject, it is frequently prudent not to force the issue.

Certain cultures, even within the United States, tend to cope with death better than others. For example, rural residents seem to adjust to the inevitability of death more easily than the urban population at large.

"The city person usually asks me to spare no expense in order to keep a dying relative alive," states Dr. Robert Leachman of St. Luke's Hospital in Houston. "But the rural person, who has lived his life in close contact with the cycle of nature, accepts death more readily as a fact of life."

In part, these different patterns of death acceptance can be attributed to personal orientation. Maryland's Leviton advocates more research in the area of death education, so there will be a greater public understanding of this subject. Through death education, perhaps as part of regular school curriculums, he hopes to "remove the mythology, so people can face death—their own deaths and the deaths of others—and therefore live happier lives."

If a child is to understand life, he must also have some familiarity with death. As Dr. Margaret Nagy comments, "It is really not possible to conceal death from the child nor should concealment be permitted. Natural behavior in the child's presence can greatly diminish the impact of his acquaintance with death." It may be bad news for the "boogey man," but it's good news for kids.

THE SYMBOLIC IMPORTANCE OF THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, there are those who fear that the Genocide Convention might not be effective. I disagree with this appraisal, but regardless, I don't think it can be denied that symbolic acts are important, too.

Genocide is a crime abhorred by the civilized world. The desire to prevent the occurrence of genocide arose after World War II witnessed Hitler's methodical destruction of the Jewish population. The world was outraged and wanted to see to it that this annihilation would never happen again. This led to the creation of the Genocide Convention.

The fact that at least 75 nations have become signatories to this treaty proves that worldwide concern exists. Our country has always prided itself on our humanitarian beliefs, and our human rights record until now has certainly been an admirable one. But I find it hard to understand why, after all our previous efforts, we have stopped here.

There is no question as to the status

of the United States in relation to the rest of the world. There is also no question but that the prestige of the treaty would be enhanced if we were finally to ratify the convention. The Senate has delayed taking affirmative action on this matter for almost 25 years. The time to ratify is now.

VIETNAMESE ORPHANS

Mr. BROOKE. Mr. President, one of the tragic results of any war is the number of children left alone, without parents, without adequate provision for the necessities of life. This tragedy is underscored by the desperate plight of the Vietnamese war orphan. At present, there are at least 800,000 children—the figure may run as high as 1.5 million young Vietnamese—who have lost one or both parents in the war. While some orphans have been taken in by relatives, countless others have been cast adrift in festering refugee camps, jammed into filthy, overcrowded orphanages or simply left to wander the streets to beg or steal. It is estimated that, throughout Vietnam, 700,000 orphaned and abandoned children are without the adequate food, shelter, or clothing necessary for a minimal existence. As one American doctor has said:

> It is a tragedy of life and limb, the magnitude of which we shall never know.

The problem of caring for these war orphans is compounded by the high rate of child desertion by living parents or relatives. Many families, uprooted and impoverished by the war, are no longer able to care for their children. Out of desperation, they have chosen to abandon them in the tragically mistaken belief that these children will be better cared for by Government authorities or charitable facilities. However, those left at orphanages and other institutions cannot thrive—or generally survive—under the present inadequate living conditions. At some Vietnamese institutions, the mortality rate runs as high as 80 percent. Scores of those orphaned and abandoned are maimed and crippled as well—and in immediate need of specialized medical attention. Without proper rehabilitation, they face lives of unproductivity and isolation in a society that has traditionally scorned the weak and disabled.

The Vietnamese Government may not have the proper resources nor the necessary desire to come to the aid of its abandoned children. Although 8 million Vietnamese—roughly half the nation's population—are under the age of 15, the Government allocates as little as 1 percent of its national budget for the care and rehabilitation of its crippled, diseased, or orphaned children. Maj. Gen. Pham Van Dong, Minister for Veterans' Affairs, has offered an unacceptable justification of his government's inattention to the orphans' misery:

> Orphans are not producers. They are spenders at a time when we need productive returns on our investment.

The United States has also been remiss in establishing adequate aid for the orphans of Vietnam, although many of these children were the victims of American bombings.

The wretched plight of an estimated 25,000 of those orphaned and abandoned is more directly tied to the American presence in Indochina; for these 25,000 children were fathered by American servicemen stationed in Vietnam.

These Amer-Asian children have added disadvantages in their already difficult struggles for survival. As children of mixed parentage, they are the objects of discrimination; as fatherless children, they are accorded minimal acceptance by the Vietnamese society, a society oriented around the family unit. They are treated as second or third class citizens in a country where every advantage does not even guarantee survival.

Adoption by suitable non-Vietnamese families is one possible solution that has been suggested to this problem. However, the Saigon Government has followed a policy of discouraging foreign adoptions by establishing stringent and limiting requirements. In some cases these restrictions have been moderated by the personal intercession of President Thieu. Certainly, it is more advantageous for a Vietnamese child to be reared in his own cultural environment. However, as Elsie Weaver of the World Vision Child Care Agency in Vietnam notes:

> The question is not whether a child will be better off raised in his own culture. The choice is not available . . . There are so many babies in the orphanages who will die unless someone rescues them.

As of late, there has been considerable discussion in the Congress, in the press, in the Nation as a whole, on the appropriate forms of American postwar reconstruction aid. I have already publicly stated my belief that our aid should focus on humanitarian relief for refugees and other victims of the war. Clearly, the question of aiding Amer-Asian children is of a more personal—more morally compelling—nature than simply the requests of foreign nations for our financial assistance. These children are half American. Without our help and concern, many will not survive. Their well-being deserves our immediate attention. For, if we choose not to help them, it appears no one else will.

The present process by which Amer-Asians and Vietnamese orphans are admitted into the United States is long and complicated—even for an American father desirous of bringing his offspring back to the United States. An "illegitimate" child born here in America naturally acquires the full rights of citizenship. In contrast, a child born overseas must be "legitimate;" otherwise he must meet a difficult, if not impossible set of legal requirements to be granted entry into the United States. Yet, the demand for adoptable children exceeds the number available in America. Thus, should we not modify our immigration regulations to permit easier entry and adoption of the abandoned Amer-Asian children by suitable American families? Let us make every effort to give these children an opportunity to live and grow in a family atmosphere, away from the destruction of war.

JULY REPORT OF SENATOR SCOTT OF VIRGINIA

Mr. SCOTT of Virginia. Mr. President, I ask unanimous consent that a copy of my July report to the people of Virginia be included in the RECORD.

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

BILL SCOTT REPORTS

THE ALASKAN PIPELINE

There is no doubt that America faces a serious energy problem. We have only 6 percent of the world's population, but consume one-third of the earth's total energy output.

Our supply of domestic energy resources is not keeping pace with our increasing demand, and the United States has moved from a position of self-sufficiency and surplus to one of increasing reliance on foreign sources. Unless we act swiftly and effectively, the problem will become more acute.

One of the most debated and controversial phases of the energy problem relates to the construction of the trans-Alaskan pipeline. After extensive debate, the Senate approved a measure that clears the way for construction across Alaska. The bill calls for changes in existing laws regarding rights-of-way because a recent court decision held, in effect, that the Secretary of Interior had no authority to grant rights-of-way across Federal lands in excess of 25 feet in width on either side of a center line.

I supported the Interior Committee bill on right-of-way modifications and those reasonable amendments and substitutes which called for pipeline construction at the earliest possible date. Although it required Vice President Agnew to break a tie vote, the Senate approved the Gravel-Stevens amendment just prior to the final vote on the Committee bill that mandates construction of the pipeline. An amendment urging study of an alternate pipeline route through Canada was decisively defeated earlier.

If construction begins shortly, Alaskan oil could provide an additional 2 million barrels—more than 80 million gallons—of oil daily by 1980 for U.S. consumers.

While we often hear of possible gasoline shortages, this problem also relates to fuel oil and natural gas for home and commercial use and the overall energy problem.

It is understood that more than 6 million barrels of oil are imported each day to help meet current demands. Alaskan oil, however, would reduce U.S. import requirements by 1980 by almost 20 percent. In addition, our balance of payments deficit, at current world prices, would be reduced annually by more than $2 billion. The Committee Report pointed out that nearly 10 billion barrels of oil were discovered on the North Slope of Alaska in 1968, and these vast reserves (including many trillion cubic feet of natural gas) are yet untapped. A pipeline to transport this oil has been planned and studied for more than four years, and it's my understanding that stringent environmental and technological controls have been assured to cover construction and operation activity.

Everyone is interested in a clean environment and a desire to reduce pollution of our air and water. Nevertheless, it seems to me that our efforts should be reasonable and that our actions should not materially reduce our standard of living. I am also concerned about our dependence upon oil and other sources of energy from outside the country which might be cut off by unfriendly nations and plan to continue to vote in favor of the development of our oil, gas, coal, water power, nuclear, solar and other resources in every reasonable way. To do otherwise would jeopardize our country's defense in time of war and our standard of living at all times.

MINIMUM WAGE BILL

The Senate passed a minimum wage bill (S. 1861) on July 19th providing for increased minimum wages for workers throughout the United States. Under the new proposal, minimum wages would be increased from $1.60 per hour to $2.00 per hour for the year following the date of enactment and $2.20 per hour thereafter. The minimum wage for agricultural workers would be increased from $1.30 per hour to $1.60 for the year after the bill is enacted, $1.80 during the second year from this date, $2.00 during the third year and $2.20 an hour thereafter.

Prior to agreeing to S. 1861, the Senate defeated alternative proposals that would have provided increases in the minimum wages over a period of time with lower rates of pay per hour, and others that would have accommodated special employment problems among the youth. I introduced an amendment that would have permitted employers to hire older Americans, those 65 years of age and older, at 85% of the generally prevailing minimum wage. My amendment was not agreed to by the Senate but you can obtain a copy of my remarks upon request.

I have reservations regarding any national minimum wage because economic conditions, age groups, and social situations vary throughout the United States. Certainly, the plight of our older Americans in trying to find meaningful employment in an environment where the government forces employers to pay everyone the same minimum is a case in point.

Although the Senate bill will now go to a Conference Committee with the House, there are clear indications that President Nixon will veto the bill finally agreed upon because he considers it inflationary. Judging from the 64–33 vote in the Senate, there seems every likelihood his veto will be sustained.

NEWSPAPER COLUMN

Approximately fifty of our Virginia newspapers have expressed an interest in receiving a regular report on activities in Washington, and I plan to submit such a column to them twice a month, with the first report being prepared shortly after Congress returns from the summer recess.

CONSTITUENT VISITORS

Constituents from throughout the State have visited the office during the summer months to obtain passes to the Senate gallery or information about sights to see in the Washington area. Among those visiting since the last newsletter were the following: David Schumacher, Portsmouth; Mrs. Carl A. Serger, Hampton; Mr. and Mrs. Robert Winston, Norton; Andre Mailliez, Louisa; J. L. Yearout, Waynesboro; J. Taylor, Fredericksburg; Andrea Katz, Norfolk; Geneva P. White, Martinsville; W. A. Herrick, Virginia Beach; James P. Saunders, Roanoke; Eleanor O. Haskins, Chatham; John D. Neff, Staunton; F. William Thomas, Bristol; and E. R. Varyo, Richmond.

LAND USE PLAN

The Senate has passed and the House of Representatives has under consideration a national land use plan. Under the proposal, there would be a new federal office created within the Department of the Interior to which states would submit plans for use of land within the states. These plans would be developed and, if approved, Federal funds would be made available to assist the states and localities for planning and zoning of all property within the respective states.

While the more than a billion dollars which would be provided states and localities by the Federal Government under the Senate bill is very tempting, planning and zoning of private property in the past has been regarded as a state and local matter over which the Federal Government has had no jurisdiction.

I am always concerned about the Federal Government invading a field previously reserved for state and local governments. This can result in the states becoming subservient and the Federal funds being used as carrots to bring about conformity to Federal requirements.

Private ownership of land is highly regarded in our country but we must of necessity submit to reasonable control over its use by our local planning and zoning boards. Master plans often result in areas being set aside for parks, for residential development, for commercial use, for industrial uses and other purposes. A well conceived master plan is generally in the public interest. However, this measure went so far and the Senate version was so detailed that plans submitted to the Federal Government which would include specifications for septic tanks.

I personally do not feel that the creation of any new Federal office with authorization to spend more than a billion dollars to provide supervision over the use to be made of private property within the various states and localities is a wise use of Federal funds and, therefore, opposed the bill. Copies of my remarks on the Senate floor are available upon request.

STUDENT AID

Our office has examined various programs to provide financial aid to students planning to attend college. In the event you would like to have a copy of this pamphlet, please let us know and we will be glad to make one available to you.

WAR POWERS BILL

Both Houses of Congress have considered legislation to distinguish between the powers of the President and the Congress to declare or to wage war. The so-called War Powers Act would make rules governing the use of the armed forces of the United States in the absence of a declaration of war by the Congress. Under the measure the President would be authorized to repel an armed attack or to forestall the threat of such an attack or to forestall the threat of such an attack upon our country, its territories or possessions, or our armed forces outside of the country. He would also have power to protect our citizens anywhere in the world. The Senate version provides that the Presidential authority would lapse within a period of 30 days unless he reported to the Congress and obtained specific Congressional authority to continue hostilities, and that the Congress could by a Joint Resolution terminate his activities within a lesser period of time. The bill, however, would not apply to hostilities in which the armed forces of our country are involved on the effective date of the act. Some opponents feel that the measure should not have been reported by the Committee on Foreign Affairs without consideration of the Armed Services Committee. While the final form of the measure will be determined in a conference between the House and Senate, there is likelihood of a Presidential veto. In such an event the 244–170 vote in the House indicates that that body would not over-ride a Presidential veto.

AGRICULTURE BULLETINS

Our office has a large quota of Agricultural Bulletins, some of which are listed below. If you are interested in receiving any of these publications, please let us know and copies will be forwarded to you:

"Food for the Young Couple."

"A Guide to Budgeting for the Retired Couple."

"Better Lawns."

"Pruning Ornamental Shrubs and Vines."

"Spring Flowering Bulbs."

"The Tomato Fruitworm . . . How to Control It."

"Money Saving Main Dishes."

"Family Food Budgeting . . . For Good Meals and Good Nutrition."

"Exterior Painting."

"Simple Plumbing Repairs for the Home and Farmstead."

PRAYER

The CONGRESSIONAL RECORD each day includes an account of all activities in both the House and the Senate. I especially enjoyed reading the opening prayer offered by the House Chaplain, Dr. Edward G. Latch, last Tuesday, and I would like to share a portion of it with you:

"If any of you lack wisdom, let him ask of God, who giveth to all men liberally and without reproaching; and it will be given him.—James 1:5.

"Lift us out of the ruts of self-righteousness and self-satisfaction. Help us to hear the music of the spheres, the song of life, and to listen once again to Thy call to all mankind—by faith to walk humbly with Thee and to live with one another in the spirit of good will.

"We pray for our country. Free our leaders and our people from all bigotry and all bitterness and give to us all large minds and great hearts that by giving our allegiance first to Thee we may reap the harvest of a common brotherhood."

BEEF SHORTAGE AHEAD?

Mr. HANSEN. Mr. President, I have written Mr. John Dunlop, Chairman of the Cost of Living Council, urging that the ceiling on meat prices be lifted before the September 12 date recently designated by the President. I hope my request will be considered, for the sake of consumers and beef producers, alike.

It is abundantly clear to consumers shopping today for eggs, milk, pork, and chicken, what happens to the supply when a freeze or ceiling is imposed under demand-heavy conditions. Pork and chicken producers, unable to stand the cost of feeding their stock only to receive a price below their production costs, sold or slaughtered chickens and hogs. The result is a shortage of these products in the supermarkets today, and the guarantee of higher prices for the limited supply that is available.

The same situation prevails in the beef industry. When demand is exceeding the supply, the very worst strategy is to depress prices to producers, thus removing any incentive to increase production. A producer who knows he cannot receive a higher price to cover the higher costs of feed and production is not going to expand his herds. In the words of Secretary of Agriculture Earl Butz—

You don't get more by paying less.

What happened in the poultry and hog industries under the freeze should be a lesson to us, and it should be obvious that it makes no sense to force similar problems in the beef supply.

In addition to the beef producers who are hurt by the continuation of the price ceiling, the packers also are suffering the consequences of this policy. Producers and feeders are holding their stock from market, awaiting the lifting of the price ceiling. Packers are, as their association put it, "sitting on their hands" waiting for September 12 when they can again obtain animals for slaughter.

This situation will guarantee higher prices for beef after September 12. Removal of the beef price ceiling now would

go a long way toward encouraging an increased supply. Further, it would put packer employees back to work and minimize the severe dislocations in this phase of the industry.

Mr. President, I ask unanimous consent that a letter from the National Independent Meat Packers Association be printed in the RECORD at the conclusion of my remarks.

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

JULY 21, 1973.

Hon. CLIFFORD P. HANSEN,
U.S. Senate,
Washington, D.C.:

At 4:30 p.m. on July 18, the beef industry was further strangled by the Cost of Living Council. The deed could not have been more effective if phase IV had declared a complete shutdown of the beef packing industry.

Locked in with ceilings below cost, beef packers must sit on their hands, with empty plants and wait for ceilings to be removed on September 12 before they can get cattle to process for the dinner table.

The 111-day meat price freeze virtually destroyed the pork industry. The next 55 days will remove beef from the marketplace. The lighter weight cattle marketed since winter can be withheld from the market and fed to heavier weights while awaiting higher prices on September 12.

The price increase bubble will be minimized if beef price ceilings are removed today. A delay to September 12 will cause higher prices and bankrupt many beef packers who cannot withstand the additional losses. In addition, thousands of employees will be idled while packers await cattle marketings in September.

Your assistance in getting beef ceiling prices removed is urgently requested. Removal of ceiling prices today will assure beef on the table and at more reasonable prices.

Very truly yours,

JOHN G. MOHAY,
Executive Vice President, National Independent Meat Packers Assn.

STATUS OF 701 COMPREHENSIVE PLANNING FUNDS

Mr. MOSS. Mr. President, in recent weeks considerable concern has been generated in Utah, as well as across the Nation, over the status of 701 comprehensive planning funds as provided in H.R. 8825.

A brief history of this legislation indicates that on June 22, 1973, the House of Representatives voted to accept the House Appropriations Committee recommendation of $25 million for 701 moneys. On June 28, 1973, the Senate Appropriations Committee recommended full funding of $110 million for 701 comprehensive planning as provided in House Joint Resolution 512 which was passed overwhelmingly by the Senate last Friday. The Senate voted to accept the Senate Appropriations Committee report on June 30, 1973. The Senate conferees have been designated to settle the differences between the Senate version and House version. As yet, no conferees have been designated in the House.

I wish to indicate my complete support for full funding of the many worthy programs initiated by 701 planning moneys. These funds are a proven success in assisting State and local governments solve many planning problems. They provide an important coordinating function for federally supported planning activities.

Recently I received two letters that express rather well the accomplishments of 701 comprehensive planning funds in Utah. One is from Mr. Albert L. Bott, executive director, Wasatch Front Regional Council, which represents the five counties of Salt Lake, Weber, Tooele, Morgan, and Davis. The second letter is from Mayor Bart Wolthuis of Ogden, Utah.

Mr. President, because of the appropriateness of these letters to the 701 funding issue, and due to the substantiating material that is provided on the proven accomplishments of these funds, I ask unanimous consent that they be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

WASATCH FRONT REGIONAL COUNCIL,
Farmington, Utah, July 18, 1973.

Senator FRANK MOSS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MOSS: Thank you for your request to provide you with more detailed information on the accomplishments we have made with 701 funds. This letter will not only describe the success the Wasatch Front Regional Council is enjoying, as a result of the 701 program, but it will also mention some of the plans and programs our local governments have enjoyed.

First, let me describe to you some of the compelling reasons why the WFRC is particularly concerned about the continuation of 701 funds. Perhaps the most important reason for our concern is the fact that the 701 monies received by the Regional Council are almost entirely responsible for our coordinated Land Use Planning Program. We have been able to inventory the whole region in a variety of planning areas, which will set the stage for our master planning in the years ahead. We have completed the master plans of the 5 counties within our region and have made some projections, both graphically and quantitatively of their growth patterns to the year 1985. Rather dramatic conflicts in land use development patterns are apparent. We hope to alleviate these problems through our planning activities. Part of our 701 program for the coming year will be the development of Alternative Regional Growth Patterns to be adopted by all the elected officials in the five counties. This plan adoption by the elected officials from all the incorporated areas in our region will greatly insure the success of the plan implementation.

We have a technical committee (Tech Com) composed of the Planning Directors of the 5 counties in our region, plus the Salt Lake City Planning Director, who meet together regularly to monitor our planning efforts and to add comments where needed. This cooperation of the top planning professionals in our region working toward an equitable regional plan is a direct result of the 701 program.

Perhaps the greatest assist 701 planning has been to regions and local governments alike, has been its extraordinary flexibility. Through it many planning techniques have been developed which have shaped growth patterns of cities, counties, and states all over the country. This single source of funding has been instrumental in developing the coordinative management framework which is presently aiding cities, counties, and regions to better serve the general public. It has been and continues to be one of the great innovative devices in Federal funding. It is now serving as a glue mechanism via the regional council for coordinating the many local plans in the Salt Lake-Ogden SMSA. (The new Salt Lake-Ogden SMSA was created in April of this year by OMB.)

I will now more specifically list some of the accomplishments of the 701 program over the last 12 years. 701 funds were utilized in the development of culinary water, storm water, and sanitary sewer Master Plans in all 5 counties of the WFRC. Comprehensive master plans have been developed for all five counties, and many of the cities within the counties. Recreation and open space master plans have been developed by Salt Lake and Weber Counties in the last two years. Citizen participation in the planning process has been almost exclusively the result of the 701 program. A variety of more detailed specific task oriented master plans have also been accomplished, i.e. Jordan River Parkway, Weber River Parkway, Cottonwood Planning District, revitalization studies of small city CBD's, Little Cottonwood Canyon Master Plan, etc.

Now, I would like to make some comments concerning the reasoning behind the cuts made by the House Appropriations Committee and endorsed by the full body of the House in a relatively narrow vote on Friday, June 22. My remarks are based on a review of the transcribed comments in the Congressional Record (20975–20980, June 22, pages sional Record (June 22, pages 20975–20980). It appears thus far that the 701 program has been a battle of the budget. While reducing the 701 appropriations by $85 million, the House increased the other categorical programs which the President had recommended be cut in anticipation of the Administration's Better Communities Act. It appears that the House would like to continue the categorical grant concept at least until the Better Communities Act has been reviewed and amended.

Another major consideration that appeared in the debate on the floor seemed to be that the Administration's Responsive Government Act will pick up the slack in the 701 program. This act, of course, has not yet been introduced, and will probably meet with prolonged discussion in both House and Senate. It would seem that the full 701 fund appropriation could be used until such time as the R.G.A. is passed or until the R.G.A. is amended to allow 701 funds to continues.

The House also appears to believe that 701 funds in the "pipe-line" are sufficient to handle the next fiscal year's planning demands. However, it should be pointed out that the rate of expenditure formula used in the House Appropriations Committee may have been somewhat premature and did not reflect the true expenditures for the fiscal year; in that a great majority of 701 expenditures come during the last few months of the fiscal year, and are very frequently extended into the next fiscal year.

To summarize, the Wasatch Front Regional Council feels very strongly that the 701 Program should be continued to enable cities, counties, and regional councils to develop and improve their planning practices, and provide a better land management capability.

We appreciate your interest and response to our requests, and hope that we can continue to provide you with comments and information from the regional and local level. May we cordially invite you to attend any of our regional council meetings, should you be in town.

Sincerely,

ALBERT L. BOTT,
Executive Director.

CITY OF OGDEN, UTAH,
July 2, 1973.

Hon. FRANK E. MOSS,
U.S Senator,
Washington, D.C.

DEAR TED: I am writing to express our city's concern over the present status of the 701 Comprehensive Planning funds. I understand

that the Senate Appropriations Committee has decided to affirm the Administration's request and to stabilize the funding at $110 million, rather than accede to the House Appropriations Committee's $85 million reduction.

Our concern is not unfounded; these monies have been most necessary and useful to the development presently experienced in Ogden City. Briefly, let me outline the general activity that this federal assistance has made possible:

A. The Ogden Redevelopment Agency, once on the verge of floundering has been completely reorganized under the 701 Program and is now actively accomplishing its goals of renewing individual units and entire neighborhoods.

B. Our Central Business District Development Plan, which has consisted only of talk during the past 10 years, has become a reality with the signing of a contract for construction of a downtown mall-type shopping center about to take place.

C. The Ogden Housing Authority, under a 1970 contract for establishment of 250 dwelling units, has now come within 52 units of its goal. But 500 additional Ogden families are still waiting for decent housing which they can reasonably afford.

D. During the past year, two sets of graduate interns have assisted in the preparation of vital studies which otherwise would not have been completed with the city's small administrative staff. The mutually beneficial experience gained by these students has been a key qualification in their successful searches for placement in meaningful municipal jobs throughout the country.

E. Other important items that have been advanced due to the use of the federal assistance are detailed in the appendix.

I strongly urge the maintenance of the $110 million appropriation, because of the profound impact that the 701 Program has had and will continue to have upon our community. A compromise of this position would certainly not be in the best interests of this country's local governments.

Sincerely,

BART WOLTHUIS,
Mayor.

SENATOR BAKER'S REASON FOR OPPOSING THE WAR POWERS ACT

Mr. BAKER. Mr. President, last Friday, the Senate overwhelmingly passed a measure intended to redress the serious imbalance of power between the executive and legislative branches of Government with regard to the use of the Armed Forces of the United States in the absence of a declaration of war. Although I was a cosponsor of that measure and believe strongly in the need for the Congress to reassert its constitutional prerogatives in this regard, I voted against final passage of the bill.

I did so for a very simple reason. Whereas the Constitution does not clearly distinguish between the President's power as Commander in Chief to involve U.S. forces in hostilities abroad and the Congress' power to raise and support the Armed Forces and to declare war, it does distinguish between which of the branches of Government is responsible for repelling invasions or attacks upon the United States, its territories and possessions. Article 4, section 4: states:

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against invasion.

The responsibility for that protection does not rest with 535 Members of Congress, but rather with the President of the United States.

Section 2 of the war powers bill states:

This Act is not intended to encroach upon the recognized powers of the President . . . to respond to attacks or the imminent threat of attacks upon the United States, including its territories and possessions, . . .

And yet, the bill requires the President to terminate all efforts to defend the Nation unless specifically authorized by Congress within 30 days.

I do not question the ability of any President to gain the approval of Congress for defending this country against invasion or attack. Nor do I question the motives of the authors of the bill, for I was a cosponsor of the measure. But rather, I question the constitutionality of that portion of the bill which requires congressional authorization for defense against invasion.

In today's climate and against the background of my concern for the diminishing authority of Congress, especially the Senate in the field of foreign affairs, my vote against this bill may be neither understood nor popular; however, the requirements of the Constitution are paramount and legislative endeavor in relation thereto must not respond to popularity. I hope for an opportunity to support a war powers measure. I feel that the need for statutory elaboration on the constitutional authority of the Congress vis-a-vis the President is great, and so it is that I reluctantly voted against this measure.

GOVERNOR ASKEW DISCUSSES EDUCATION NEEDS

Mr. MONDALE. Mr. President, recently the Education Commission of the States held its annual meeting in my own State of Minnesota. At that meeting, Gov. Reubin Askew of Florida assumed the chairmanship of this highly important commission.

I had an opportunity to review the text of the speech the Governor presented to the annual meeting. In it he reviewed the problems and challenges facing our schools and pointed to some of the promising movement his own State of Florida has made toward equalizing educational opportunities and educational resources among the school districts.

Governor Askew's remarks are thoughtful and challenging. In order that they may be available to my colleagues and to the public, I ask unanimous consent that they be printed at the end of my remarks.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

REMARKS OF REUBIN O'D. ASKEW

Nearly a decade ago, Dr. James Conant provided the vision and Terry Sanford furnished the leadership that gave birth to the Education Commission of the States.

The brilliant educator from Harvard and the most able Governor from North Carolina recognized that the Commission's tasks would not be easy and its challenges would not be small.

Yet I doubt that Dr. Conant, Governor Sanford, or any of the other leaders who helped launch E.C.S., could foresee the role thrust upon us in the decade of the 70's.

For events have brought us to a turning point in the history of our Federal system, and we face today both the challenge and the opportunity of helping the States and local school districts to reassume their rightful roles in educational policy-making.

Court decisions, the concept of revenue sharing and, unfortunately, the present leadership crisis in Washington are challenging the States to reassert leadership in education, as well as in other areas of government.

As a Governor, and as your new chairman, I welcome the challenge and I see as E.C.S.'s primary charge the responsibility to help demonstrate the viability of the States in one of government's most important functions.

History has taught us that our people will turn to the Federal Government if there is a leadership vacuum in their statehouses.

I am a firm believer in the principle that government closest to the people can be both more responsive and more efficient, and I can think of no better way to prove it than in the education of our children.

Many politicians, speakers, writers and scholars have filled many volumes over the years with words on the importance of education to a free society.

But Thomas Jefferson, who said so much so well, probably put it best.

"If a nation expects to be ignorant and free," said Jefferson, "it expects what never was and never will be."

As a politician, I know the value, indeed the necessity, of educating all of the American people.

I know that ignorance is the midwife of demagoguery and oppression; that a man or woman's vote can never be as meaningful as it should be if there's no sound basis for using it; and that there's no politician, no lobbyist and no image-maker so clever that he can turn truly informed people against themselves.

I know that education has indeed been the best hope for certain children to escape the cycle of poverty and fear in this country . . . certainly I could not be standing before you today, as your chairman, without the benefit of a public education.

I know, in short, that the education of the people is a guardian of our freedom, and the master key to our future.

I also know that education, as envisioned by Jefferson and others, has been in serious trouble in recent times, public support no longer can be taken for granted.

Seven years ago, 61 percent of the people questioned in a Harris poll expressed confidence in their system of public education. Five years later, however, in 1971, the confidence figure had dropped to 37 percent of those questioned.

According to a new H.E.W. report, more than half of the school bond issues presented to voters around this Nation in fiscal 1972 were defeated. This change of attitude also has been reflected in the withdrawal of thousands of children from our public schools, and in the hostility with which many citizens have regarded anyone connected with public education.

Parents have been upset by discipline problems, by what they perceive to be lack of achievement by their children, and by what appears to them to be an educational system less and less concerned with either the problems of making a living or making a life.

It's not difficult to understand why this has happened.

For at least ten years now, we have placed on the shoulders of our public schools almost alone tremendous social, political and economic burdens . . . burdens that should be borne by the total community, not just the schools, not just the courts, not any one element of our society. Regardless of what that element might be.

We've asked public schools, in far too

many cases, to act as parents as well as instructors . . . and we've been angered by their inability to do so.

We've too often tolerated waste, inefficiency and executive featherbedding in public education, while continuing to ask for more taxes that do less.

And we've not been receptive to the more creative and independent of our educators, but have often allowed them to be penalized for pointing out problems.

But, worst of all, we've allowed our public schools to be effectively isolated from the people, often limiting citizen involvement to the raising of funds for painting the teachers' lounge or to the setting of dates for a cookie sale.

It's no wonder, then, that education has come upon difficult times.

But no one ever said that education was going to be easy.

And I rise on behalf of education today, not as a prophet of doom, but rather as an apostle of hope.

For I see good tidings in recent developments in Florida and other states around this Nation. I see a deeper understanding of the problems of education in many of our legislatures, and a determination to do something about them.

No other single organization is as uniquely qualified and well equipped to help them, as is our education commission of the states. We have within our membership, our staff and our budget the strength to help education fulfill its promise in this great democracy of ours.

We can begin by insisting that all segments of a community, both public and private, carry their share of that community's social, political, economic and cultural burdens.

And if the time has come to involve the community in its own problems, it's also time to involve the community in the school system's problems.

I suggest that we encourage parents and other citizens to participate constructively, and to use their varied talents to help us solve some of the weightier problems of the individual school and the individual school system.

In Florida, we are establishing in each school district advisory committees whose membership will include parents, students and others broadly representative of the individual community.

These committees will involve lay citizens in the planning and evaluation of our schools at every level.

Their creation is part of a quiet revolution Florida is experiencing in the financing and running of our public schools.

Using the recommendations of a statewide governor's citizens committee on education as its guide, the Florida legislature recently enacted bills that will:

Accelerate the shift of a major portion of the financial burden of education from the local level to the state level.

Equalize to a substantial degree the educational opportunities available to all children, regardless of where in Florida they happen to live.

Free local school districts to spend school dollars with the kind of flexibility that encourages innovation and creativity.

And place with each district and each school the kind of accountability that will make our education system more responsive to the real needs of our people.

These are but a few of the things we are attempting to do in Florida. I am particularly proud that our State is continuing to lead the way toward equalization.

We are demonstrating our commitment to take on a greater share of the financial burden of education at the State level to insure equal opportunities for all children throughout our State.

Under the program I signed into law earlier this week, Florida will achieve 91 percent equalization of funds between our richest and poorest school districts.

We intend to continue this effort in Florida, regardless of court rulings, because we think it is right.

While I naturally take considerable pride in what we have accomplished in Florida, I'm equally encouraged by the educational progress that other States are now making.

All these efforts are designed to restore public confidence in our schools, and E.C.S. provides the needed vehicle through which we can share our successes and learn from our failures.

E.C.S. also provides a forum in which State political and educational leaders can thrash out our policy differences and through which we can speak with a common purpose to the Federal Government in Washington.

This is especially important at a time when the Federal Government appears ready to return educational prerogatives to the individual States. And at a time when the Congress is reemerging as a co-equal in our three branches of Government and is beginning to reassert its proper initiative in the policies of our Nation.

From all indications, Congress is not going to pass the President's special education revenue sharing program this year.

Instead Congressmen probably will be seeking to work out their own plan for the revitalization of elementary and secondary education. We must be ready to help them, and to speak with a unified voice for policies representative of our States and our people.

And we must demonstrate that we, too, are prepared to assume our proper role and responsibilities in our Federal system.

We must demonstrate our willingness to reexamine our own tax structures and to require every person and every interest to pay, to the best of their ability, their fair share.

We must convince our people that tax reform is the only appropriate means to tax relief. This means closing exemptions in local property taxes, as well as plugging loopholes in State taxes.

And it means requiring fair, realistic and uniform property assessments within our States.

Elimination of inequities in our tax systems will enable us to tackle the even more difficult task of conquering the inequities in our society.

In our land, education has always been recognized as a means for man to reach for the ideal and to share his own destiny.

In our democratic society, the destiny of the individual must necessarily be the destiny of the Nation. We can only be strong as a nation if we are strong as individuals.

We must therefore direct education toward the individual.

Education must provide the relevant knowledge and training to earn a living, and to live a satisfying and productive life in an increasingly complex world. Our academic and vocational programs, at all levels of our education system, must have as their common goal the preparation of the young for a lifelong love of learning, living and self-realization.

Our funding programs must be designed to make equal and quality educational opportunities available to all our people according to their ability and desire rather than their wealth, their race or place of residence.

Our education programs must be designed to give local school districts, and even local schools, maximum freedom and flexibility in deciding how to best meet the broad goals of state and federal governments.

Beyond high school, our public and private educational opportunities must be less duplicative and more diverse to help meet the demands of a highly technical and fast-changing world.

Our educational goal is not to achieve uniformity but, rather, to fully utilize the rich diversity of our pluralistic society.

Anatole France once said that "to accomplish great things, we must not only act, but also dream; not only plan, but also believe; not only follow, but also lead."

My hope for this commission is that we will continue to plan and dream and believe not only in our own states and nation, but in our people, and in their ability to make things better.

And my prayer is that we will act, individually and collectively, to make the best of our dreams and plans come true for all people, for all time.

Thank you.

THE AMERICAN HORTICULTURAL SOCIETY

Mr. BAKER. Mr. President, as a member of the Board of Directors of the American Horticultural Society, I would like to take this opportunity to call to the attention of my colleagues in the Senate the acquisition of the Society's new headquarters at the historic River Farm Estate in Mount Vernon, Va.

The American Horticultural Society, which was founded in 1922 to promote and expand interest in the horticultural sciences, is the one national organization that serves the interests of all American horticulture.

In February, 1973, the Society was extremely fortunate in acquiring for its permanent home the River Farm Estate located on the George Washington Parkway about 30 minutes from the Capitol and 5 miles from Mount Vernon. This beautiful and historic property of 27 acres, with over 1,000 feet bordering on the Potomac, was purchased by George Washington in 1757 and remained in his family for over a century. This same property received a good deal of publicity about 2 years ago when the Soviet Government attempted to purchase it as a retreat for embassy personnel. Public protest was so intense that it was necessary for Congress to pass a special act declaring the property a national heritage and refusing approval of the transaction.

The American Horticultural Society is establishing River Farm as a National Center for American Horticulture, where all scientific, professional and amateur horticultural organizations who wish to do so can be sheltered under one roof. Coordinating operations and sharing expenses among member societies will reduce operating costs and permit additional funds to be applied to more productive purposes. This centralized national headquarters will give a public impact, force and focus to the values of horticulture that has to date been unattained in this country.

The acquisition of River Farm has enabled the American Horticultural Society to move its computerized Plant Records Center, the only plant science information center in the world, onto the premises. The center, established under a grant from the Longwood Foundation, is developing a data bank on all cultivated ornamental plants in North America and has, at present, over 300,000 plants on record.

Recently, this resource capability attracted a grant from the Department of

Transportation to help plan a practical program to help eliminate the traditional squalor associated with most surface transportation facilities. The Society determined from its computers which trees, shrubs, and ground covers can best survive air pollution and other stresses of the urban environment in each of 10 hardiness zones of the United States. The Society is the only organization that has this information on record for every climate in the country.

The Department of Health, Education and Welfare is also helping support a multidisciplinary effort of the American Horticultural Society to determine the means by which the role of horticulture in environmental education can be used most effectively.

In addition, thanks to a private grant, the society is researching the interaction between plants and people and the impact on emotional and psychological well-being. Studies have shown that when a human being is under stress, it appears that the presence of plants and the opportunity for close association with them can exert a beneficial psychological effect. Subtle man-plant relationships become obvious in the extreme urban environment where field and forest have been replaced by asphalt and brick. The rewards of horticultural therapy have been demonstrated in correctional institutions, mental hospitals, in homes for the elderly and in the ghetto. The summer edition of the society's magazine, The American Horticulturist, has a fascinating article on this subject.

All of the activities of the American Horticultural Society are interrelated. Together they form a background of experience and information for the establishment at River Farm of a teaching center for research and instruction in the esthetic, medical, psychological and scientific application of horticulture in the human urban habitat.

For the general public, the society is now making plans to make River Farm the center of extensive display and demonstration gardens—some established by the National Plant Societies—where visitors can be shown how their own homes may be landscaped to achieve individuality and beauty.

In addition, it is hoped that River Farm will house one of the major horticultural libraries in the country. The Society is already the recipient of an important collection of books to this end. Presently, no such library exists in the Washington area.

Mr. President, River Farm represents an opportunity to preserve an historic heritage, to establish a national center dealing with one of the most important components of the urban environmental crisis, and to create an American Horticultural Headquarters unlike any other in the world.

The Society, which enjoys non-profit status, is seeking substantial contributions to realize the goals I have described, and to secure the perpetuation of this national landmark in a manner appropriate to its distinguished heritage. Its membership is growing at a staggering rate. In just 2 years, individual membership has increased from 2,500 to over 20,000 members. The American Horticultural Society is also a part of a federation of other horticultural organizations, and thus it speaks to about 70,000 persons in all 50 States.

The goal of the American Horticultural Society is simple. It wishes to maintain a living landscape for the enjoyment of future generations, and it is approaching environmental problems on many fronts in a scientific, dynamic and business-like way.

I am proud of my association with the Society, and I'm delighted to offer my congratulations upon the acquisition of the beautiful and historic River Farm headquarters.

NEW MELONES DAM

Mr. TUNNEY. Mr. President, I have long been concerned with the various ramifications of the New Melones Dam to be constructed on the Stanislaus River.

Although I want to see effective measures taken to protect against the ravages of flood in the region, I have long believed that not enough attention was given by the Army Corps of Engineers originally to spell out the specific plans to mitigate the anticipated environmental and recreational consequences of this project, and Congressman JOHN MCFALL and I have sinced worked with the corps to try to rectify that shortcoming.

I would like to bring to the attention of my colleagues several significant developments which have taken place in the past year affecting this project. First, various environmental groups have obtained an injunction temporarily prohibiting any further construction on the dam. The U.S. District Court in San Francisco heard the case and handed down a decision earlier this year, and the case was promptly appealed to the Ninth Circuit Court of Appeals where the matter currently resides.

In addition, on April 5 of this year, the California Water Resources Board unanimously decreed that the impoundment of the three-fourths of the water sought by the Bureau of Reclamation should be denied. The Board found that:

First, the Bureau of Reclamation could not currently utilize the project water in a beneficial manner beyond the four counties surrounding the project;

Second, the current use of the river between camp 9 and Highway 49 is "a unique asset to the State and the Nation;"

Third, some water is needed for fish, wildlife, and water quality, and water can be stored for these purposes; and

Fourth, the value currently available which would be available from hydroelectric power. For these reasons, the Board decreed that the reservoir could not be filled beyond 650,000 acre-feet—approximately one-fourth full, and thus all the waters stored would be dedicated to fish releases and water quality. The legal status of this order of a State agency upon a Federal Agency is not certain at this time.

These developments have affected the appropriations recommendations for fiscal year 1975. The administration originally recommended $18 million for this fiscal year for the construction of this project, and the House reduced that figure to $16 million. The Senate committee has further reduced the recommended appropriation to $15 million in accordance with the revised corps capability in light of the continued halt in construction pending the outcome of the ninth circuit decision. It is possible of course, that even that decision will be appealed to the Supreme Court and no construction will take place at all during this fiscal year.

Regardless of the outcome of these developments, we have continued to press for mitigation of the environmental impact of the Dam. In a number of letters to Col. James C. Donovan, we sought the following minimum guarantees from the Corps:

First. Provision of a white water recreation area between Goodwin's Dam and Knight's Ferry—or some other more desirable location—to allow a white water recreation to those who presently use the area which would be inundated by the new Dam;

Second. Acquisition of flowage easements for downstream areas to accommodate an 8,000 cubic feet per second non-damaging flow and at the same time provide absolute guarantees for perpetual preservation of 4,000 to 8,000 acres of prime riparian habitat from Goodwin Dam to the San Joaquin River;

Third. Acquisition of lands in fee to provide recreational access to the river from Knight's Ferry to the San Joaquin River;

Fourth. Acquisition in fee of the prime spawning gravels for the preservation an enhancement of anadromous fishery resources of the Stanislaus River; and

Fifth. Acquisition under the corps' recreational authority of the desirable caves in the immediate vicinity of the proposed lake either for preservation or for inclusion in the corps recreational master plan.

In response to that request, Colonel Donovan promised in a letter of September 5, 1972 that "firm decisions have been made" under the authorizing legislation to:

Provide a white water recreation area between Goodwin Dam and Knight's Ferry;

Acquire flowage easements over downstream areas to accommodate an 8,000 cubic feet per second non-damaging flow and at the same time preserve some 3,000 acres of prime riparian habitat;

Acquire lands and fee for recreational access to the river from Knight's Ferry to the San Joaquin River;

Acquire in fee the prime spawning gravels for the preservation and enhancement of the anadromous fishery resources of the Stanislaus;

Acquire under the corps' recreational authority the desirable caves in the immediate vicinity of the lake either for preservation or for inclusion in the corps' recreational master plan.

He further advised that "these decisions are firm commitments and are considered definite, consistent with the project authorization and subject only to the appropriations of funds by the Congress and refinement of functional and design details."

Subsequent communications with Col-

onel Rockwell—Colonel Donovan's successor—have assured me that the corps fully intends to utilize a portion of the appropriations in the pending legislation for downstream land acquisition in pursuance of the aforementioned promise. These efforts merit the highest priority of the corps on this project. I intend to monitor the corps progress in following through on these commitments in the coming fiscal year.

COMMUNITY DEVELOPMENT PROGRAMS

Mr. TOWER. Mr. President, in early March of last year, the Senate passed, after but 1 day's debate, the Housing and Urban Development Act of 1972, an omnibus bill of considerable breadth, one provision of which would have replaced the current community development categorical grant programs with an improved and simplied special revenue sharing procedure. Unfortunately, though boasting an 80-to-1 vote of approval by this body, the legislation failed of final enactment due to certain problems encountered in the House of Representatives.

Since the Senate action of last year, I have on numerous occasions visited with individuals and groups who have expressed special interest in the community development proposals—mayors, renewal officials, private citizens. Repeated inquiries and requests have reached my office urging that the revenue sharing approach be revived at the earliest possible moment. I am pleased that the enabling legislation has again been introduced on both sides of the Hill and that the Housing Subcommittee of the Senate's Committee on Banking, Housing and Urban Affairs is currently conducting public hearings for the purpose of examining the various proposals.

On Monday, July 16, HUD Secretary James T. Lynn appeared before the Housing Subcommittee as leadoff witness for the hearings and reiterated administration support for the realinement of HUD Community Development programs. Today, before the National Urban League, Secretary Lynn forcefully underscored that support and the need for early congressional action.

Mr. President, I associate myself with the remarks delivered today by Secretary Lynn, and ask unanimous consent that the text of his address be printed in the RECORD.

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

REMARKS BY JAMES T. LYNN, SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AT THE NATIONAL URBAN LEAGUE

In the first part of my talk today, I would like to focus on a form of discrimination against a minority group we don't ordinarily think about.

But first, let me set the stage with a few illuminating facts and figures.

With only five percent of the world's population, and about seven percent of its land area, the United States produces more than one-third of the entire world's output of goods and services.

Our annual gross national product is double that of our nearest competitor, the Soviet Union. Our annual exports *alone*—while only four percent of our gross national production—exceed the annual total gross national products of all but nine nations.

Real growth in our economy—not inflated, but real growth—was almost 48 billion dollars in 1972. That growth by itself—6.5 percent—equalled the combined gross national product of Norway, Sweden, Denmark, and the Netherlands. In fact, it was greater than the annual GNP of 90 percent of the countries in the world. Just our *increase* in output was greater than the national output of 90 percent of the world!

From August 1971, when President Nixon announced the new economic policy, to last month, our output increased by 11½ percent, a more rapid growth than in any comparable period in the last 21 years. In this period of 22 months, four and a half million new civilian jobs were created—more than in any comparable period in our entire history. In the last six months alone, 1.6 million jobs have been added.

In the same 22 months since August 1971, real per capita disposable income—the money that's left for spending after taxes and inflation have taken their bite—rose by 7½ percent. In the past year and a half alone, the average working man's annual income has gone up by the equivalent of four weeks' pay.

What has all this meant to our people? In constant 1971 dollars—that means even after taking out the effects of inflation—the number of families with seven to 15 thousand dollars in annual income almost doubled in the two decades since 1951. The number of families with 15 thousand dollars and over swelled from about four percent to almost 25 percent of the population during the same period.

At the same time, the number of minority American families living at the poverty level—also measured in constant dollars to filter out the effect of inflation—declined from almost one-half to less than one-third (33 percent). And the number of minority families making ten thousand dollars and over climbed from a minuscule level, 2½ percent, to 30 percent.

The housing picture reflected the same trend. In the single decade from 1960 to 1970, for example, the number of substandard housing units in the nation was cut in half.

Why do I recite that catalog of very substantial achievement? For a number of reasons.

First, because that kind of productivity and efficiency, the American system, is the only thing that can underwrite all we hope to do in solving the social problems of the United States.

Second, because all that good news is not without its somber side. The enormous head of steam our economy has built up—combined with various other factors—has led to prices rising at unacceptably high rates. That is why the President took the bold actions he put into effect in the middle of June, followed by Phase IV last week, to put a lid on the spiral without getting us into a permanently controlled economy. In addition, although the progress made is very good news, we are all well aware that not all Americans have shared equitably in the fruits of the American success story.

If we were a poor nation, or if the great majority of our people were existing at a bare subsistence level, our only problem would be to raise ourselves out of poverty collectively.

But our problem is different, the stark contrast between the growing number of beneficiaries of our economic system and those who have, in the main, been denied its bountiful benefits.

The fact is that in this affluent nation, the poor are in the minority.

Within this minority making up our poor are many who continue to be discriminated against in the pursuit of a better life by reason of the color of their skin or other senseless reasons. But a very large segment of our poor, whatever their race, are being discriminated against in a little discussed but nonetheless very devastating and cruel way—by the impact of inflation.

After all, those of middle and higher income may be annoyed and irritated—and rightfully so—that inflation nibbles away at their purchasing power. But as a Miamian was quoted in the New York Times of April 9th, "I'd rather pay $15 for a good steak than $5 for a mediocre one." Or, as reported in the same article, sales of fur coats were up 15 percent last year, with sales expected to increase sharply again this year. Or the sale of eight million color TV sets in 1972, up from 6.3 million in 1971.

The headline on that story read: "Many Finding Inflation No Bar to the Good Life."

But for the poor without decent jobs, for the elderly, for those struggling on small fixed incomes, whether from savings or welfare, inflation is no mere annoyance or irritant. For them, for those minorities, inflation hurts, and hurts badly.

An important way to put an end to this kind of cruel discrimination is, of course, to bring inflation under control, and that is why the President's Phase IV move is important.

But there's a great deal more to it than that. President Nixon, with his multi-faceted approach is attacking one of the root causes of inflation: unbridled public spending without a matching rise in revenues.

The real hoax—and the cruel illusion—is that so many of these increases in spending are *supposed* to benefit the poor. But the fact is that in far too many cases the spending programs involved don't get the job done. Either because too much of the money gets eaten up in administration of the program—by government bureaucrats or government-sponsored bureaucracies in the private sector—or because the particular program really doesn't get at the problems that should have higher priorities.

Does this mean that we are preparing to throw out the baby with the bathwater? Or to scrap all our social programs because they have not done everything we had hoped? Certainly not! After all, the Federal budget for human resources has grown steadily over the past four years, and for this year proposes a record level of funding for human resources programs. A figure of 125 billion dollars, in fact, which is almost double the amount spent on social programs in 1969.

To me, this demonstrates not only that we are not throwing out the baby, but also that we are trying hard to improve the lot of our less fortunate citizens.

Yet, the Federal Government, by its very nature and size, is an impersonal entity. It's tremendously difficult for a huge organizational structure to *show* that it cares—and, more importantly, to make that care *count* where the only meaningful payoff is: at the local scene.

That, fundamentally, is why the President and all of us in this Administration are betting so heavily on the New Federalism. The basic thrust of New Federalism is to push the power, the decisions, the authority and the money as far down the managerial pyramid as possible. In other words, to get the real business of the States and the cities and all other communities—which is the well-being of their people—conducted at their own levels. That is where the knowledge of what needs to be done is most germane; that is where the problems have to be lived with every day; that is where we most need the care and the concern.

The first step was general revenue sharing, which was enacted into law last year. The effect of that law is to send back to State and local governments 30 billion dollars over five years—to be spent in any way the local people, through their elected officials, see fit.

The next step is special revenue sharing, which would also send money back to the States and communities, but for four broadly specific purposes: education, law enforcement, manpower training, and community development. Within each of these areas, again, the money can be spent as locally elected and accountable officials see fit.

These four special revenue sharing proposals call for 6.9 billion dollars during the first year of operation. In community development, the amount is 2.3 billion dollars a year beginning July 1st, 1974. The Better Communities Act, containing this Community Development proposal, went to Capitol Hill about three months ago; hearings are now being held by the Housing and Urban Affairs Subcommittee of the Senate.

The 2.3 billion dollars will finance community development activities in lieu of seven HUD categorical programs; model cities, urban renewal, water and sewer grants and related programs. If the local communities determine that they want to spend their Better Communities money on those same things, they are free to do so—but it is *their* decision to make, based upon *their* on-the-spot knowledge of what they really need.

Or they can spend it on any other program or programs that fit within the broad meaning of community development.

The important thing is that the Better Communities Act would give cities, counties, and States far more flexibility in the financing of community development activities—with *local* determination as to how the money is used. And lest you think a motive was to reduce the budget, I should point out that the proposed 2.3 billion dollars annual funding level would exceed the total appropriation level in recent years for the seven categorical programs that are being replaced.

Above all, the Better Communities Act is grounded upon a four-pronged needs formula, determined on the basis of total population, the extent of housing overcrowding and the extent of poverty—with poverty being given double weight in the formula. The money, in other words, will be apportioned in accordance with genuine need—instead of to communities that can afford the best "grantsmanship" teams, or can afford the matching funds that were a precondition to the old HUD categorical programs.

Furthermore, local governments will not be able to finalize their annual plans without review and comment by the people of the community.

Finally, let me read you a section of the Bill itself: Section 9(a) says: "No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this Act."

And this provision has teeth in it, because not only are the remedies provided for by Civil Rights legislation available to enforce it, but upon violation the Secretary of HUD has the authority to withhold a part or even all of the funds a community would otherwise be entitled to under the Act—and I intend to enforce it.

Clearly, then, the Federal Government is not turning its back on the cities and other local communities. Leadership, overall policy, guidance and funds will, of course, flow to a significant extent from Washington. But it just does not work—and we have all seen that it doesn't work—to have someone in a marble monument on the Potomac—or even a Federal official in the field answerable only to that marble monument—trying to fit a Detroit, a Des Moines, a Newark or a San Jose into a rigid statistical stereotype—when each one has problems uniquely peculiar to itself.

With the money going directly to the communities where it is to be used, and with the great flexibility afforded in its use, the second-guessing from a sprawling, impersonal bureaucracy in Washington will be eliminated. Layers of control, review, paperwork, application, approval and redtape will be eradicated, so that each dollar of revenue sharing money can do a dollar's work.

That point is absolutely basic. Spending billions and hundreds of billions on social programs is not something the Administration is trying to avoid in order to control inflation. As I already pointed out, the 125 billion dollars in this year's budget is a record high. But using that money *effectively* and *efficiently*—so that it does what it is supposed to do; so that it helps the people it is supposed to help; and so that more and more money and more and more programs do not have to be thrown into the breach of failure—*that* is one of the ways the Administration proposes to do the jobs that need to be done but to keep inflation in check while doing so.

That is why programs that have not worked at all, or have worked only marginally, or cost far too much for the little good they did, have been suspended or terminated. *That* is why bold new initiatives in general and special revenue sharing have been undertaken: to do the most good for the people who need it the most, without feeding the fires of inflation that rob the poor most cruelly of all.

That is why, for example, we have the subsidized public housing suspension. Certainly everyone concerned had the best intentions in the world when, to name one example, Pruit-Igoe was built in St. Louis. Yet there they are, all those tens of millions of dollars in shattered hopes, buried by the wreckers ball and the bulldozer. How much, in the process, have we helped the poor families for whom Pruitt-Igoe was to mean a decent home in a suitable environment? Where are they now?

And what has happened to the people who lived in the 198,000 units of subsidized housing that HUD has had to take back by reason of defaults? How much good did we do them—or the estimated 56,000 more families who may find themselves in the same tragic circumstances by this time next year? How much good have we done them while committing taxpayers to 65 to 85 *billion* dollars in subsidized housing payments over the next 30 to 40 years?

There can't be any doubt that the Administration has tried hard to make the subsidized housing laws work. More subsidized housing was generated in the past four years than in the preceding 34 years!

But the poor return, the results of those subsidized housing efforts, in relation to the huge expenditure, are what finally led to suspension of new commitments under existing programs while we make a real effort to find better ways to do the job. Of course, even with the suspension, substantial subsidized housing starts continue by reason of approvals of applications already in the processing pipeline and honoring past commitments. But we want to come up with better ways of working toward housing in which our less fortunate citizens can live with dignity and pride. And in which they can afford to stay as long as they need to.

That is the principal thrust of our HUD housing study, which is now well on its way to completion. Assistant Secretary Mike Moskow and a staff of 80 people are hard at work going over the 500 responses we've received from individuals and groups whose advice, comments and ideas we asked for. That's about 8,000 pages in all, and every one is receiving attention and consideration.

The recommendations growing out of this study will be ready to go to the Hill, as the President promised, by September 7th—about six weeks from now. I earnestly hope that these recommendations will lead to doing a better job in the work to which we are all dedicated—a decent home and a suitable living environment for every American family.

This, then, is what we are talking about:

Cutting out or cutting back programs that have not worked, or that have had minimum effect at maximum cost;

Refusing to adopt new programs that would only mean more of the same old thing—more Federal waste, overlapping, duplication, and overhead;

Putting the money and the power into programs that can work, and can be administered at the level where they can be most effectively applied.

By all these means and others, President Nixon is determined to help those who have not shared properly in the riches of this nation—and yet at the same time hold down the inflationary pressures that eat away at whatever purchasing power the meager incomes of our poor might otherwise have.

These poorer people of our country are, as I said at the beginning, a diminishing minority—which is one measure of how much we in the United States *have* accomplished.

But the fewer poor there are, the harsher is the contrast between their situation and the general affluence of the nation—and the harder it becomes for them to bear their lot. Believe me, we in the administration *do* care, and we want to approach this problem in the best and most effective way. But we are convinced that the New Federalism, revenue sharing, the Better Communities Act, welfare reform, Phase IV economic initiatives, and the continuation and initiation of categorical programs that do work, all within the framework of sound fiscal restraint, are the kinds of things that will do the job better than it has been done so far, and *really* help our less fortunate citizens.

So let's *all* of us—in and out of government—mute the rhetoric, listen to and learn from each other in an atmosphere of mutual respect and get on with that most important job.

CLYDE E. FANT

Mr. LONG. Mr. President, a valued friend, former Mayor Clyde Fant of Shreveport, La., died earlier this month and has left a profound void in civic affairs in Shreveport, Caddo Parish, and Louisiana.

For 16 years, Clyde Fant served as mayor of Shreveport and his achievements will live after him to serve as monuments to his dedication to public service.

So highly did I regard Clyde Fant that I recommended him to become Mayor of Washington, D.C., when our late and beloved President, Lyndon Johnson, asked me who I believed was the most qualified person for the post.

Mr. President, when Clyde Fant declined to run for office again in 1970 because of ill health, he stepped aside quietly and did not indulge in second-guessing the decisions of his successor. But, when it was necessary for him to help convince the voters of Shreveport that several new taxes were necessary for the city, he lent his influence without hesitation.

Because of Clyde Fant's political acumen, the State legislature agreed to share a portion of Louisiana's tobacco tax with its municipalities. His name always was among those in serious speculation for higher political office, including Gover-

nor. For 3 years Clyde Fant served on the Advisory Board of the National Council of Mayors and attended the World Conference of Mayor at The Hague, Holland.

Mr. President, Clyde Fant was active in many civic and religious affairs in the Shreveport area. His death will leave Shreveport and Louisiana poorer. Mrs. Long joins me in extending our deepest sympathies to his wife and two sons, Judge Jack Fant of Shreveport and Dr. Clyde Fant, Jr. of the Southwestern Baptist Theological Seminary in Fort Worth, Tex., and his mother, Mrs. John P. Fant of Jefferson, Tex.

I ask unanimous consent to print in the RECORD a column from the Shreveport Times and an editorial from the Shreveport Journal:

There being no objection, the column and editorial were ordered to be printed in the RECORD, as follows:

[From the Shreveport (La.) Journal, July 9, 1973]

CLYDE E. FANT

The passing of Clyde E. Fant will be taken as a personal loss by thousands of Shreveport citizens because he was a warm personality who was as he said himself, "not lower than the highest nor higher than the humblest."

Clyde Fant was a native of nearby Linden, Tex., and came to Shreveport as an employe of Southwestern Electric Power Co. He entered politics in 1944 when he was appointed to serve the unexpired term of the Commissioner of Public Utilities. In 1946 he ran for the office of mayor, was elected and was re-elected in 1950. He did not seek re-election in 1954 but ran for the office again in 1958 and continued to serve as mayor until 1970. He retired from public office because of ill health.

Mr. Fant's political ability succeeded in getting the State Legislature to give the municipalities of the state a portion of the tobacco tax. This made him perhaps Louisiana's most popular mayor and preceding every gubernatorial election his name was mentioned as a possible candidate. His ability was recognized at the national level and for three years he served on the Advisory Board of the National Council of Mayors and attended the World Conference of Mayors at the Hague, Holland.

Mr. Fant was active in many civic and religious endeavors. For many years he served on the Board of Trustees of Broadmoor Baptist Church and was a past president of the Broadmoor Kiwanis Club.

The public accomplishments of Mr. Fant are too numerous to list here. A newspaperman once asked then Mayor Fant what he regarded as his greatest accomplishment in office. He replied that he would let the public decide that. Perhaps his greatest accomplishment was moulding himself into the worthwhile public servant and private citizen that he was.

The Journal extends its sincere sympathy to his immediate survivors who include his wife, Mrs. Margaret Fant, and two sons, Judge Jack Fant of Shreveport and Dr. Clyde Fant Jr., a professor at Southwestern Baptist Theology Seminary, Fort Worth, Tex., and his mother, Mrs. John P. Fant of Jefferson, Tex.

[From the Shreveport (La.) Times, July 8, 1973]

A FRIENDSHIP VIEW

(By Stanley R. Tiner)

This is one of those maudlin, intensely personal kinds of columns that journalists invariably swear they will never write, and then turn around and write anyway when the time comes.

It is born out of my tenderfoot days as a Shreveport Times reporter covering City Hall in the twilight days of Clyde Fant. It was like being a young sports writer covering Babe Ruth because Clyde Fant was as big-league as any political figure you will meet.

He had the thing that men admire wherever it exists, whether it be in sports, politics, or in just plain life—class.

The death of Clyde Fant, for the moment at least, recalls not memories of the political power that he wielded, nor for an evaluation of the years of his dominion, but rather that death brings recollections of a very human man.

This was the Clyde Fant behind the facade of office, a man concerned very much with other people, with his friends and his family.

HAD RARE GIFT

He had the rare gift (it was perhaps his most important asset) of touching people with his words and his actions. His ability to shift easily through the emotional gears of humor, seriousness, humility and exaggerated grandeur was extraordinary.

He was a "man-in-the-street" politician of the first order and his death robs the state of one of its last such men He took his campaign to the coffeeshop level of almost every man, whether it was in a public restaurant or a private shanty. It was on this personal level that he built success of unusual dimension.

A single event occasionally crystallizes our mental image of a person and in the shadow of Clyde Fant's death his last moments as mayor come to mind.

On the exterior he tended to be steel-tough but on Nov. 10, 1970, tears washed away that image as he told his city goodby.

"I bow out gracefully, wishing each of you the best things in life," he said.

He then quietly exited through a side door and left City Hall with the sounds of a standing ovation still ringing in council chambers.

He never played the role of Monday-morning quarterback, as he had promised he would not, but when called upon to aid in the passage of city ad valorem taxes which had been unexpectedly defeated on the first try, he personally came back and assured their passage.

Clyde Fant simply told the people that they should vote for those taxes and they did. It was the fitting public gesture that said appreciation better than the more formal and planned events to mark Clyde Fant's stepping down from office.

In those days of basked reflection, days that could have been better spent with friends and good cigars down at his favorite local grill. Clyde Fant chose the hardship of further service when Gov. John McKeithen asked him to serve on the Louisiana Tax Commission.

As in everything once he took on the task he did so wholeheartedly. Those who knew him and knew of his efforts on the commission will tell you he worked day and night and spent months reading the tedious laws and regulations relative to his job.

He and his beloved Margaret were a common sight to air travelers to Baton Rouge as they made their weekly trips between the Capitol and Shreveport.

But of all his achievements none was given the prominence in Clyde Fant's recollections than those successes reached by his sons.

Though both are still relatively young men, they have already reached attainment in their fields. Clyde Fant Jr. is a professor at the Southwestern Theological Seminary in Fort Worth and has just returned from a year's study in Germany.

John Fant has been elected to a Caddo District Court judgeship and has already been mentioned prominently for higher office.

The authorship of their lives and the joy of grandfatherhood were the bright spots that shone through Clyde Fant's last painful year of life.

He savoured that year and lived it to the fullest.

He met the prospect of death by promising his Lord that he would do something good for someone on each day that he was given.

He fulfilled that promise with quiet back-street good deeds to those he knew, and sometimes for those he didn't know, and he died.

My occupation of editorial writer may dictate for some future day a fuller view of the political life of Clyde Fant, but for now such judgments are subjugated to a feeling of loss, and grief.

Farewells to friends do not require more.

POLITICS AND ECOLOGY

Mr. DOMENICI. Mr. President, it is with great pleasure that I bring to the attention of the Senate a report recently compiled concerning the annual meeting and conference of Politics and Ecology held May 2 in Santa Fe, N. Mex. I am especially pleased with the success of these to formerly divergent groups in working together to achieve mutual goals. From the opening message, concerning a look at current environmental legislation, to the concluding paper, dealing with legislative solutions to the energy crisis, I see great effort and potential success in these two powerful groups that are working together for the betterment of all Americans, today and for generations to come. The environmental groups, with their good cause, and the political groups, with their great influence, can together achieve great success for our society. I am pleased to see this progress and hope it is the first indication of many such efforts in the future. Mr. President, I ask unanimous consent to print the report of the Regional Environmental Education Research Improvement Organization's annual meeting and conference in the RECORD. Many sectors of society have contributed to this report and I believe it will be of great benefit to all who read it.

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

POLITICS AND ECOLOGY—ANNUAL MEETING AND CONFERENCE

(NOTE.—Figures and slides referred to are not printed in the RECORD.)

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WELCOME

(By Sunny Butler)

(NOTE.—Sunny Butler is the Vice President of the Education Committee, REERIO.)

It is my pleasure to welcome you to our conference entitled "Politics and Ecology." This subject is a special favorite of mine because to me the influence of people upon one another is a strength more powerful than money.

On the trip up here, Harry Burleigh talked with us concerning projects he was working on. He said that no matter how much money was involved, he found he was stumped unless he could stir up public interest in a project. He said most specifically the interest of women. He talked about involving the League of Women Voters, Garden Clubs and the Audubon Society. I didn't say 'women' because I didn't want to be a 'female chauvinist.'

Maybe I've told you before about my visit with PR people in Albuquerque but it bears repeating because at that particular time I felt I had one of the most important inspirations of my life and it came about in this way: Ron Hamn who was the moderator of that particular conference and some others were having breakfast together and Ron Hamn was talking about this great conflict with regard to the environment and all the different sides that were involved. When I made my speech I said, "Gentlemen, there are no sides to a globe. What we have here is not a conflict, but a mix. I express my ideas and you express yours. We may not agree at this time or in this place, but somewhere out there in the mix, ideas come together and solutions begin to emerge."

As I was preparing to come here today I got a call from the newly elected vice president of the meteorological society, but now this newly elected officer was approaching me to find out my qualifications for speaking with his quote "objective," "scientific," group. He also mentioned the term 'emotionalism.' Of course I reserved my remarks upon this occasion, but you can be sure that when I have my friend as a captive audience I will remind him that "scientific objectivity," technology, and government combined have not prevented us from getting into the mess we are in. True, they will help to get us out, but scientific objectivity and 'emotionalisms' notwithstanding some other terms like ethics, integrity, and principle will have to be applied, if not by officials, then by the people themselves.

As he went on I was reminded of the new head of the Atomic Energy Commission and her statement that environmentalists are not being asked for their credentials and they are these: We are citizens. Citizens have the right to participate and become involved in decisions which affect them and their lives and they definitely have the responsibility to participate in governmental functions *which belong to them*. I am frequently dismayed and disgruntled that so many people in public life, i.e. officials, agencies etc. seem to feel that the governmental bodies which belong to the people should not be influenced and participated in by the people.

Now we come to the essential point—*politics is people*, what they know, and what they do. We hope to catch some sense of the legislation involved, how it affects us, what it means to industry, our localities, and our nation.

I see a glorious hour ahead of us because I see that we are listening to each other as we never have before. I think we shall look back upon this period of coming to terms with the environment as a time of coming together, of working together, all nations, and all people, for a better quality of life for all. Let us remind ourselves often as we go forward together that there is greatness in all of us; in those we call our enemies as well as in those we name our friends. Ultimately our enemies may benefit us even more than our friends because they make us think; and sometimes they even make us change.

POLITICS—A LOOK AT CURRENT ENVIRONMENTAL LEGISLATION

(By Cooper H. Wayman)

(NOTE.—Cooper Wayman is with the Environmental Protection Agency as the Regional Counsel, Region VI, in Dallas, Texas. Prior to this he was Assistant Regional Counsel, EPA, Region VIII in Denver, Colorado.)

It is a pleasure to be here and talk to you about the Environmental Protection Agency and its programs for quality control of our environment.

I would like to say at the outset that I firmly believe we are beginning to make some real progress on the long road to environmental soundness, and that we are going to see steady improvement the rest of the way. I am a born optimist who believes that, whatever the problem, this country has the ability to solve it. A nation that can send men to the moon and bring them back—not once but many times—surely can clean up the environment and keep it clean.

Since the Environmental Protection Agency was created by President Nixon in December 1970, we have spent considerable time in "getting ready," that is, we have been busy setting up the machinery to accomplish our goals. I don't say that all the machinery is in place, but I assure you that soon we are going to see improvement in the quality of our air and water; we are going to reduce noise pollution, clean up our rivers, reduce noise, and more efficiently dispose of our solid wastes.

My optimism stems first from what we already are doing, second from an in-born philosophy of mine that nothing is impossible. I refuse to be a captive of the past. "It can't be done" is no longer acceptable in our society. At this point we have barely tapped our capacities for doing things. The laws of physics and aerodynamics which enabled our astronauts to get to the moon and back existed a million years ago, but not until these laws were sought out were they discovered and applied. Today we live at the very standpoint of opportunity and look out upon a frontier of new ideas. Since ideas are infinite, our opportunities for accomplishment are unlimited. There may be some inconveniences and uprootings in the process, but I believe we are headed for a better world, particularly in those areas that concern the environment.

As you know, a term of considerable significance to the EPA is "Air Pollution Control Implementation Plan." The Clean Air Act of 1970, under Section 110, sets forth the requirement that each state shall develop implementation plans for attainment of standards. An implementation plan in simple terms is the *workable program* designed by respective states to achieve the adopted ambient air standards within the time frame outlined in the Clean Air Act. At the heart of a plan is the *control strategy* which incorporates *emission limitations*.

The EPA Region VI includes Texas, New Mexico, Oklahoma, Arkansas and Louisiana. All these states submitted implementation plans in January 1972 and have subsequently begun administering their respective programs in accordance with the plans. Each state has submitted in accordance with the plans. Each state has submitted revisions for review and approval as the refinements were needed, and EPA has called for revisions where the plans have been found to be deficient. These options are always open as new information becomes available. Also, where a state fails to correct deficiencies, the EPA must promulgate regulations which it feels are required for attainment of National Ambient Air Quality Standards.

In the case of New Mexico, several deficiencies were noted in the originally submitted plan and consequently, portions were disapproved by EPA on May 31, 1972. Since then, the state has corrected some areas of concern. However, as of today, the following portions of the plan remain deficient.

General Requirements: The plan does not provide for public availability of emission data. Of primary concern in this area is that all emissions data should be available to the public. The New Mexico plan allows emission sources to remain confidential under certain conditions.

Control Strategy and Regulations: Sulfur Oxides: The plan does not provide for attainment and maintenance for the national standards for SO_2 in the Four Corners Air Quality Control Region (AQCR). EPA promulgated a corrective regulation on March 23, 1973, which effectively requires 70% control. The compliance date for primary standards is designated as March 15, 1976.

Further, the plan does not provide for attainment and maintenance of secondary standards for SO_2 in the Arizona-New Mexico Southern Border AQCR. The requirements for submittal of this portion of the plan has been deferred until July 1973 to allow further definition of control strategies relating to smelters.

Control Strategy: Particulate Matter. The plan does not provide for attainment and maintenance of national standards for particulate matter in El Paso—Las Cruces—Alamogordo AQCR. Of primary concern in this region, regarding particulate matter, are the emissions designated as Fugitive Dust. These emissions are mainly generated from unpaved roads and agricultural-related practices. The EPA Administrator granted an extension in time for the development of a plan in the New Mexico portion of the region to allow further definition of the problem and allow time for the establishment of emission factors and an adequate control strategy.

Compliance Schedules: The plan does not require increments of progress for schedules extending beyond January 1974. Periodic points of progress need to be identified and monitored to assure compliance within the time frame of the Clean Air Act.

All other portions of the New Mexico plan are deemed approvable at this time. However, as I have indicated, whenever new information becomes available, a call for revision may become necessary. EPA itself may be the new information source. For example, I refer you to the recent decision to delay for one year the attainment of automobile emission reductions. The fully anticipated reduction—90% on 1975 light-duty vehicles below the 1970 model emissions—will not be achieved until 1976. Many of the state implementation plans took credit for federally-regulated reductions in their calculations for attainment of standards by 1975, and a one-year delay will now require a re-evaluation and possibly introduce transportation control measures in some areas not previously designated. What I am pointing out here is the state and EPA must continuously monitor progress and trends toward attainment and maintenance of standards.

The 1972 amendments to the Federal Water Pollution Control Act gave us a whole new set of tools with which to clean up streams. They mandate a sweeping federal-state campaign to prevent, reduce and eliminate water pollution under two general goals: (1) to attain water clean enough for

fish, wildlife and recreational uses by 1983; and (2) to eliminate all discharges of pollutants into the Nation's waters by 1985. For the first time, the law extends the federal pollution control program to all U.S. waters; previously, only interstate waters were covered by federal legislation.

The 1972 law establishes a new system of permits for discharges into the Nation's waters, replacing the 1899 Refuse Act permit program. No discharge of any pollutant from any point source is permitted without a permit, and publicly-owned sewage treatment plants and municipally-controlled discharge points, as well as industrial dischargers, must obtain permits.

We have just recently announced that application forms for certain types of discharges are now available from our Region VI office in Dallas. Forms now available are these: Short Form A, for municipal wastewater dischargers; Short Form C, for manufacturing and mining operations; and Short Form D, for wholesale and retail trade, service and commercial establishments, including vessels. These forms and instructions may be obtained by contacting our Permits Branch Chief for the Region VI office in Dallas.

Anyone applying for a federal license or permit must obtain certification from the state that the discharge will be in compliance with the new law. States must give public notice of all applications for certification and may hold public hearings on certification applications.

If a certification by one state will result in a discharge that may affect water quality in another state, a public hearing must be held by the federal agency that issues the license or permit, if requested by the second state. If the permit or license will result in discharges that are not in compliance with water quality requirements, the license or permit cannot be issued. Industries discharging pollutants must use the "best practicable" water pollution control technology by July 1, 1977, and the "best available" technology by July 1, 1983.

EPA will issue guidelines for "best practicable" and "best available" technologies for various industries by October 1973. The guidelines can be adjusted by several factors, including the cost of pollution control, the age of the industrial facility, the process used and the environmental impact of the controls.

By May 1974, new sources of industrial pollution must use the "best available demonstrated control technology."

Discharges of toxic pollutants will be controlled by effluent standards to be issued by EPA no later than January 1974. EPA is empowered to prohibit discharges of toxic pollutants, in any amount, if deemed necessary. The 1972 legislation prohibits the discharge into the Nation's waters of any radiological, chemical or biological warfare materials, or high-level radioactive waste.

Any industry that discharges its wastes into a municipal treatment plant must pre-treat its effluent so that the industrial pollutants do not interfere with the operation of the plant or pass through the plant without adequate treatment. This requirement takes effect no later than May 1974 for new industrial sources of pollution, and no later than July 1976 for existing industrial facilities.

The law also authorizes loans to help small businesses meet water pollution control requirements, and provides for more federal aid to local governments and sets deadlines for stronger control measures.

Federal construction grants of up to $18 billion are authorized over the next three years to help local governments build needed sewage treatment facilities. Actual payment of federal grants will extend over a nine-year period. Under present allocation plans, New Mexico will receive $21.1 million for the three-year fiscal period 1972–1974.

The federal share of the cost of local treatment facilities is now 75%, with state and local governments paying the balance. The maximum federal share was 55% under previous legislation.

In order to qualify for a federal construction grant, sewage treatment plants approved before June 30, 1974 must provide a minimum of secondary treatment. After that date, federal grants may be made only to plants that will use "best practicable" treatment.

All sewage treatment plants in operation on July 1, 1977—whether or not built with the aid of federal grant, and no matter when built—must provide a minimum of secondary treatment. Exception: A plant being built with the help of a federal grant that was approved before June 30, 1974 must comply with the secondary treatment requirement within four years, but no later than June 30, 1978.

Also by July 1, 1977, all sewage treatment plants must apply whatever additional, more stringent effluent limitations that may be established by EPA or a state to meet water quality standards, treatment standards or compliance schedules.

The United States generates 360 million tons of solid waste each year—garbage, trash, cans, bottles and other solid materials. Although the primary responsibility for the management of solid materials resides with state and local officials, federal activity has been directed by Congress into several areas: (1) construction, demonstration and application of waste management and resource recovery systems for the preservation of air, water and land resources; (2) technical and financial assistance to agencies in planning and developing resource recovery and waste disposal programs; (3) national research and development programs to develop and test methods of dealing with the collection, separation, recovery, recycling and safe disposal of nonrecoverable waste; (4) guidelines for the collection, trasnportation, separation and recovery and disposal of solid waste; and (5) training grants in occupations involving design, operation and maintenance of solid waste disposal systems.

The hazards of using chemical pesticides have increased in recent years with the sharp rise in their consumption by agriculture, industry, householders and government. In 1970, United States production of pesticides and related products totaled 1,034 billion pounds, with sales valued at $870 million. Some 800 million pounds of pesticides are used each year in the United States and about 40% is applied by agriculture.

Some 32,000 pesticide products—including insecticides, herbicides, plant growth regulators, rodenticides, bactericides and fungicides—made from one or more of 900 chemical compounds are currently registered with the U.S. Environmental Protection Agency.

The Federal Environmental Pesticide Control Act of 1972 substantially amends the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) of 1947. Here are major provisions of the new law:

The use of any registered pesticide in a manner inconsistent with labeling instructions is prohibited. Pesticides must be classified for "general" use or "restricted" use within two years after October 1974. The states will certify pesticide applicators for use of restricted pesticides. The law allows four years for development of certification programs. Federal standards for certification must be set forth by EPA by October 1973, and the states must submit their certification programs based on these standards to the Agency by 1975. The EPA Administrator may issue a "stop sale, use and removal" order when it appears a pesticide violates the law or its registration has been suspended or finally cancelled. Pesticides may also be seized if they violate the law.

Pesticide manufacturing plants must be registered with the Federal Government (EPA) one year after enactment of the new law.

Federal assistance to the states to enforce provisions of the law and help develop and administer applicator certification programs is authorized.

The EPA Administrator is required to develop procedures and regulations for storage or disposal of pesticide containers. The Agency may issue experimental use permits, conduct research on pesticides and alternatives, and monitor pesticide use and presence in the environment. Indemnification is authorized for certain owners of pesticides registrations which are suspended, then cancelled.

Many of you in the fuel industries are familiar with EPA's pollution contingency plan involving the discharges of oil and hazardous substances. Congress has declared that it is the policy of the United States that there should be no discharge of oil into or upon the navigable waters of the United States, adjoining shore lines, or into or upon the waters of the contiguous zone. The primary thrust of this plan is to provide a federal response capability at the regional level. The On-Scene Coordinator shall determine if the person responsible for the discharge of oil or other hazardous polluting substances has reported the discharge in accordance with the act and is taking adequate action.

In the event the person responsible for a pollution incident does not take proper and appropriate actions to contain, clean up and dispose of pollutants, or if the discharger is unknown, further federal response must be instituted. Through the resources of the regional office, EPA will provide technical expertise relative to environmental pollution control techniques, including assessment of damage and environmental restoration.

I have touched on some of the highlights of the Agency programs and the new laws under which they are operated. I could not possibly, within the time allotted for this presentation, cover the entire spectrum of EPA activities, but I assure you we want to communicate adequately simply because good communication is the real key to accomplishment.

Also, I would like to emphasize that EPA is taking a reasonable attitude about the whole environmental effort. The pollution dilemma we find ourselves in didn't appear in one day, and certainly it cannot be solved in a day. EPA seeks no villains, no whipping boys. We only want to help clean up the environment in which you live and to preserve it for future generations.

Thank you.

Rio Grande Regional Environmental Project

(By Harry Burleigh)

(Note.—Harry Burleigh is the Executive Director of the Texas Water Development Board in Austin, Texas. He has served in this capacity since March of 1971. Previously he was Chief of Investigations for the U.S. Bureau of Reclamation for Texas in Austin.)

President Thomas, guests, Mrs. Butler, ladies and gentlemen. As you have just learned, I have been asked to discuss with you the Rio Grande Regional Environmental Project.

For all practical purposes, the project had its beginning in the minds of local people as a water supply project. Officials and operators of water districts, the people of Las Cruces, Juarez and El Paso could see that a preponderance of the population was going to place almost impossible demands on a meager water supply, and on that basis came to the Bureau of Reclamation office in Austin, Texas in 1969. Essentially they said to us, "go find some more water for us, we're about out."

Today, as in 1969, it's almost impossible for an engineer or his breed to promote, carry, and furnish a pure, simple water supply project. This was explained to the local people during their visit to Austin. It was our view—and it was suggested to

them—there were other water sources available in the El Paso area and instead of developing a water supply project we attempt to integrate the physical and technical investigations relative to water supply into a broader concept—the whole socioeconomic environmental concept—so that if and when we established the fact that there were new water supplies and proposed the development and transmission of such we wouldn't get into a large harangue with the sociologist, the economist, and the environmentalist.

This was a counter proposal by the Bureau of Reclamation, and since my office at that time made the proposal under my direction as the engineer in charge, I want to emphasize that it was not a hypocritical proposal.

In the four decades I have been in this business, I have seen more than one water project I felt that in the long run did not fit well into our changing economy or our changing social conditions. It was with every bit of integrity I possess that I proposed, instead of the old forty-year water supply study, let's study the whole bag—the environment, the social impact, economics and everything—and see if we could get a water-supply project that was really acceptable, not only to the professional but to every facet of our culture.

We proposed the El Paso area as ideal for such a study. The study area, for all practical purposes, stretches from Elephant Butte down to Fort Quitman. If ever there was an isolated area—from everything and everybody—it's this area. The area sobs big tears when you go out there. They feel isolated politically and economically. It's 600 miles to the capital of Texas, 250 to Santa Fe, and 250 miles before you get to the first town west of Tucson. They do feel isolated, and in many ways are isolated.

In our view it was an isolated area that could be a good example to learn if we could integrate the views of the engineers, the economist, the sociologist, the environmentalist into a study that would make everybody happy and not lead to arguments when it came time to build the physical works that the local people in time would evaluate project by project to determine what they wanted in their own interest.

As an engineer I want it known flatly I don't like arguments over projects I have to build because arguments lead to court. For your information, at this moment down in my state I am inter-associated with eight court cases that are holding up projects that have to be developed, and I assure you they will be developed. Everytime one of these projects is held up for one year construction costs go up. Construction costs are going up 9, 10 and 11 per cent a year. If I have to delay, by I, I mean my agency, on a project down on the Gulf Coast that at the moment costs $40 million and is badly needed, the cost—and we're in court in Victoria—because of a year's stalling has increased to $44 million. If that amuses some of the ladies here today, let me remind you that when that water comes out of the tap into your cooking pot it's going to cost you 10 per cent or more than it would have if we hadn't gone to court. This is why at least one engineer in this room will explore every avenue to get together with the environmentalists.

I wasn't being hypocritical when I proposed the RGREP study. I reiterate, I have seen four decades of the water business, and in retrospect, I have seen projects conceived and built that should have been done so with a lot more care and intelligence. This is a criticism of my own profession.

Until several years ago, any engineer out of high school if he heard of someone wanting a project could run out into the country and find a dam site and build a project. Those days are gone, they're gone forever. I think it is good they are gone.

Again, let me point out that the RGREP projects stretch from Chama to Elephant Butte and on to Fort Quitman. It takes in the whole American stateside economy of the Rio Grande Valley. Specifically defined purposes are: (1) improve the declining water resources that we are fighting; (2) to foster improvement in the economic well-being of the citizens of the region through expanded regional development within proper environmental restraints; (3) to protect and enhance the natural environmental resources for the benefit of the citizens of the region, the state and the nation; and lastly, to improve the quality of life environmentally and socially for all of the citizens of the region. As far as I know, RGREP is the first of its kind.

Some of you may be familiar with the West Slope study. The study was supposed to include all orders west of the Continental Divide. The environmental factors were so complex the study has been abandoned. The area to be studied was a microcosm. It was a relatively small area, not the entire western states. It had all the factors, I think that we studied in making reasonable conclusions in the RGREP area. If we pull this off successfully—because of its complexity—it's going to call for the integration of a wide variety of skills and disciplines.

Following this, we have attempted to include in our studies as many skills and disciplines as possible. Essentially this composes our executive committee. Included is the Bureau of Reclamation which gives us entree into the federal agency and its varied facets; the two large cities involved, El Paso and Las Cruces, the region's irrigation districts.

Others involved include a spin-off organization of the Council of Governments—GAIN, which has made a very fruitful inventory of the region's economy and economics; the State Engineer of New Mexico, your very, very able Steve Reynolds from Santa Fe, and my own agency, the Texas Water Development Board in Austin. The colleges and universities are also involved, and probably the bulk of the heavy thinking and new research that will be needed will be done by New Mexico State University at Las Cruces, Texas Tech University at Lubbock, and others in the two involved states.

Now add that all up and that's quite a bundle of skills and brains attacking a new type of job. If we can't pull it off out of that pile of brains and skills in a little microcosm like the Rio Grande Valley, I don't think it can be implemented in vast areas like the entire Missouri basin or the west slope of the Rockies.

RGREP involves an incredible variety of studies. I have a piece of paper here—it looks like legal paper. This is our study outline. On this paper are 65 types of studies that must be made in order to make RGREP workable. These studies include institutional, legal, land, ground water—the whole bag. They all have to be studied in order for them to be an intelligent integration of the engineer and the environmentalist.

From the results of our studies—and we have been involved in the project for two years and it now appears that three or four more years will be needed to complete our work—we hope to present to the residents of the area several alternatives that they can pursue as they move ahead into their future. We hope to pose answers to quizzes and questions that are environmentally desirable and acceptable.

Now I said environmentally acceptable. I could define what environmental means to me as an engineer that has to build water supply projects. I mentioned that we were in eight court cases with many environmentalists, but I don't see any coordinated, consolidated, crystallized goal for the aggregate of the environmentalists. One group wants the land undisturbed; another group wants cleaner water, and another along our coastal estuaries is greatly concerned about the estuaries and their ecological balance. I, too, am concerned.

What I'm saying is that types like me have to work with many types of environmentalists. To date, I have yet to hear from them. To my knowledge, they have not stated what their overall basic gut objective is. I am well aware of their overall effort, their concern here, their concern there, but I have yet to find a defined environmental goal enunciated that would as such relate to people.

In my agency, environment means that any human being should be provided the opportunity to earn a living in circumstances permissive of human dignity and in circumstances of enjoyable rapport with the physiography of his own or other areas to which he may have access.

That is quite a statement. But in our shop that is what we consider environment to be. But it means two things to us. Those who would stop developments will have to learn to compromise with my breed because damage will be done. When somebody gets thirsty enough or somebody wants water badly enough dams will be built. So first it means that those who would stop water development projects by reason of environment will have to learn to compromise with us; secondly, it means that those who have to provide for the physical developments—guys like myself—will have to work with those concerned with the environment and compromise many of the things we would do with the goals and aspirations of the environmentalists.

Now that has not occurred to date. We have tried—most unsuccessfully—for this compromise. We invited most of the Texas environmental leaders to our office recently for two meetings. They came and the results were one of the better arguments of the latter part of this century. But there was no compromising. I tried to the best of my ability to get them to tell us what they wanted from us, what they desired for our environment, what were their stated goals. But to no avail. So we didn't do any compromising. It is very difficult to compromise with someone when you don't know his ground rules.

The definition of environment I gave a few moments ago means to me nothing but compromise. It's time for the physical scientists, the builders of my type and the environmentalists to get together. We can build in many places and in many ways. Our plans do not have to be built the way we lay them out.

That's what RGREP is. It's an attempt by the Jesse Gilmers, the Harry Burleighs, the Steve Reynolds to bring the many disciplines and the various skills into one bundle at one time and come out with a proposed physical project that is acceptable to everyone concerned, a project if you will, that won't languish in court while the costs of its construction go up and up and up. That is all that RGREP is, and I think it can be developed successfully. The skills and brains we have assembled for this project lead me to believe that we can accomplish the objectives we have established for this small microcosm.

I think this study can lead to a brighter future for this region. It will provide better opportunities through expansion of its resources, more and better opportunities for a more abundant way of life for more people, and they can live that life in an acceptable environment.

Lake Powell Decision and Its Related Problems

(By Jesse Gilmer)

(Note.—Jesse Gilmer has served as the Rio Grand Compact Commissioner for Texas in El Paso since 1968. Formerly he was active as Board Chairman at Tri-State Equipment Company in El Paso, Texas.)

Under the general category, "The Politics and Ecology of Water," I have been assigned the subject of "Lake Powell Decision and It's Related Problems."

For the purpose of this paper, I have selected that portion of Webster's unabridged definition of politics which says, "that politics is the art or science concerned with the guiding or influencing *governmental* policy," and "is a branch of ethics concerned with the state or social organism as a whole rather than the individual person." The word organism in the definition of politics ties us back to the unabridged definition of the word ecology. I borrow the term social organism and use it along with the words politics and ecology to discuss the Lake Powell—Rainbow Bridge problems.

It appears that the first non-Indian to visit the Colorado Delta was Francisco De Ulloa in 1539. Juan De Onate who was explorer as well as colonizer reached the mouth of the Colorado in 1604.

In 1956 the Congress of the United States authorized the construction of Glen Canyon Dam on the Colorado River above Grand Canyon. The dam was built in Arizona, but most of the huge lake lies in Utah. Construction of the dam included building the new town of Page, Arizona and a bridge across the Colorado to carry a new branch of U.S. Highway 89 between Page and Kanab. When the gates of Glen Canyon Dam were closed in 1963, the historical period of the Colorado *as a wild river* within the Grand Canyon *was ended.*

Lake Powell was named for Major Powell the brilliant explorer. When he plowed through the Grand Canyon over a hundred years ago, Major Powell saw, "royal arches, mossy alcoves, deep beautiful glens, and painted grottoes and a vast chamber carved out of the rock."

Because of the sweet sounds which filled the great chamber, he named it the Music Temple. *Lake Powell has drowned Music Temple and the rest of Glen Canyon.*

To the engineer, Glen Canyon Dam is an object of great achievement and beauty. The dam and power plant cost $248 million dollars. It will pay for itself through the sale of power. The lake is one of the earth's beautiful man made objects. Boating, skiing, diving, fishing, swimming, sight seeing and pleasure in general is provided in abundance, because of the facilities.

"The dam is regarded with loathing by the members of the Sierra Club, the Friends of the Earth, and other conservationists groups and individuals who believe that it is wasteful, unnecessary, and a monumental example of the harm that can be done when bureaucrats are faced with the compulsion to pour concrete."

Backed up waters invite vacationists to Lakes Meade and Powell, turn generators, irrigate California fields, feed Los Angeles faucets, and fill San Diego swimming pools.

Situated about six miles from the Colorado River Channel up Rainbow Bridge Creek is one of the world's most beautiful colorful scenic pleasure giving sights: The Rainbow Bridge. The Rainbow Bridge arches 309 feet above the gorge. It spans 278 feet. Rainbow Bridge is large enough, lacking only inches, to frame the United States Capital building. To those of you who would be for or against placing the United States Capital building under the Rainbow Bridge, I must report that during my research I found no plans considering the moving of it there.

The Bridge is described by one author as appearing from a plane "to look like one-half of a butterscotch lifesaver lodged in a crevice."

One author describes the bridge: "Rainbow Bridge! Seeing it, I felt that lifeless matter had been caught in dramatic action. From high on one canyon wall the solid rock seems to stream out and down in fluid motion."

An editor once wrote, "the country surrounding the national monument is unbelievably spectacular. The Great Stone Arch itself is one of the most inspiring wonders we have ever seen. It is the exclamation point at the end of a beautiful sentence."

There are hundreds of arches and bridges in Arizona and Utah, yet Rainbow Bridge overshadows them all.

The first non-Indian American was shown the Rainbow Bridge by a Paiute Indian on August 14, 1909.

With popular interest aroused, President William H. Taft on May 30, 1910 preserved Rainbow Bridge for all time by proclaiming it a national monument.

Before the formation of Lake Powell, the bridge could be reached by flying over it, by walking, or by riding at least 14 miles by horse, or by boat travel from Lee's Ferry of three days duration followed by a six mile hike up rugged Bridge Creek.

The guest book at the monument has been signed by Theodore Roosevelt and Zane Grey.

Between 1910 and 1957, the bridge was visited by 13,000 people.

More than 9,000 persons visited Rainbow Bridge last Memorial Day weekend. This was only made possible because of it's accessibility by way of beautiful Lake Powell.

One million people will visit Lake Powell in 1973, with great numbers able to visit the Rainbow Bridge by water.

A U.S. District Judge has recently ruled that the water level in the still filling Lake Powell must be maintained at least 100 feet below capacity.

The technical and historical aspects of the interstate river compacts and the engineering analysis of the results of the federal court order if sustained have been supplied to me by Mr. Steve Reynolds, New Mexico State Engineer. Mr. Reynolds is the best qualified man in the western United States to supply the facts and interpret their meaning.

The Colorado River Compact of 1922 allocated the consumptive use of 8½ million acre-feet of the waters of the Colorado River system to the lower basin states of California, Arizona, Nevada, Utah and New Mexico. The Compact allocated the consumptive use of 7½ million acre-feet of the waters of the Colorado River system to the upper basin states of Colorado, Utah, Wyoming, Arizona and New Mexico. With respect to the upper basin allocation, the Compact carried an overriding provision that the upper basin shall deliver at Lee's Ferry, a point on the Colorado River about 28 miles below the Utah-Arizona stateline, not less than 75,000,000 acre-feet in any period of ten consecutive years.

Since 1948, at least two things have become abundantly clear. First, the average virgin flow of the Colorado River at Lee's Ferry is more than a million acre-feet *short* of the 15,000,000 acre-feet. Secondly, the river flow is so erratic from year to year that *large* amounts of storage capacity are needed to regulate the delivery to 75,000,000 acre-feet in each ten years, and thus maximize the amount that may be used in the upper basin. It now appears that even with nearly complete regulation of the river, the upper basin will be able to use only about 6.3 million acre-feet of the 7.5 million acre-feet allocated to it.

Working with the states of the upper basin and using the two Colorado River compacts as a framework. The U.S. Bureau of Reclamation planned the Colorado River Storage Project. Core elements of this project are four reservoir units with a total active storage capacity of 31.0 million acre-feet. Lake Powell with an active capacity of 25 million acre-feet is the largest.

Navajo Reservoir, about 40 miles above Farmington is one of the storage project reservoirs. It has an active capacity of 1.5 million acre-feet and was completed in 1962 at a cost of $42,000,000.

The Colorado River Storage Project was authorized in 1956. An important provision of the act is that hydroelectric power revenues in excess of the amount needed to repay the cost of the dams, reservoirs and power plants to be constructed could be used to subsidize irrigation projects authorized by the act or to be authorized by later acts of the congress. New Mexico's share of these excess power revenues is 17%. This share is estimated to amount to $205 million dollars by 2059.

In 1962 the Navajo Indian Irrigation Project and the San Juan-Chama Diversion Project were authorized. The Navajo Project will irrigate 110,000 acres for the benefit of the people of the Navajo tribe. The project is under construction at an estimated cost of $205,000,000. It will divert about 500,000 acre-feet annually and will consume about half that amount. Navajo Reservoir will regulate the water supply for the Indian project and will also regulate water for municipal and industrial uses consuming another 100,000 acre-feet annually. About half of this latter amount has already been contracted for the operation of power plants in the four corners area in New Mexico.

The San Juan-Chama Project will divert an average of 110,000 acre-feet of water annually from San Juan River tributaries in Colorado through the Continental Divide into the Rio Chama system for use in the Rio Grande Basin of New Mexico. The total cost of the project is $89,000,000 and the main diversion works are now virtually complete. The city of Albuquerque has contracted for 48,000 acre-feet of this water. The middle Rio Grande Conservancy District has contracted for 21,000 acre-feet, and 28,000 acre-feet is tentatively allocated for the irrigation of 40,000 acres in four small tributary units in northern New Mexico. Five thousand acre-feet annually has been allocated to maintain a permanent pool at Cochiti Reservoir, the Corps of Engineers' Flood Control Project under construction below the mouth of White Rock Canyon.

New Mexico's share of the power revenues from the Colorado River Storage Project will be used to pay that part of the irrigation project costs which are beyond the ability of the water users to pay.

In 1968, the Congress authorized the Animas-La Plata Project in the same act that authorized the Central Arizona Project. This project would furnish water for irrigation, municipal, industrial, and recreational use in southern Colorado and northern New Mexico. It will use 34,000 acre-feet of New Mexico's upper basin allocation. The total cost of the project is $109,000,000 of which $26,000,000 is allocable to New Mexico.

The law which authorized the Colorado River Storage Project in 1956 contained two provisions to satisfy the environmentalists, or preservationists. Section 1 provides:

"That as part of the Glen Canyon unit, the secretary of the interior shall take adequate protective measures to preclude impairment of the Rainbow Bridge National Monument."

Section 3 provides:

"It is the intention of Congress that no dam or reservoir constructed under the authorization of this act shall be within any national park or monument."

In November of 1970 the Friends of the Earth filed a suit in the U.S. District Court for the District of Columbia seeking to compel the secretary of the interior to comply with these provisions of the Storage Project Act. At first blush, the complaint may seem reasonable in view of the statutory provisions quoted.

We report again, a U.S. district judge has recently ruled that the water level in the still filling Lake Powell must be maintained at least 100 feet below capacity.

This stops filling the lake at one-half capacity.

The Bureau of Reclamation has repeatedly requested funds to construct a barrier dam and other works on Bridge Creek to prevent the waters of Lake Powell from backing into the Rainbow Bridge Monument as the reservoir fills. The cost of the works needed is estimated at $20,000,000.

Congress in making appropriations for the

construction of Glen Canyon Dam has inserted in the acts language prohibiting the use of any of the money appropriated for the construction of works to protect Rainbow Bridge Monument. The position of the congress in this matter is explictly based upon studies made by the U.S. Geological Survey which show clearly that there can be no damage to Rainbow Bridge as a result of Lake Powell waters backing up the arroyo which it spans.

In preparing this paper I talked at length with an eminent geologist of the geological survey who headed up a 1959 study to determine for the National Park Service, the Bureau of Reclamation and committees of the Congress possible damage to the Rainbow Bridge by Lake Powell waters. Based on these talks I was convinced that "no structural damage would befall the bridge if Lake Powell should ever fill with water."

"With an abundance of water in the watershed, Lake Powell would on the average be full only 13% of the time. Its water would flow in and out of the bridge monument. Most of the time during Lake Powell operation its water would be completely out of the bridge monument property."

"The bridge's actual underground foundations would not be damaged *in any degree* when Lake Powell is full."

Based on several years association with the Geological Survey, I have absolute faith in its integrity and geological determinations.

Furthermore, most preservationists don't want to see the protective works constructed. It is their view that the construction activity, including roads and the excavation of embankment materials, would insult the environment. Nonetheless, they insist that the provisions of the authorizing legislation should be satisfied; and they contend that this should be done simply by limiting the elevation to which the water of Lake Powell is allowed to rise. *This would be a disaster for New Mexico water resources.*

Many reasonable people say that with the reservoir full there would be no material impairment of the scene. Admittedly, after the reservoir is filled and then drawn down by releases, some vegetation will have been drowned out, a high water line will be noticeable, and there will be some silt visible in the bottom of the canyon, but these effects should not be unacceptable if all factors are taken into account.

The lowest abutment of the bridge is at elevation 3721. When the water is at spillway level, elevation 3700, the surface would be 21 feet *below* the abutment. The water in the arroyo below the bridge would be 46 feet deep.

Steve Reynolds says further, "if the maximum flash flood occurred while the reservoir is full, the lake level would rise another 11 feet but would still be 10 feet below the lowest abutment. The bridge will not be inundated as some accounts might lead you to believe. The bridge rises 309 feet above the bottom of the arroyo which it spans.

What the Friends of the Earth are really asking by their complaint is that the reservoir not be filled above elevation 3600—one hundred feet below spillway level. There is no way for the court to require the secretary of the interior to spend money that the congress hasn't appropriated. Even if money were available, it is now too late to build the barrier dam that would keep Lake Powell out of Rainbow Bridge Monument. And that construction is probably the last thing the Friends of the Earth want. Let's look at the consequences of the court order.

The active capacity of Lake Powell would be reduced from 25 million acre-feet to 12.1 million acre-feet. With that reduction, the upper basin would be able to use only 5.2 million acre-feet instead of 6.3 million acre-feet annually. The amount of water available for use in New Mexico would be reduced by about 100,000 acre-feet annually. The power revenues available to subsidize irrigation projects in New Mexico would be reduced by $43 million.

There would be no water available for the authorized Animas-La Plata Project. The amount of water available from Navajo Reservoir for municipal and industrial uses would be cut by about 36,000 acre-feet, and there would be a 7% shortage in the water supply for the Navajo Irrigation Project and the San Juan-Chama Project.

El Paso Natural Gas Co., motivated by the energy crisis in the United States, is planning to invest in excess of $1 billion in a coal gasification complex on the Navajo Reservation. The company has leased Navajo coal and has requested a contract for 28,250 acre-feet of water to serve this complex; the State of New Mexico supports this request. This development would be precluded.

The State of New Mexico has reserved 7500 acre-feet of the supply available from Navajo Reservoir for a project currently under investigation by the Bureau of Reclamation to furnish a reliable supply for the city of Gallup. This project would be precluded.

Albuquerque and the middle Rio Grande Conservancy District would get only 93% of the water they have contracted for from the San Juan-Chama Project *but the amount of their payments would remain unchanged.*

Perhaps the most disturbing effect is the 7% water shortage that would be visited on the Navajo Indian Irrigation Project and the four tributary irrigation units of the San Juan-Chama Project in northern New Mexico. The people in the project areas have counted heavily on the stimulus that these projects could give their chronically depressed economy. A 7% shortage would seriously cripple these projects and could make some of the tributary units infeasible.

The complainants in the federal district court may be the Friends of the Earth but they are by no means friends of the men of the soil in northern New Mexico.

A spokesman for the Friends of the Earth said an impending water crisis in New Mexico "could have been averted" if the federal government hadn't ignored a law setting limits on the water in Lake Powell.

"They (New Mexico) based their assumptions on an illegal situation." "Had the Department of the Interior obeyed the law, this crisis would have been averted."

"All the ruling does is enforce a law that had been on the books since the dam was authorized."

I ask these questions: Do we subscribe to the definition usually attributed to Gifford Pinchot, the first head of the forest service, i.e., "The management of natural resources for the greatest good of the greatest number in the long run," should be our policy. Under this definition, it seems clear that the improvement in access to Rainbow Bridge and the increase in water supply for the upper basin that will result from allowing Lake Powell to fill to elevation 3700 readily justify the slight esthetic disadvantage that might result from allowing Lake Powell to back into the arroyo below the bridge.

You can see from the situation outlined so far and the status of Lake Powell water control as directed by the U.S. court, that the *greatest of all showdowns* is approaching between conservationists and those who seek to use natural resources to do man's bidding.

We may be approaching the environmental shootout of the century!

I now wish to propose some more questions: Did the congress, over many years, by rejecting the Bureau of Reclamation's appropriation request, alter its position set forth in the authorizing legislation to the extent that Lake Powell waters will now be permitted under the Rainbow Bridge? Does the 1973 intention of congress intend that a dam or reservoir constructed may be within any national park or monument? This would be a new interpretation of the 1956 law.

Does the belief of many people including the geological survey, that no structural damage would ever befall the bridge should Lake Powell fill with water mean that the secretary of the interior has taken "adequate protective measures" to preclude impairment of the Rainbow Bridge?

Are we going to operate a multi-billion dollar economic multiplier system of water and power use at much less than 50% of efficiency by holding the Lake Powell water level one hundred feet below the spillway?

Are we going to deny the beauty of the Rainbow Bridge to the crippled, the elderly, the young, the less affluent who could otherwise enjoy the beauty by passing under the bridge at most hours of the day or night in boats?

If the limit on capacity for Lake Powell remains, will the loss of storage there solve the salt problems on the lower Colorado?

Are we going to start a battle in the congress for repeal of the restricting legislation? A battle which will leave more scars and responsibilities than any of our conservationsts or developers would want or survive?

I urge that working through such groups as "REERIO" those of us on all sides of the Lake Powell-Rainbow Bridge battle band together to form as acceptable a solution as we possibly can.

This challenge is history's greatest opportunity for the engineer, the developer, the park user, the Friends of the Earth, the Sierra Club, the National Audubon Society, the conservationists to emerge with a plan which will be a model for future environmental controversies.

If we battle the problem out with group *against* group, both the winners and the losers will have scars that won't heal and must assume responsibility with all its hurts for the victory or the loss.

As the prestigious "Forbes" magazine states, "attacking the ecology movement today is like sneering at motherhood, but this too we feel should be subjected to rational examination. Like everybody, we are for ecology. But, like everybody we're not entirely sure what we want to preserve—or what we want to pay to preserve it."

AN ECOLOGIST'S VIEW OF THE PRESENT AND FUTURE IMPACT OF ENVIRONMENTAL LEGISLATION

(By William E. Dick-Peddie)

(NOTE.—William E. Dick-Peddie is Chairman of the Biology Department at New Mexico State University in Las Cruces, New Mexico and has served in this capacity since 1966. His main discipline in Biology is plant ecology. Prior to his appointment as Chairman, Dr. Dick-Peddie was Professor of Biology at New Mexico State University.)

I have been asked to give an overview of legislative impact from an ecologist's viewpoint. To do this I must clarify some items. These are: Ecology as a discipline; ecology as a point of view; and the implications of environmental quality.

Ecology as a discipline deals with living organisms and their relationship to their environment. When considering an organism, its environment is composed of other organisms such as plants, animals and microbes and abiotic features such as temperature, humidity, minerals, gases, etc. Consequently, when someone uses the word ecosystem they are or should be conveying to you that they are aware of the interactions taking place among the living members as well as the interactions taking place with the abiotic (physical) features of a given system. You can see from this that understanding the dynamics of an ecosystem can be extremely complicated. In fact ecologists have yet to find a system, including the Arctic Tundra, which is simple enough to be covered by a predictive model. A predictive model would tell you that *this* modification will cause *these* changes in each of the component units. It has taken the computer

age to even lead us to think we might ever succeed in modeling an ecosystem.

It is obvious then that ecology is a synthetic discipline. It attempts to stand back and look at the "wheels-within-wheels" that are operative and then it tries to synthesize these events into some meaningful whole. As a consequence, ecologists possibly more than anyone else are prone to attempt to see the "big picture" and to be acutely aware of interactions in all complex systems. For years we ecologists have attempted to sell this viewpoint, not the discipline, to the public for use in dealing with complex problems. It may have been a mistake because as might be expected we have only been partially successful. Some people have confused this point of view with ecology itself. Some have chosen one arena only in which to think "ecologically" such as pollution, energy, population, land-use, etc. unaware that doing so is not ecological.

The public's misunderstanding of the ecological point of view coupled with its zeal to do something has led to confusion, emotionalism, and inefficient effort. For example, environmental legislation usually addresses a New Mexico is in my opinion a good piece of legislation but the more important issue as to whether or not an area should be subdivided has not yet been addressed.

Agencies, commissions, and boards are created or modified to deal with specific portions of the environment (pieces of the whole). Often these are organized along parallel lines of authority. For example, a water group, a land-use group, a mining group, a development group, and an environmental improvement group may all operate in the same system with virtually equal autonomy. Not only may there be no powerful coordinating umbrella group over these, but there may not even be an over-riding policy to guide their individual activities. To call this situation ecologically unsound is a colossal understatement.

Now let's look at an additional dimension: The concept of environmental quality. This idea adds a subjective element to the complexity of ecosystems. The discovery of fire and the invention of the wheel by man made this species unique because it is the only one capable of modifying its environment. Environments can be modified so that they will no longer support life. However, environmental modifications short of this extreme are called "civilization" or "life style" or "standard of living."

If a society decides that a certain degree of environmental modification is desirable, any additional modification or reduction in modification will be considered to have reduced the quality of the environment.

There is absolutely no point in talking about environmental quality until all segments of a society have reached at least a consensus as to what range of environmental modification they will accept. How many times have you heard a Chamber of Commerce type state that he is for a high quality environment but then you find that there is never an economic development proposal which he is not in favor of? How often have you talked with someone who says we need economic development but then proceeds to propose restrictions which would prohibit such development under our profit system or any other system?

We must understand the relative nature of the environmental quality concept. It should be recognized by everyone that economic development usually initiates a change in the degree or kind of environmental modification. This change will be viewed by various segments single parameter which immediately renders it ecologically unsound. The subdivision legislation just passed in of society as enhancing or reducing the quality of the environment.

In summary, first we must appreciate the ecological viewpoint of interdependent systems. As in ecosystem analysis there is no place for the single factor approach if we are to have effective environmental legislation and if we are to have effective groups carry out or enforce this legislation.

Second, we must face up to the environmental quality issue. The public must decide what quality it wants and then either arrange to pay for it or agree to modify its standard of living. This should constitute the basis for an environmental policy for the state.

In my opinion as an ecologist, environmental legislation and administraiton will continue to exhibit contradictions, overlaps, and inconsistencies until a truly ecological approach is used and environmental quality is viewed realistically.

SIGNIFICANCE OF ENVIRONMENTAL IMPACT STUDIES—POINTS OF VIEW FROM INDUSTRY, GOVERNMENT, EDUCATION AND ENVIRONMENTALISTS

(By Fred A. Gross, moderator)

(NOTE.—Fred A. Gross is Vice President of the Research Committee of REERIO.)

As a nation it used to be fashionable to assert that we obeyed the Holy Scripture "to be fruitful and multiply and take dominion over the earth." It seems fairly clear that we have done so but in so doing I fear we often overlooked the admonition of "careful husbandry" that the sacred text also calls for.

In many ways Environmental Impact Statements are simply a way to ask that one set forth in writing the evidence of his "careful husbandry" as an integral part of his planning.

It is clear that the National Environmental Policy Act of 1969, requiring environmental impact statements for federally supported and regulated activities, is being effectively used at the national level to force government agencies and some corporate interests to rethink many of their policies and programs. NEPA has been commonly regarded as a statute mandating systematic analysis of environmental impact and full public disclosure, but not one establishing substantive standards by which a proposed project or policy may be declared unlawful. In Calvert Cliffs, the U.S. Circuit Court of Appeals held that agencies must make a "finely tuned and 'systematic' balancing analysis" in resolving conflict among environmental, economic, and social values. In some cases, notably California, a state act has been used in a way that created severe disruption of private construction activities in a manner not contemplated by many environmental supporters.

I am certain that with our knowledge of the rate of consumption of our non-renewable resources that environmental pressures are just beginning. Notice I do not claim that our awareness will cause us to act responsibly, but that the "environmental pressures" are just beginning. The forcing function is not public attitudes but rather natural forces—public awareness, public opinion and public actions are responses—not initiatives. Environmental Impact Statements are only feeble legal attempts to cause us to examine those natural forces in our new projects.

It is not clear that the vocal cries of some environmentalists nor the equally strident voices of some industrialists are based on any public mandate, rather I suspect that they are aware that their rhetoric reflects principally only their view of the world. On the other hand I have observed that when the public expresses its view through the vote in this state and many sister states the majority opinion clearly expresses an environmental concern.

Yet, significant though the achievements of environmental impact statements have been, it is not clear whether such environmental actions will turn out to be a strategic weapon in the war against environmental deterioration or one useful mainly for tactical aims. Thus far, relatively few projects or policies deemed environmentally destructive have been definitely stopped or overturned. And most of the preliminary injunctions granted by courts under NEPA probably will be dissolved once the judges have become satisfied that adequate environmental impact statements are in hand.

Today we are to hear the viewpoints of four speakers on the "Significance of Environmental Impact Studies" representing a broad cross section of public and private interests.

SIGNIFICANCE OF ENVIRONMENTAL IMPACT STUDIES—AN INDUSTRY VIEW

(By C. David Bedford)

(NOTE.—C. David Bedford is employed at the Public Service Co. of New Mexico as Manager of Corporate Planning. He has participated as Public Service of New Mexico representative on various inter-utility committees and is a registered engineer in New Mexico.)

I. The first point that I would like to make on environmental impact studies is to clear up a popular misconception that I believe exists. An environmental impact study is not a new concept that was created by the National Environmental Policy Act of 1969 or Little NEPA, at least not for a public utility.

We may have called it a planning study before and values may have been more closely related to dollars and it definitely received less publicity. But before we could undertake a new power plant or major transmission line project we had to justify it to our management, our stockholders and to the New Mexico Public Service Commission, our regulatory agency. The need for the facility had to be demonstrated and alternatives analyzed and priced out.

In retrospect, most environmental values were considered. A power plant was evaluated on the proximity to its fuel and cooling water supplies, minimum population density along with avoidance of historical and archeological sites and least need for new transmission lines. The environmental values were reflected in dollars—less cost for shorter fuel and water delivery facilities and shorter transmission lines, less cost for less desirable land and right of way, less cost for necessary screening and camouflaging. A transmission line routing was similiarly analyzed. A straight line cost less and had fewer miles of impact. Timber clearing and steep slopes were avoided because of higher construction cost as well as erosion and structure washout problems. We routed around valuable and populated land because of higher right of way cost.

The planning procedure was not what we have today. It lacked in the full consideration of the impact of air and water pollution. It fell short in usually not including full disclosure of plans and soliciting inputs from the public. But the consideration of needs, alternatives and impacts is for the most part not a new concept.

II. Perhaps the biggest new factor considered in our present planning process is air and water pollution.

I give credit here to the public pressures stimulated by the environmentalists. Before regulations and enforcement of uniform compliance, an industry member could not undertake a clean-up campaign without becoming non-competitive with other members of that industry because of higher costs. Neither could a public utility go overboard on control equipment for fear that its regulatory agency would rule that it was an unnecessary expense and therefore not chargeable to its customers.

The regulations and enforcement are necessary to effect a clean-up and still keep the members of an industry in a competitive position so that each can stay in business. These controls are also necessary so that a public utility can properly recover its clean-up cost as a proper cost of doing business and a justifiable addition to its rates.

And we have mentioned to several of our

environmentalist friends we expect their support when we seek fair rate relief to recover these additional costs, just as we heard from them telling us to do a better and better job of pollution control.

III. While accepting air and water quality regulations, standards of performance and other environmental regulations as valid and necessary parts of the planning process today, I feel the agencies enacting or changing these rules should themselves be required to support their findings with some sort of impact study. There should be a documented study of the benefits resulting from a tighter control regulation than that required to protect health and property versus the total cost of obtaining that stricter control level. Such a study should include on the cost side the full ramifications of higher product price, possible switch-over to a cheaper but more environmentally damaging product and the increased consumption of natural resources for the construction and operating energy requirements of the additional pollution control equipment. Note, that I said for pollution control levels beyond those needed to protect health and property. And we must indeed have some of these because the federal, state and local regulations are certainly not uniform everywhere and at the levels that the Environmental Protection Agency found to be required.

It also is from my viewpoint unreasonable, except in a demonstrated critical situation, to force a facility owner to retrofit to meet higher standards than were initially adopted when his facility is already in operation or well under construction.

Neither should an owner be forced to risk his money installing unproven control equipment, if he is making reasonable progress in researching and developing and proving out more reliable and more effective pollution controls.

IV. While the points I have mentioned so far about environmental impact studies and compliance with environmental regulations all generally contribute to a better plant or transmission line, there is one significant aspect of our present formal impact studies that is nonproductive. That is the complications resulting from longer lead times to formally prepare, circulate, review and respond to questions. The longer lead time forces us to plan further in advance and, therefore, to contend with many more uncertainties. This in turn drives up the overhead in the planning department and increases the costs of projects. Another result from the formal procedure is to freeze the design at the impact study submittal point and to hesitate to introduce any improvement past this point in time for fear of holding up the entire project. This shows up as a slowed down reaction to changed conditions, extra costs and lower operating efficiency.

V. I would suggest that the environmental impact study procedure will go much more smoothly for the applicant, the reviewing agencies and the interested parties from the general public if the following improvements can be effected:

1. The applicant should begin full disclosure and discussion of his planning as early as possible.

2. The reviewing agencies and others should give this preliminary information early consideration so any overlooked problem areas can be restudied by the applicant.

3. The attitude of the reviewers should be one of constructive criticism; an adversary position should be saved for later, if necessary.

The most recent example I would have to offer on this point is our new San Juan Generating Station's impact study. Some of the best questions from agencies and individuals did not get submitted for our consideration and reply until after the federal lead agency had circulated the Draft Environmental Statement. And one of the questions that was bothering some agencies for quite a while was answered easily once it was asked—yes, there would be separate statements on each unit of the plant, not just one initial statement for the whole four unit plant.

VI. Finally, for the benefit of the applicant, the reviewing agencies and the other interested parties, it is imperative that the Final Environmental Impact Statement be the same for both federal and state approvals. You cannot have the lead state agency approving one line routing or piece of plant pollution control equipment and the lead federal agency approving something different.

For several months on our San Juan to Ojo 345 KV transmission line it appeared that the New Mexico Public Service Commission had approved a routing across the Navajo Indian Irrigation Project and across the Jicarilla Apache Indian Reservation that would not be recommended by the federal lead agency because of the Bureau of Indian Affairs' objections. After a number of conferences, misunderstandings were resolved and agreement reached. But it leaves the state lead agency wondering about its effectiveness and hesitant to render the first decision on the next project.

Furthermore, the Final Environmental Impact Statement must be enforceable by the applicant after it has been approved. In New Mexico a single property owner can refuse the sale of his property or right of way even though both state and federal approvals have indicated this approach has the least environmental impact on the whole area and cause an approved project to be modified, perhaps beyond the extent of the approval. This seems quite unfair to the majority of the property owners, who have had to abide by the state and federal approvals.

Significance of Environmental Impact Studies—A Government Point of View

(By William D. Hurst)

(Note.—William D. Hurst has been employed with the Forest Service since 1937 in the Inter-mountain and Southwestern Regions and in the Washington Office. Currently Mr. Hurst is the Regional Forester, Southwestern Region, Forest Service in Albuquerque, New Mexico.)

The National Environmental Policy Act of 1970 has without doubt altered the approach taken by most agencies of government to the work they perform. While there are some obvious drawbacks to the environmental impact statements required by NEPA, the benefits which the procedure generates outweigh by far the negative aspects of the law. We can say, therefore, that environmental impact studies are desirable in not only doing a better job on the land but in gaining public understanding of Federal agency programs as well as the programs of others who utilize public lands for one purpose or another that exerts a substantial impact on the land.

What are the drawbacks of the system? Here are a few we have encountered in the Forest Service.

1. The system is time consuming and costly. The time frame established to meet the environmental statement process as well as the talents required to make the environmental analysis and write the report are costly, not only in terms of men and money but in the delay the process requires. This aspect of the system was, fortunately, not a great new impact upon the Forest Service because we have been, for many years, making environmental analysis for all actions which disturb the land. We called these multiple use surveys.

2. Opponents of a project can use NEPA, and oftimes quite successfully, to curtail action, delay action or kill a program. Long and costly court actions often result. The opportunities NEPA offers to question every aspect of the environment and even create imaginary environmental problems are endless. Even though such a course does not often prevail, the resulting delays and the legal and administrative actions required to counter an unworthy challenge are costly and discouraging.

On the other hand, the strengths of the system are substantial and overriding. Some of the more obvious are:

1. It requires advanced planning. This is a worthy requirement and one we all recognize and accept.

2. It requires and provides for a high degree of public involvement. This perhaps is its greatest attribute.

3. It requires a careful look by qualified people at the probable effects of the proposed action upon the environment and provides a means of exposing the findings to the interested public. In pre-NEPA days, the studies were usually made by competent people, but they lacked exposure and hence public misunderstanding often resulted.

4. It provides an appeal route that gives the concerned John Q. Public his day in court should he choose this avenue.

5. It provides a platform for debate where facts can be presented and acceptable decisions reached.

6. It places all agencies of government—and others who use public land—on a uniform footing in their approach to maintaining and protecting the environment.

The National Environmental Policy Act environmental statement process requires a consideration of economics as well as environmental impacts. This is a fact often overlooked by the users of the NEPA process. If properly utilized, this economic dimension can add balance to the environmental consideration which on almost any project can, without constraint, be developed into unreasonable and unacceptable proportions.

In summary, NEPA's requirement for environmental impact studies is good. Despite its cost and its other shortcomings, many of which can be eliminated by reasonable men working together, the NEPA process is perhaps the most significant and the most effective system yet devised by man to minimize the effects of man's action on the total environment. As pressures on the land continue to build, NEPA's usefulness will increase. It should be retained and strengthened.

Significance of Environmental Impact Studies—A Point of View From the Education Sector

(By James A. Zwerneman)

(Note.—James A. Zwerneman is the Chairman of the Department of Economics at New Mexico State University. He also serves as Associate Director of the Center for Business Services. His major interests are in research management systems and forecasting methodologies.)

The measure of significance for environmental impact studies is derived from two primary factors. First, the studies must be comprehensive in scope and in depth. Second, the studies must be totally objective in nature and free from normative conclusions. The significance of the environmental impact study will be lessened if these two conditions are not met.

In general, the academic community assumes a critical posture when viewing environmental impact studies. Even if the above two criteria, i.e., comprehensiveness and objectivity, are satisfied, there is a third element to be considered. The credibility of the study team may be questioned if the members of the team are from a single institution, business organization or government agency. An interdisciplinary study team that is also assembled on a multi-institutional or multi-organizational basis will be able to stand up to a technical review and critique

much more effectively than would otherwise be the case.

Well designed and produced environmental impact studies can be significant in two different ways. The first index of significance is seen in the improved level of understanding among the study team and review team members. The engineer and the sociologist, the physicist and the economist, the hydrologist and the biologist, can appreciate the other points of view with greater understanding when all are working on a common problem together. The results of the team approach to environmental research should produce a more meaningful analysis than what would have been produced by a series of individual efforts.

More importantly, however, than the improvement of academic scribbling is the significance of the environmental impact study to the community at large. Information that can be channeled into a single instrument is in itself a useful planning tool. A example of this can be illustrated using one of the recently completed studies produced by the New Mexico Environmental Institute for the American Smelting and Refining Company (ASARCO). Even though ASARCO has decided not to locate its proposed Southwest copper refinery in Dona Ana County, the site related data, the economic analysis, and the process analysis will be useful and meaningful to local government decision makers and to the citizenry of the greater Las Cruces region. The study will be helpful as well to ASARCA in planning its new facilities at the alternate site.

In addition to the fact that environmental impact studies can synthesize large quantities of technical data, there is another significant aspect of their utility. Invariably, impact studies uncover and identify subject areas where further research can be both productive and rewarding. To the academician, this provides a stimulus to continue in work that will have a positive bearing and subsequent application.

One of the significant spin-off benefits that can be realized from environmental impact studies parallels that of having the interdisciplinary team. Cooperation between the research team, the sponsoring industrial firm, the appropriate government agencies, private consulting firms, and the universities is essential. Interaction between these groups is just as necessary as interaction among groups if we expect to produce truly comprehensive environmental impact studies. It would appear that persons in all sectors are communicating with each other today better than they have done in the past.

In the final analysis, the environmental impact study can and must serve the purpose for which it is intended. It must systematically provide technical information upon which meaningful decisions can be based. Investment decisions by the firm, environmental statements by the appropriate agency, and planning decisions by local government, are all dependent upon the quality of the information produced in the study. It is therefore encumbent upon the study team to ensure that the study is both comprehensive and objective. One method that can be used to facilitate the quality of the study is to have the work of the study team subjected to a peer review, both during and at the conclusion of the work. Such a procedure is traditionally employed in scholarly pursuits within the university and is readily applicable to environmental impact studies. Concurrence by the review team with the study team findings will substantiate the results. Where differences or omissions are indicated there will be an obvious need to reconcile the differences and to fill in the gaps. The resultant documentation will lend substance to the quality of the impact study.

To the degree that environmental impact studies are undertaken and produced using a truly scholarly-research procedure, they can contribute significantly to the environmental planning and management functions. Studies of a lesser nature are questionable in value to any potential user.

SIGNIFICANCE OF ENVIRONMENTAL IMPACT STUDIES

(By Sally Rodgers)

(NOTE: Sally Rodgers is employed at the Central Clearing House in Santa Fe, New Mexico.)

"The Environment," "The Ecology." Popular phrases. What do they mean? Both of these phrases are incorrectly used interchangeably, but they have specific and complex meanings. The dictionary defines ecology as: ". . . the branch of biology which treats relations between organisms and their environment." Ecology, then, basically deals with interrelationships and interdependencies. A healthy viable eco-system is one which, by definition, is both diverse and balanced. Man's environment is an inter-relating composite of both physical habitat which includes, of course, all basic life support systems and other life forms and our social and economic systems. It's a complex concept and thinking about it and acting on it are relatively new experiences for the majority of us. We know we are causing damage to our life support systems and we know this damage has effects on our economic and social structures.

Environmental impact studies are but one of the needed mechanisms we must use in order to avoid leaving a legacy of diminished quality of life and an economic burden of cleaning up our abuses to future generations.

Because we have no experience with impact statements at the state government level, we must look to the experience and achievement of the federal Environmental Quality Act.

It must be emphasized that thinking of ourselves as part of an eco-system rather than apart from it is a complex and big task. Our government, our society, is similarly complex and big and our laws dealing with the environment must reflect this. Lack of coordination between agencies in decisions affecting both environment and economics has been the rule. Enactment of NEPA (The Environmental Quality Act) has been a major piece of governmental reform legislation in this area. The third annual report of the Council of Environmental Quality reports five clearly beneficial effects of NEPA on the Federal government. The NEPA concept is truly an ecological one. It seeks balance. It requires consideration of alternatives to proposed projects. It requires scrutiny of the risks and negative effects as well as benefits. It ". . . is a major step in bringing national policies in line with modern concerns for the quality of life. For the first time, maintaining environmental quality is acknowledged to be "the continuing responsibility of the Federal Government." The second benefit provides, via the impact statements, "a systematic way for the Government to deal with complex problems that cut across the responsibilities of several agencies." In the past, different agencies have often responded to these problems in a piecemeal, uncoordinated fashion largely because of the lack of a mechanism for shaping comprehensive policy. By forcing interagency consultation and attention to a broad range of effects and alternatives, impact statements foster more sophisticated Government decision-making. It uncovers the need for more comprehensive policies and programs in areas such as energy and transportation. Thus, it is a catalyst for more sensible policy formulation and program development.

Third, it has opened a broad range of Federal Government activities to public scrutiny and participation for the first time. Although many agency procedures were formerly closed, the agencies are now required to explain their decision when significant environmental values are concerned. A written study of environmental effects, including analysis of available alternatives, must be available to the President, the Congress, and the public before an agency acts. The public in turn has an opportunity to evaluate and comment on the agency's analysis. This new element of public participation would contribute to more careful and conscientious decisionmaking.

Fourth, agencies whose personnel have reflected a narrow focus of concerns are being required now to supplement their staffs with persons of different background relevant to environmental issues. NEPA's required "interdisciplinary approach" means that personnel must be hired who bring not only new skills but a fresh viewpoint to the agencies. Over time, this influx should lead to sharper questioning of traditional assumptions within the agencies. Out of it should emerge an institutional viewpoint that is more sympathetic to environmental values.

Fifth, NEPA's initiatives are enforceable in Federal court by citizen suits. This keeps each of these requirements from being an empty exhortation. What NEPA requires of the agencies is often difficult and uncomfortable. Constructive, progessive change usually is.

"By requiring a thorough examination of environmental effects before the Government commits itself to a new course of action, NEPA supplies a needed mechanism for technology assessment. New technologies have been developed and used in the past, usually without sufficient advance assessment of the broad image of environmental changes that they might bring. Our ability to anticipate and thereby to control the environmental effect of technological change has been enhanced." This new ability is not unlike the process we are more familiar with in drug and food safety. Without the FDA scrutiny of the new technological advances in medical drugs, we might have in this country experienced tragedies similar to the European thalidomide babies.

We have an opportunity in New Mexico to institute the similar kinds of progress under our state Environmental Protection Act. During the last session of the legislature, it became clear to all interests, e.g., industry, state agencies and citizens groups, that our "Little NEPA" needs to be amended to conform with New Mexico's needs. The Governor will soon appoint a new Council on Environmental Quality whose task it will be to evaluate the NEPA concept relative to our state's problems and formulate guidelines for state agencies in doing impact studies. The public hearings held by the Council will provide a unique opportunity for all to contribute to New Mexico's growing concern about our environment.

LEGISLATION-SOLUTIONS TO PROBLEMS OF THE ENERGY CRISIS—PART I—DESIRED THRUSTS OF FUTURE LEGISLATION

(By James Lynn Goodrich)

(NOTE: James Lynn Goodrich is a Professional Engineer working as a Feasibility Consultant in El Paso, Texas. He has worked on a variety of well known engineering and economic programs and devotes a great deal of time to educational activities toward development of our future engineering talent in youth.)

There is a real genuine continuing need for ever increasing supplies of energy for fuel and power to maintain and improve our well-being and economy.

Conventional energy sources for most of the large scale energy uses in the United States of America are, or depend upon, fossil fuels.

Energy can appear in many forms, as in light and heat and in the flow of electric cur-

rent. Energy can be converted from one form into another. It can appear as the energy of motion, kinetic energy, or it can appear as energy of position, potential energy. It can appear as chemical energy on the atomic or molecular scale and as nuclear energy on the nuclear scale.

The measurement of nergy quantities is stated in units of the *heating value equivalent* in whatever state the energy may exist or appear. The BTU (British Thermal Unit) in the English System of Measures and the joule (J) in the SI—(International Standard System of Units) are the common units for the measurement of energy. In this paper, the BTU is used as the unit of energy measurement and is stated in multiples, as x 10^6 BTU=1 million BTU, or 10^{12} BTU=1 trillion BTU, or x 10^{15} BTU=1 quadrillion BTU.

A quick review of the present U.S. and World Energy situation is essential to gain a good understanding of the subject.

Figure 1 is a graphic chart which illustrates the U.S. and world trends and predictions for the use of fossil fuels:

Natural gas and oil are used at present to satisfy three-fourths (75%) of the U.S. demand of energy and the remaining fourth (25%) is obtained from coal, hydro and nuclear.

Demand for oil in the Free World outside the United States will quadruple by 1985 while the U.S demand for oil is doubling.

Costs of energy are rising rapidly as exploration, mining, extraction, conversion, transportation, transmission and distribution become more difficult and time consuming and subject to more restrictions and obstacles.

The total demand for energy in the United States exceeds the U.S. domestic supply by about 15 per cent, and the gap between supply and demand is increasing rapidly. It is very important to understand that the *difference* in amount of fuels for energy between U.S. domestic supply and U.S. energy consumption must be *imported*.

PROJECTED U.S. ENERGY SUPPLY AND DEMAND, TRILLION BTU

[10^{12} BTU per year]

	1970	1975	1980	1985
Total domestic energy consumption	67,827	83,481	102,581	124,942
Total projected domestic supply:				
Oil	21,048	22,789	24,323	23,405
Gas	22,388	20,430	18,030	14,960
Coal	13,062	15,554	18,284	21,388
Hydropower	2,677	2,840	3,033	3,118
Geothermal	7	120	343	514
Synthetic oil				197
Synthetic gas		380	570	940
Nuclear	240	3,340	9,490	21,500
Total	59,422	65,453	74,073	86,022
Shortage indicated	8,405	18,028	28,508	38,920
Projected imports and other means for supplying fuels to make up shortage:				
Imported oil	7,455	15,284	22,163	29,997
Imported gas	950	1,610	3,880	6,280
Additional coal production		756	1,643	1,762
Additional residual fuel imports		378	822	881
Total	8,405	18,028	28,508	38,920

These alarming forecasts could become even worse if the projected coal production does not materialize.

A popular conception of an "energy shortage" is that the petroleum, gas and coal, in their natural state deposits, are completely or nearly exhausted.

Our resources in their natural state are far from being exhausted. Some people feel that as long as there are "reserves" of fuel declared by industry or the government, the supply should not suffer a shortage.

The present energy crisis is the consequence of there having developed a *difference* between the *rate of demand* and the *rate of supply* for *energy service*. *Energy service* is the provision of energy, as a commodity, to the consumer in the form and at a rate that will meet the consumer's requirements.

The beginnings of the present energy crisis occurred many years ago. Critical shortages in U.S. electric power and fuel supply were evident during War II when the Federal Power Commission on November 23, 1947 issued a bulletin warning all power companies of the situation and urging them to seek relief by means of interconnections with other systems until their installed generating capacity could catch up with demands for power.

There was a cardinal principle, prior to War II, that electric power systems should maintain reserve capacity equal to the rated capacity of the largest unit on the system, so that in event of the failure of the largest capacity unit in the system or the equivalent thereof, the "reserve" would be pressed into service and the consumer would never know there had been a threat to reliability or continuity of supply.

The U.S. has never caught up with the demands for power and other sectors of the energy industry have been equally hard pressed to meet the increasing requirements, with extant restraints.

Changes in the energy industry, by their very nature, require many years to effect, even when planned and without extraordinary restraints.

This is to say that revolutionary methods of extracting energy from unconventional sources, which are feasible, may require 20 years or more to place in service in the volume and numbers that will affect the overall picture.

Therefore, the energy supply must be increased effectively within present technological state-of-the-art, insofar as possible, to minimize the gap between supply and demand. This means, also, that the demand must be trimmed of excess to genuine and realistic uses and economically burdensome losses.

Abundance of energy supplies in the U.S. has been the greatest factor in determining application of rules of regulatory bodies.

A shortage of capacity to deliver energy to the user has developed gradually, while the "rules of abundance" continued to be applied. This can be properly interpreted that artificial restraints have been applied to the laws of supply and demand, and that for some time, energy has been supplied to consumers at considerably below true total costs.

We are faced with a realistic economic problem which must be solved by technology implemented by political clout. But how?

Reduction of heat rejection losses through increased efficiency and recovery of waste by-products of energy conversion is the greatest single area of technical approach to alleviation and overcoming of the present energy crisis.

Slide No. 2 is a graphic chart which illustrates a very important idea, the relationship between thermal efficiency and heat rejection rate. This relationship is seemingly unimportant when fuel cost is low and the supply is plentiful; but it cannot be ignored when fuel is scarce and the price is high.

Small increases in thermal efficiency produce proportionally larger savings in units of energy supply which would otherwise be wasted as rejected heat. For example: When your equipment is operating at 25% thermal efficiency, you are throwing away to waste three (3) units of energy for each one (1) unit you utilize. While, at a thermal efficiency of fifty (50) percent, you throw away to waste only one (1) unit of energy for each (1) unit you can utilize. The total heat rejected per unit product output Q total equals 1 minus n, divided by n, where n=Overall Thermal Efficiency.

Slide No. 3 applies the heat rejection equation, 1 minus n, divided by n, equals Q total, to estimate present and attainable trends of overall thermal efficiencies of the total of electric power generation in the U.S.

The same principle applies to heat losses of energy conversion and energy transfer and to utilization equipment and systems as well as conversion processes.

Scarce and high priced energy will render energy-intensive industries unprofitable, uncompetitive and prohibitive unless the waste energy "overhead burden" is effectively reduced.

Higher cost and scarcity of energy will signal engineering and architectural changes in commercial and industrial buildings and homes, and will command changes in design criteria for insulation, lighting, heating, cooling, water supply and plumbing and other energy utilization conditions.

Immediate and near-term effective increases in the U.S. domestic energy supply capacity can only be achieved through improvements in efficiencies, elimination of waste, and the recovery and reutilization of waste energy resources. In the mid-term and less immediate, new sources of energy must be discovered, developed and placed in service on a large scale.

There is no way that the widening gap between U.S. domestic energy supply and demand can be closed *other than* by a massive National commitment to a high-technology and engineering assault on all aspects of the problem implemented by political clout.

Dr. Edward Teller, noted physicist said on March 11, 1973.

"The United States has the choice of reemphasizing research and technology or succumbing by the end of this century to membership in society that does not recognize free speech." With specific reference to the energy crises Dr. Teller described a variety of solutions to the energy problem, such as nuclear reactors, coal gasification, various revolutionary uses of oil, but said:". . . the real answer lies in careful research and technology."

"There can be only disaster arising from unawareness of the casualties and effects inherent in our technologies," was voiced by Marshall McLuhan.

R. Buckminster Fuller, eminent authority on revolutionary design for efficiency and utility, the geodesic dome and dymaxion among others, said:

"I find man utterly unaware of what his wealth is or his fundamental capability is. He says time and again: 'We can't afford it.' For instance, we are saying now that we can't afford to do anything about pollution but after the costs of not doing something about pollution have multiplied many fold beyond what it would cost to correct it now, we will spend many fold (additional) what it would cost to correct it now."

There are many proposed technical solutions to the energy crisis through unconventional methods and means. Most of these will require from 15 to 30 years to prove and place in use on a large scale which will have significant impact on the problem, but nonethe-less they must be pursued vigorously to bring them into being to replace the diminishing supply of non-renewable energy sources.

In the meanwhile, it is imperative that the U.S. proceed on the basis of present conventional energy sources, conversion and delivery technology, to develop and achieve a higher state-of-the-art in efficiency and conservation so that the gap between supply and demand can be minimized without penalizing the real genuine need for fuel and power. The *GAP* between supply and demand is not

so much the *amount* of energy, but rather the *rate* of delivery which means *capacity*. Capacity often may be increased at some expense of efficiency, as well as by increasing efficiency and eliminating waste.

The solutions of energy problems is technical. However, implementation of the technical solutions must be by political means—legislation. Political solutions in the U.S. derive from the people.

A Joint Engineering Legislative Forum was held in Washington early in 1973 to provide mutually helpful dialog on matters of Congressional concern which require engineering and technical approaches. The Forum focused on energy and a series of bills in Congress basically designed to force the emergence of a coherent "energy policy" in the U.S.—a vastly complex problem that ranges from nuclear and hydroelectric power plants to oil imports.

Bills such as S. 70, S. 357, S. 419, S. 424 and S. 454 (along with companion bills in the House) seek to set up some sort of policy making body or advisory commission (one even calls for a semi-private corporate setup) that would advise the President and Congress as to National energy priorities, supervise research and development projects (such as those now underway to find a means of converting coal to gas, getting oil from shale and tar sands, making use of thermal power), and increasing the efficiency of energy distribution systems.

"Today over 60 federal agencies directly or indirectly influence energy decisions. If there is any coordination among these agencies, no one is aware of it. Not only does the right hand not know what the left hand is doing, but the right hand can take action which is contradictory to the objectives of the left hand. The Department of the Treasury regulates oil importation policies, while the Department of the Interior works to develop our domestic reserves. The Federal Power Commission regulates the rates of natural gas and electricity, but if nuclear power is involved, then the AEC is in charge. Meanwhile, the Environmental Protection Agency must ensure that environmental standards are met in order to comply with the Clear Air and Clean Water Acts," quoting Senator Ernest F. Hollings, South Carolina Democrat (hopefully not our context). Continuing, Senator Hollings said: "The solution which I propose is a high-level, full-time, three-member council with authority and responsibility to evaluate our total energy needs. This council would establish a national energy policy for maximum utilization of our resources, and it would give this policy cohesion and continuing direction. This proposal is embodied in S. 70, . . . It would not have the problem of getting a quorum. It would be a full-time, viable working group. In addition to formulating and implementing a national energy policy, the council would become the central point for the collection and analysis of energy information and statistics. For the first time, Congress, the President and the American public would know where to turn for intelligent and inclusive information. The council in turn can provide the vehicle for disseminating information, particularly on the need to increase conservation of energy. Further, the council would be independent of all existing federal agencies, and it would have the authority to oversee and coordinate their individual policies and programs. The growing environmental concern, which demands cleaner sources of energy and methods of energy utilization, brings us more squarely to the realization that we have sadly neglected development of technology to meet the growing demand. What we need now is a national commitment to a technology of abundance. This commitment must become a reality if our long-term needs are to be met at reasonable prices, both in dollars and in terms of the environment. In order to launch such a commitment, we need a Federal effort with the same sense of urgency with which we embarked upon the Apollo program. By pulling together the mass of technical talent which is needed, by giving it the kind of financial support which it needs and deserves, we can begin to achieve our long-range goals." (End of statements by Senator Ernest F. Hollings.)

The National Energy Forum of the United States National Committee of the World Energy Conference was held in September 1971 in Washington, D.C. and energy problems were defined by some of the most knowledgeable people in the field of energy problems. Their Forum deliberations were assisted by a comprehensive study of the nation's energy problems by Arthur D. Little, Inc. of Boston, Mass. In 1971, there was common agreement among the most knowledgeable that the United States is in dire need of a viable U.S. Energy Policy. There was less than unanimity as to what the policy should contain and how it should be implemented.

Every important nation on earth except the United States has a national energy policy. The United States cannot afford to wait another year to adopt, by Congressional action, a viable and dynamic U.S. National Energy Policy.

We must remember that the difference between demand and supply of energy, of course, represents the amount of *imports* we must bring in each year, if it can be found, and if we have the supertankers to transport it, and if we can pay the prices that will prevail with the competition of other Free World countries.

In conclusion, it should be emphasized that the highest priority in our legislative program and the greatest thrust should be for the passage of a viable and dynamic U.S. National Energy Policy. It appears that Senator Jackson's bill S.70 has the best chance of accomplishing that objective. Companion bills deserve the same emphasis so that the measures can be approved by Congress and the President and become operative.

Mere passage and approval of the U.S. National Energy Policy Act, or whatever it may be called, is just the first step. Additional legislative thrusts must follow adoption of a National Energy Policy, to ensure that essential funding is approved every year to perform all of the functions called for, or essential to implement the Energy Policy Act, including, (1) energy management, (2) research and development, (3) collection of energy information and data and its analysis, and (4) dissemination of meaningful, intelligent, and inclusive information, frequently and regularly to the Congress, the President and the American public. Related to the legislative thrust required for energy problems, are environmental quality, conservation of other natural resources besides energy, maintenance of national defense, technological and engineering manpower resource management and improvement, and NASA's funding for development of an operational capability for exploitation of earth resources by the use of near-earth space (up to synchronous orbits).

Even with dedication to a national commitment of the same sense of urgency as the Apollo program, the "energy crisis" will not be overcome much before the end of the 20th century, if then. The "energy crisis" can be, must be, and will be overcome and the rewards will be much greater than the cost. Everyone should know and believe this.

LEGISLATION—SOLUTIONS TO PROBLEMS OF THE ENERGY CRISIS—PART II—PARTIAL SOLUTION WITHIN EXISTING LEGISLATION

(By David N. Raffel)

(NOTE: David N. Raffel is Director-Owner of PROTANS Consultants in El Paso, Texas. Mr. Raffel is formerly Vice President and Chief for Latin America work of Harza Engineering Company. He has first hand experience with environmental consequences of meeting our population's increasing demands for power and water.)

A LEGISLATED PREDICAMENT

Every legislation enacted which in one way or another contributed to the present and very real energy crisis was enacted in the hope of improving the ultimate well being of the general public. It was just unfortunate that the various individual laws interacted in such a way as to bring us to our present predicament. A good example of that is our attempt to control the amount of sulfur introduced into the air we breathe.

Laws were enacted limiting the sulfur content of the fuels that can be used by the utilities. The laws not only set standards but imposed enforceable penalties for noncompliance. That legislation eliminated a portion of the coal and oil produceable in the United States from use as fuel. At the same time, and in an attempt to solve a problem of national security and balance of payments, the amount of foreign low sulfur oils which could be imported to the United States was limited. Those imported oils might have supplemented domestic supplies and replaced fuels of higher sulfur content.

The timing of the legislation is significant. The laws were made before alternative fuel sources could be developed. The laws forced a shift away from fossil fuels and toward nuclear fuels. But other laws concerning heat rejection from both nuclear and fossil fueled plants and concerning public participation in the siting and licensing process delayed construction and operation of nuclear fueled plants. The sulfur content laws came before resolution of disagreements between the federal government and the natural gas industry, so the gas industry delayed exploration and development of new resources.

The laws also came before the utilities and their equipment suppliers could design and manufacture and install adequate sulfur removing equipment. They came before any significant amount of "new technology" means of generation could displace the need for fossil fuel burning plants. Yet, our need for central station generation of electricity continues increasing in both magnitude and as a percentage of total energy consumption.

We may recall that electric utilities provide only part of our energy. Home heating and cooling, commercial heating and cooling, industrial consumption, use of internal combustion engines for power and transportation presently consume a large portion of our total fuel than the electric power utilities. Those other uses create a disproportionately large share of the total environmental pollution.

Some alternatives which might diminish the total damage to our environment are:

a. Improving the efficiency of the myriad small home and industrial electrical and combustion devices.

b. Shifting toward public transportation instead of private transportation.

c. Increasing the proportion of homes, offices, and factories which are heated and cooled by electricity generated at central utility plants. Larger central station generating plants are more efficient, less polluting consumers of fuel than the smaller units which they replace.

Keeping that in mind, let's look at the pattern of utility energy generation. Figure 1 is a typical system load curve for a week. Time and day are given along the bottom and the amount of energy delivered to the various utility customers at any time is the height of the curve. The generating equipment is governed so that it delivers just the amount of electricity demanded by the customers and never more, and hopefully, never less. The lower portion of the electricity generated at any time of day is called the base load. The higher portion is called the peak load.

UTILITY PEAKING

Since fuel is consumed when starting up and picking up load by a thermal unit, the utility tries to have as few starts as possible. Since the base load is generated all day long, the utility prefers that the base load electricity be generated by the units having the least total costs for operation. It happens that the present nuclear fueled plants produce electricity at lower total cost than the more efficient modern fossil fueled plants. So the utility elects to use nuclear fueled plants to generate the base load electricity.

As the demand for electricity increases at various times during the day, the utility operates less and less economical and less efficient thermal fueled units. The selection is for the more efficient, but their availability soon runs out and older, less efficient equipment is finally operated to meet the peak of the load. If available, alternative generating equipment may be operated to meet the peak. Those alternatives now include conventional hydroelectric plants, pumped storage hydroelectric plants, Diesel-electric plants, gas turbines, combined cycle units with gas turbines, and in one instance the geoethermal units.

Increasing use of electricity for heating and cooling is the major means of shifting energy consumption toward less polluting central station generation. We can expect that diminishing the total environmental pollution by shifting toward central utility production of energy will not diminish the future differences between the peak and the base load.

Our present research and development of geothermal and solar and magnetohydrodynamic plants has not yet reached a stage where we can build the major peaking plants of the 1980's with that kind of equipment. And it is the 1980's we are talking about, not the 1970's. The time between decision to build and going on the line with commercial energy is so long at present that no plant not already started through the licensing process will be serving loads before the mid-1980's.

Let's consider how we might meet the peak loads with existing technology in such a way that total additional pollution in meeting those loads is minimized or reduced. We are also looking for a way of doing that so total allocation of our limited material resources is minimized. We are looking for a way that is practical for generating large amounts of electricity on peak, within the existing legislation constraints and with minimum total damage to the quality of our environment.

As an alternative to generating on peak with older fossil fueled plants, utilities use hydroelectric plants if they have them. Hydroelectric plants can be of two distinct types. One is the conventional hydroelectric plant, using either the natural deliveries of water from the stream or regulating the natural flows in reservoirs. Flood excesses can be stored for release later when the natural flow is low. The other type is the pumped storage plant.

Many hydroelectric and pumped storage plants are built with the machinery halls excavated in rock, underground. An extensive mining, tunneling, and shaft excavation technology already existed and was extended to solve the special problems of that kind of excavation.

THE PUMPED STORAGE CONCEPT

Figure 2 is a simple schematic showing the basic features of a pumped storage project. The conventional project is at the left. There is an upper reservoir for storing potential energy, an intake/discharge control structure, a water conduit called a penstock, which could be in a shaft or exposed, a guard valve, the basic pumping/generating equipment in a powerhouse or in an underground cavern, a second intake/discharge control structure, and a lower reservoir.

Conventional pumped storage has been used since the late 1940's for generating on peak in situations where water supply is limited. Basically, a portion of base load generating capacity which is not supplying the load for several hours of the day is used to pump water to an upper reservoir, where it is stored. Later, the water is dropped back through the hydroelectric generating machinery to the lower reservoir, generating energy when it is needed on peak. The reservoirs can be natural bodies of water or they can be man-made. The pumped storage reservoirs which are man-made are not ordinarily used as recreation lakes because of rapid and large changes in water levels throughout the operating cycle.

The pumping and generating energy fit the utility load as shown on this second weekly load curve, Figure 3. This pattern supplies the same customer loads as Figure 1. The peak of the load is met by generating with pumping storage units. The magnitude of the peak varies substantially from hour to hour. The base of the load plus the pumpback energy is supplied by the base load units. In that manner, the base load units are operating at nearly constant load and optimum efficiency all the time. The remainder of the load is supplied by other thermal units which are at nearly constant load and nearly best efficiency while they are operating. More energy is needed for pumping during off peak hours than is later recovered when generating on peak, because there are machine losses and hydraulic losses. But, by generating the pumpback energy with the least expensive base load energy, the utility avoids inefficiencies and higher fuel costs generating on peak with thermal units. The patterns of most utility system loads and the necessary amounts of base load generating units generally permit installing pumped storage equal to 10% to 15% of the total system capacity.

It is characteristic of hydroelectric and pumping machinery that the higher the head, or fall, of water, the smaller are the machines, the reservoirs, the structures, and the civil works required for generating a given number of kilowatts on peak. Figure 4 shows the relative costs at different head of machinery and structures and, most significantly, the volume of water required to be stored, pumped, and stored again. The amounts are given as proportions of the amounts when operating at 352 feet maximum generating head. That is the head at the Ludington Pumped Storage Project on the east shore of Lake Michigan, where the world's largest reversible pump-turbines are now operating.

Obviously, given favorable sites, the allocations of labor and materials to build a pumped storage peaking plant decrease as the head increases. It is also obvious that water consumption by evaporation and leakage and environmental defacement decrease as the volume of water handled and the reservoir sizes decrease when the head increases.

The economics of very high head pumped storage plants have not been considered much in this country because of the scarcity of sites with large differences in elevation near major load centers. Pumped storage plants built and proposed in the United States have been limited to the head technically developable with the reversible Francis type pump-turbines. Those machines are practical for relatively efficient operation at heads as high as 1400 to 1700 feet. Efficiency decreases rapidly at the upper limit of the head range.

In Europe, where large topographic differences in elevation exist near major population centers, single stage pumped storage plants are operating at heads of 3000 feet and more, using separate Pelton type turbines and multistage pumps.

HIGH HEAD UNDERGROUND PUMPED STORAGE

The right side of Figure 2 shows an underground pumped storage project. The only difference between the underground and the conventional is that the lower reservoir of the underground project is mined in the solid rock. Location of the power cavern is not the distinguishing feature. Several proposals to plan underground pumped storage projects have been made and one is now being built in Finland, where the lower reservoir is an abandoned mine. The underground portion of the project may be beneath land or beneath a body of water—the so-called "offshore" development—where land near the major load center is scarce or unavailable at a practical cost.

The following are the principal advantages of going underground:

a. Ability to site the plant near the load center, thus reducing transmission losses at the time when the load is greatest and transmission losses per mile will be the highest.

b. Reduction of the amount of thermal-generated energy needed for pumpback by reducing transmission losses.

c. Reduction of the amount of land corridor and labor and materials needed for transmitting the energy to the load center.

d. Reduction of the amount of peaking generating plant above ground and in public view.

e. Freeing some of the land above the facilities for public use as parks, etc.

Partly because of inertia, underground pumped storage proposed in the United States to date has been limited to heads appropriate for reversible Francis style pump-turbines. Two-stage (one above the other) developments using reversible machines have been proposed as a means of reducing the total excavated volume per megawatt of peaking capacity. There is talk of developing reversible machines capable of operating efficiently at higher heads than now possible. But there is no reason to wait the years required for achieving that tour de force, even if the operating range for such machines can eventually be extended.

There is absolutely no reason why much higher heads, on the order of 3000 feet or more, should not be developed now in a single stage with separate pumps and turbines. The heads will be available by going underground to the lower reservoir. Such a project is shown at the right side of Figure 2, for comparison with the highest head conventional pumped storage. There is a small surface reservoir, the intake/discharge control structure, the penstock, the powerplant in a cavern, a lower control structure, and a mined pillar and cavern underground reservoir. A typical head for an economical underground pumped storage project is about 1000 meters or more, say 3500 feet. That is a high head by most standards, but it is not greater than the depth of many mines.

With the head developed in one stage, there will be less total excavation than if the head is developed in two stages because there will be no intermediate regulating reservoir and because the separate machines are more efficient than reversible machines, which are a compromise between design for pumping and design for generating operation. The high head underground pumped storage project is a development with a small surface reservoir. The volume required at 3500 feet head is only one tenth the volume required at 350 feet head. The quantity of rock excavated and subsequently sold, used to line the upper reservoir, or otherwise used as fill, the cost of the pumping/generating facilities, and the surface defacement will similarly be less for a high head underground pumped storage project than for a plant with lower head. Water consumption will be less and makeup supply allocated will be less.

Of course, a safe high head underground pumped storage plant cannot be sited just anywhere. But the geotechnical criteria for selecting a site for such a project can be met near many of our major load centers. Geotechnical criteria of primary importance are those related to the subsurface conditions which will have an influence on the stability for construction of shafts, underground powerplant caverns, and underground storage reservoirs and on the long term stability of the underground storage reservoir under operating conditions. The geotechnical criteria include the following:

a. *Sound Rock*

1. The rock mass and the rock should be relatively free of major structural features that will influence its stability in large, unlined caverns during both excavation and long term operation. This includes structural features that may be susceptible to erosion by the water flowing through the rooms or to deterioration as a result of the daily fluctuations of water in the subsurface reservoir.

2. The rock should have a minerology that that is not susceptible to weathering, which could deteriorate the strength of the rock during operation of the facility.

b. *Adequate Thickness, Distribution, and Depth.*

1. The rock unit should have adequate thickness for the safe placement of the openings for the underground powerplant and for the underground storage reservoir.

2. The geometric configuration of the rock unit should be favorable for the placement of the underground powerplant and the underground storage reservoir.

3. The depth of the rock units should be sufficient to develop the intended head for generation.

c. *Water Tightness*

1. The permeability of the rock mass should be low to prevent either inward seepage and filling of the subsurface reservoir or outward seepage and leakage from the subsurface reservoir.

2. The permeability of the rock mass should be of the type that can be controlled by standard methods. Provisions can be made for treating local zones of secondary permeability, such as along joints or bedding. However the cost to control intergranular, or primary, permeability throughout an underground storage reservoir would most likely be prohibitive.

The geotechnical aspects of surface reservoir siting are also of primary importance. Evaluation should be made to ensure that the surface reservoir can be made relatively watertight and that the reservoir slopes will be stable under large and rapid changes of water level. Besides the technical considerations, the effect of a high head underground pumped storage project on the total environment should be evaluated.

TOTAL UTILITY SYSTEM WASTE HEAT REJECTION WITH PUMPED STORAGE

The bulk of the pumpback energy will be generated by the most economical base load thermal plants. If the base load units are nuclear fueled, waste heat rejected by them during pumpback will be about one and one half times as great as with fossil fueled base load pumpback. However, the nuclear plant waste heat will be about the same as waste heat from the older fossil fueled plants which would otherwise be used for peaking, per unit of electricity generated. Besides lesser operating efficiency of the fossil fueled peaking units, energy is consumed and wasted when they are starting up and shutting down and while they are following the peak of the load at inefficient part load operating conditions. That additional waste will not be as great, however, as the difference between the pumpback energy and the energy generated on load by the pumped storage plant. Thus, if there is a nuclear base, there will likely be greater total utility waste heat rejected to the environment with pumped storage on peak than with thermal units on peak. If there is a fossil fueled base, total utility waste heat rejected to the environment will likely be about the same, with pumped storage or with thermal peaking.

TOTAL UTILITY WATER CONSUMPTION WITH PUMPED STORAGE

Total utility water consumption would be about in proportion to the total utility waste heat rejection. There will be an additional long term water consumption with pumped storage because of the evaporation and leakage from the reservoirs. With a 3500 feet head underground pumped storage project, the surface reservoir will occupy only about 50 acres of land and the underground reservoir will be slightly larger. With such head and, say, 1000 megawatts peaking capacity, total water consumption at both the upper and lower reservoirs would be about 825 acre feet per year.

TOTAL UTILITY FIRM WATER SUPPLY DURING CRITICAL DRY PERIODS WITH PUMPED STORAGE

A cooling pond for 1000 megawatts of thermal peaking capacity would occupy about 1060 acres, or 20 times as much surface land as the upper reservoir of a high head underground pumped storage project. To reduce that land requirement, utilities in the southwest would build mechanical draft cooling towers. The towers would mar the landscape and create fog plumes on cold days. They would occupy less land than the upper reservoir of the high head underground pumped storage project, but we are not considering a large land area anyway.

A 1000 megawatt thermal peaking plant with cooling towers here in the southwest will consume 15 to 20 acre feet of water per day by evaporation and almost the same amount additional for tower blowdown.

That amounts to 8,000 to 10,000 acre feet per year, if operated on peak 8 hours per day, or consumption at the rate of 15 to 20 cubic feet per second when operating. *That is an amount about ten times as great as the rate of makeup supply for an alternative high head underground pumped storage plant!* And the makeup supply must exist at the same time as makeup for the base load units operating at their full capacity.

It wasn't many years ago that the Mississippi River level was so low that water could not be passed through the Union Electric Company's condensers at St. Louis. Their generating plants could not be operated at all. Without a firm supply of cooling water for a thermal plant, the plant cannot be counted on for generation. If the supply is not available every day of every year, then other generating capacity will have to be built or obtained by interchange for meeting the peak of the load, even if only for a day or two.

Consider a critical dry period or an emergency when makeup water is not available for a high head underground pumped storage project and when cooling and blowdown water is not available for a thermal peaking plant. The pumped storage plant will be operable at nearly its full capacity. The capacity will be reduced only by the ratio of evaporation and leakage losses during the critical period to the normal volume of water in the pumped storage system. Later, when makeup water is again available, the volume can be replenished to its normal amount.

In contrast, the alternative thermal peaking unit (normally requiring about ten times as much daily makeup as an equivalent capacity high head underground pumped storage plant and thus more frequently susceptible to reduction in the needed supply) will be completely out of service. Thus, we can appreciate the significance to the public and to the utility of a difference in the required allocation of firm water supply during a critical dry period. In water short areas, this matter should not be overlooked.

LOW VALUE BRACKISH OR SEA WATER

In regard to both total water consumption and firm allocation, there is an intriguing possibility in regions where brackish or sea water lies deep underground. Given careful exploration and planning, a high head underground pumped storage project can use brackish or sea water instead of the much higher quality water needed for makeup, cooling, and blowdown at a thermal peaking plant. Certainly, the proper materials must be selected and they cost more per pound than materials suitable with fresh water. Yet, there are several hydro-electric plants operating year after year with sea water. The extra cost of the special materials would necessarily be balanced against the value of freeing a higher quality water for other uses.

If high quality water were valued at only $15 per acre foot for irrigation, then using brackish water would be justified if the extra expenditure for materials were about $120,000. But if the high quality water were eventually valued as municipal and industrial water, then using brackish or sea water might justify an additional expenditure for materials of three quarters of a million dollars.

TOTAL UTILITY ATMOSPHERIC POLLUTION WITH PUMPED STORAGE

There will be no at site atmospheric pollution with pumped storage peaking. Most of the pumpback energy will be generated by the large base load units which are equipped with the most effective pollution control equipment and systems. With thermal peaking, if the peaking units are not at the same place as the base load units, then there will be some atmospheric pollution at two or more places instead of only at the base load plant sites.

WHY CONSIDER HIGH HEAD UNDERGROUND PUMPED STORAGE?

Underground pumped storage at high head is a here and now technology. If should be considered as an alternative to other means of peaking for the following reasons:

a. The necessary technology for shaft and cavern deep mining exists.

b. Given adequate planning and site selection, high head underground pumped storage is economical. There may be situations in which existing mines can be used for the lower reservoir, as in Finland.

c. High head underground pumped storage causes minimum topographical defacement because surface reservoirs are small. The plant can be close to the load center, thus minimizing requirements for right-of-way and structures for transmission. The powerplant and the lower reservoir will be safely out of sight.

d. Underground pumped storage peaking minimizes fossil fuel consumption when all or most of the pumpback energy is generated during off peak hours with the then excess capacity of base load nuclear fueled plants. That pumpback energy costs 3 mills per kilowatt hour or less, compared with 6 to 7 mills per kilowatt hour for fossil fueled peaking.

e. High head underground pumped storage minimizes the total utility system requirement for firm water supply during critical dry periods.

f. Well planned and well executed underground pumped storage will not destroy the underground environment and it will not pollute the groundwater basin.

Several additional advantages to the electric power utilities are summarized below:

a. Very high head underground pumped storage projects with separate pumps and turbines can be started simply, can change from pumping to generating mode very rapidly, and can pick up load in a very short time.

b. Investment in transmission facilities can be low and system transmission stability

can be high, with the peaking capacity operated near the major load centers.

c. Land purchase requirements decrease as the head increases and part of the facilities are put below ground.

d. Total utility disbursements for fuel and investment tied up in fuel reserves can be reduced. This is increasingly significant because we are already experiencing doubled costs for fossil fuels and can expect further increases.

It seems in the interest of the general public and of the electric power utilities that high head underground pumped storage should be considered as an alternative whenever other means are proposed for meeting the peak loads of the 1980's and thereafter. Many utility systems can use 10% to 15% of their total capacity as pumped storage. Economical high head underground pumped storage plants can be built with existing technology and within existing legislation, with minimum deterioration of the environment.

TRADITIONAL ECONOMIC METHODS FAIL TO CORRECT U.S. ECONOMIC PROBLEMS

Mr. HARTKE. Mr. President, the traditional economic tool for correcting a disequilibrium in the balance-of-payments mechanism has not worked. No one can say with any assurance that the two dollar devaluations will restore the United States to a position of surplus. There is, however, evidence that the strong medicine of devaluation is not at all effective in combating our trade deficit.

Exports from Germany continue to pour into the United States despite our two dollar devaluations and the recent German mark revaluation. Overall, German exports, despite the much higher prices demanded for mark-valued products, showed a 20.9-percent increase for the first 5 months of 1973 compared to the same period in 1972. German exports to the United States increased by a record 18.2 percent during this period.

Exports to the United States in May of this year amounted to $440.65 million up from $397.15 million in May 1972. Imports into the United States increased by 22 percent in 1972. They continue to climb at this annual rate. Export volume only increased by 8 to 14 percent in 1972. Devaluation has not given an impetus to exports in general.

Devaluation has also not been very successful in attracting foreign investment to the United States. Volkswagen was considering putting an assembly plant in the United States but has made no moves in this direction because the dollar parity fluctuates so drastically from day to day. This is hardly the basis upon which these firms can make any long-term plans or even short-term calculations. So they put off any decisions to invest in the United States and the potential jobs for Americans are not realized.

Devaluation has made our agricultural products extreme bargains, draining our supplies and pushing up domestic prices. Phase IV promises even higher food prices, adding to our already outlandish annual agricultural price inflation rate of 32 percent.

We can ill afford waiting around until the positive effects of devaluation materialize. Thus far, it has not brought about the kind of adjustments which are necessary. It has been detrimental. Our dollar, although still one of the world's reserve currencies, is being buffeted back and forth by speculators and creating severe strain on the world's monetary and trading structure. The potential has been created for a major shift in international trading relationships in the next few months, and it will not be in the favor of the United States.

NEW LEGAL SERVICES CORPORATION

Mr. JAVITS. Mr. President, it is my expectation that the Subcommittee on Employment, Poverty, and Migratory Labor will proceed in the very near future, hopefully before the August recess, to consider the administration's proposal and other proposals for the establishment of a new legal services corporation.

The Senate Committee on Labor and Public Welfare has before it S. 1815 and amendment No. 132, essentially the administration's proposal, which I introduced to ensure its consideration, and S. 706 and amendment No. 5, introduced by Senator MONDALE, which I cosponsored, which is basically the bill agreed to in conference last year, but unfortunately dropped in anticipation of its veto by the President, largely over the failure to reach agreement on the way to appoint the board of directors of the corporation.

The House of Representatives has already acted upon the administration's proposal having made a number of changes in committee and also on the floor—in the latter case changes which I consider on the whole to fall short of the need.

Mr. President, when I introduced the administration's proposal on May 15, 1973, I indicated that each of the provisions of that measure would have to be judged by the very principles enunciated by the President in his messages on the subject—not only in terms of intent but their potential effects. These principles are: the independence of the corporation, freedom of the attorney-client relation—and maintenance of a vital program. I pledged that I would seek to eliminate the elements which could tend to politicize the program and to support elements that could serve to professionalize it.

In this regard I noted particularly that:

> The views of the organized bar and the attorneys in the current program with respect to these and other provisions will—as in the past—be a strong guiding force in the final legislation which results.

I am very pleased, therefore, that a number of very distinguished members of the National and New York Bar came to Washington this past Wednesday, July 18, 1973, and make known to me and to other Members of the Congress their views with respect to the House-passed bill and the proposals to be considered in the Senate.

It must be constantly reassuring to those who conduct the program, as it is to me, that lawyers of such stature as Robert Meserve, president of the American Bar Association, and Orville Schell, president of the Association of the Bar of the City of New York, would personally meet the elected representatives in behalf of a professional legal service program.

Mr. Schell transmitted to my office joint statement endorsed by the New York State Bar Association, the Association of the Bar of the City of New York, the New York County Lawyers Associations, the Legal Aid Society, the Community Action for Legal Services—CALS—and Community Law Office—an extensive and impressive array of the key associations concerned with legal services.

The statement indicates that each of these organizations is strongly committed to the entertainment of a National Legal Services Corporation which:

(a) is adequately funded to meet the compelling need for legal representation of eligible indigent clients;

(b) permits legal services lawyers to provide the sam representation to indigent clients that the private bar provides to its clients:

(c) has sufficient flexibility in its personnel policies and in the use and application of its funds to permit an innovative attack on the problem of providing legal representation to the indigent; and

(d) is not restricted by statute in the kind of cases that it can take or the nature of the legal assistance it can provide to eligible clients.

On the basis of these criteria, the statement concludes:

> We believe that H.R. 7824, as passed by the House fails to satisfy the foregoing principles and is, therefore, unsatisfactory.

Mr. President, I agree with this conclusion and, as the legislation is considered by the Committee on Labor and Public Welfare, I pledge every effort to insure their implementation in the areas of concern noted in the statement—legislative and administrative advocacy, full representation, and the continuation of backup centers, as well as other areas of concern.

I also acknowledge with satisfaction the receipt by my office of a petition—signed by 1,509 lawyers and candidates for admission to the bar in New York State—endorsing a resolution sponsored by the New York Law Associates in support of a resolution passed by the House of Delegates of the American Bar Association on February 16, 1973, urging the formation of a strong legal services corporation and in the interim continuation of the existing program at an adequate level of funding.

Mr. President, I also wish to express my strong support for the continuation of a meaningful legal services program under OEO in the interim until a national legal services corporation is established. In that connection, I note the following very promising development:

The action of the House of Representatives in voting to appropriate $71.5 million for the current program in OEO for fiscal year 1974; I expect to testify before the Senate Committee on Appropriations tomorrow in support of that appropriation; earlier the Appropriations Committee, at my request, included as

report language on H.R. 7447, the second supplemental appropriations bill, a commitment to fund the existing program. Pursuant to that commitment, the program is now being conducted under a continuing resolution.

The commitment made in writing to me by the Acting Director of OEO, Alvin J. Arnett, in response to a letter dated June 28, 1973, from me and 10 other members of the Labor and Public Welfare Committee and the Senate to continue the vital backup centers at least through December of this year;

The commitment made by Acting Director Arnett just last Friday in his confirmation hearing before the Committee on Labor and Public Welfare, in response to questions which Senator Schweiker and I posed, that he does not intend to make any major changes in the goals or conduct of the legal services program and he will tend toward funding of existing projects in carrying out the programs throughout this fiscal year. With respect to his commitment not to affect any major changes in the program, I note also that he has advised Robert Meserve, president of the American Bar Association, of his intent to withdraw and not pursue at this time any new regulations for the program; Mr. Phillips had previously published regulations that in my opinion would have greatly changed the program and limited so-called law reform cases and restricted representation in cases involving assistance for the establishment of community development corporations and other organizations.

I ask unanimous consent that there be printed in the RECORD a copy of the statement by the New York Bar Association to which I referred earlier, together with the exchange of letters I had with the Acting Director of OEO, Alvin J. Arnett, regarding backup centers, and a copy of the resolution sponsored by the New York Law Associates to which I also referred.

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

THE PROPOSED NATIONAL LEGAL SERVICES CORPORATION (H.R. 7824 AND S. 1815)

On May 15, 1973, the Administration introduced its long-awaited bill seeking to establish a National Legal Services Corporation (H.R. 7824). The bill, changed substantially by the Committee on Education and Labor and amended extensively by the House of Representatives prior to passage on June 21, has been sent to the Senate for consideration. Companion legislation has been introduced in the Senate (S. 1815 and amendment 132 thereto).

SUMMARY OF RECOMMENDATIONS

Each of our organizations is strongly committed to the creation of a National Legal Services Corporation which:

(a) is adequately funded to meet the compelling need for legal representation of eligible indigent clients;

(b) permits legal services lawyers to provide the same representation to indigent clients that the private bar provides to its clients;

(c) has sufficient flexibility in its personnel policies and in the use and application of its funds to permit an innovative attack on the problem of providing legal representation to the indigent; and

(d) is not restricted by statute in the kind of cases that it can take or the nature of the legal assistance it can provide to eligible clients.*

We believe that H.R. 7824, as passed by the House, fails to satisfy the foregoing principles and is, therefore, unsatisfactory. We unanimously call upon the Senate, in its consideration of S. 1815, to reaffirm these principles by adopting, at the very least, those essential amendments described below to the cited paragraphs in H.R. 7824 and S. 1815.

1. Adequate funding

Prospects for adequate funding of the Corporation and the legal service programs operating thereunder are seriously threatened by:

(a) the specific authorization (Sec. 6(e) of H.R. 7824) for local courts to impose potentially staggering court and counsel fees upon such programs, even where no such costs could be imposed on private attorneys, with the additional problem that a concern with possible defunding inhibits a program from adequately asserting clients' rights; and

(b) the severe restrictions against the use of non-Corporation funds (Sec. 10(b) of H.R. 7824), which may have the adverse effect of virtually eliminating substantial funds *now contributed* to such programs by state and local governments, foundations and the private Bar.

In addition, we note that since neither H.R. 7824 nor S. 1815 contains an authorization or appropriation of funds, separate legislation will be required to enable the Corporation to even begin to carry out its responsibilities.

2. Equal representation

The opportunity—indeed, the obligation—for legal service lawyers to render the same type of representation to poor clients as the private Bar furnishes to its clients is embedded in the Code of Professional Responsibility, in the Constitution's guarantees of Equal Protection and Due Process and in the concept of our adversary system. Yet H.R. 7824 and S. 1815 undermine the goal of equal representation by:

(a) prohibiting (Sec. 7(a)(5) of H.R. 7824 and Sec. 6(e)4 of S. 1815) legal service programs from many forms of legislative or administrative advocacy both as members of the Bar with the obligation to contribute to the improvement of the law and even in cases where such advocacy is required by the interests of the clients, while permitting such advocacy by private attorneys for competing interest groups;

(b) severely inhibiting legal services programs from advising clients of applicable laws and remedies (Sec. 6(b)5 and 7(b)4 of H.R. 7824; Secs. 6(b)5 and 7(b)5 of S. 1815) because such advise may "encourage" the use of such laws and remedies, despite the fact that attorneys are professionally bound to advise their clients of applicable legal alternatives and despite the fact that encouraging wider understanding of such laws and remedies may reduce the frequency of litigation and the cost of legal services;

(c) subjecting restrictions on the ability of legal services programs to advise clients of corporate and organizational alternatives available under the law (Sec. 7(b)5 of H.R. 7824 and Sec. 7(b)6 of S. 1815) even where such laws created for profit can be helpful to such clients, or assisting them in meeting the requirements of such laws even though such non-litigation counseling is a primary service for the private clients.

In each of these cases, we believe, H.R. 7824 and S. 1815 must be modified to preserve the appellate and advocacy capabilities of legal service programs to the same extent that such capabilities exist within the Bar generally.

3. Personnel Policies and Innovative Approaches to legal Problems

Despite the desparate need for more qualified men and women to meet the legal needs of the poor and for innovative approaches to these needs, H.R. 7824 will make it more difficult for legal service programs both to obtain qualified staff attorneys and to pursue such approaches. In particular:

(a) de-centralized national back-up centers are eliminated entirely (Sec. 6(a)(3) of H.R. 7824), despite the obvious contribution they have made to thorough research and analysis by legal service lawyers—a contribution directly parallel to that which libraries, continuing legal education programs and numerous research associates make to the private Bar. Two other sections dealing with other subjects (Secs. 6(b)4 and 7(b)3 of H.R. 7824 and Sec. 7(b)3 of S. 1815) may be read to have the same effect of excluding back-up centers and should be clarified or eliminated;

(b) both full and part-time attorneys associated with legal service programs are prohibited from virtually all participation in the political process (Sec. 7(a)(6) of H.R. 7824 and Secs. 6(b)5 and 7(a)7 of S. 1815), including non-partisan campaigns. These limitations surpass those imposed on full-time government employees by the Hatch Act. To the extent that they do, we believe them inappropriate and oppose their enactment.

(c) local bar associations must be requested to recommend applicants who must then receive preference for all available staff attorney positions (Sec. 7(a)(8) of H.R. 7824). Although consultation with local bar associations is desirable, the bill as presently constituted provides that recommendations from the local bar association must receive preference and this may inhibit the independence of the program.

4. Restrictions on cases and services rendered

Highly objectionable provisions of H.R. 7824 arbitrarily restrict either the particular clients which legal service programs may represent or the types of remedies which may be sought on behalf of those clients. We believe strongly that once the promise of rights is made to a group of citizens and a lawyer-client relationship established, legal service lawyers—like all lawyers—must be free to pursue (within the framework of the Code of Professional Responsibility) all available remedies for vindicating their clients rights—regardless of whether those clients or those rights are popular or unpopular with the majority of any community, court or legislature.

Notwithstanding these fundamental principles, neither the Corporation nor any legal service program funded by it may represent an indigent client who:

(a) is under 18 and lacks parental consent for such representation (except in severely restricted cases (Sec. 7(b)(6) of H.R. 7824). This subsection raises a question concerning an emancipated person who is under the age of 18 and the bill should, at a minimum, be amended to exclude emancipated persons. Moreover, the proposed Corporation may well wish to issue guidelines outlining the circumstances under which such representations may be undertaken. Such matters appear to be inappropriate for inclusion in the legislation establishing the Corporation and should be left to the Corporation's Board of Directors.

(b) has been convicted of a criminal charge and seeks relief in a civil action arising out of alleged acts or failures to act connected with the criminal conviction and which is brought against an officer of the

*These principles were contained in a Resolution adopted by the House of Delegates of the New York State Bar Association on June 29, 1973.

court or against a law enforcement official (Sec. 9(b)(1) of H.R. 7824).

In addition, even if eligible for representation, no client is permitted to assert any claim with respect to:

(c) his right to attend an integrated school (Sec. 7(b)(7), (10) of H.R. 7824);

(d) her right to a non-therapeutic abortion (Sec. 7(b)(8) of H.R. 7824); or

(e) the Selective Service Act (Sec. 7(b)(9) of H.R. 7824).

We find in each of these cases an unacceptable deviation from the principle that the rights of poor clients are as equally entitled to respect, and enforcement, as the rights of all other citizens.

* * * * *

For the reasons stated above, we strongly urge all members of the Congress—and particularly those concerned with the continued role of law and fair play in our society—to create a truly *professional* Legal Services Corporation in accordance with both the principles set forth at the outset of this report and the specific recommendations set forth above.

NEW YORK STATE BAR ASSOCIATION.

U.S. SENATE,
Washington, D.C., June 28, 1973.

Mr. ALVIN J. ARNETT,
Director, Office of Economic Opportunity, Washington, D.C.

DEAR MR. ARNETT: As members of the Senate Committee on Labor and Public Welfare and others concerned with the legal services program, we urge you to utilize, and obligate existing funds appropriated for fiscal year 1973 and funds that we expect the Congress to appropriate for fiscal year 1974, to continue the current support centers at least through December 31, 1973, or until a national legal services corporation can be established.

As you know, the sixteen support centers throughout the Nation currently funded by the Office of Economic Opportunity provide essential specialized legal assistance for legal services attorneys and their clients, thus serving as the vertebrae of the entire program, in such crucial areas as employment, migrant and other law.

The Economic Opportunity Act Amendments of 1972, signed into law by the President on September 19, 1972, provides that of the authorized amounts in each of the fiscal years 1973 and 1974, the Director of the Office of Economic Opportunity shall "reserve and make available" not less than $71.5 million for legal services programs. On October 31, 1972, the President signed into law (P.L. 92-607) the Supplemental Appropriations Act, 1973, appropriating $71.5 million for legal services for the current fiscal year 1973.

And, under recent decisions in the Federal courts, the Office of Economic Opportunity is obligated to make fiscal 1973 funds available before the close of this fiscal year for continuation of the legal services, as well as other OEO programs.

Moreover, with respect to fiscal year 1974, the Congress has already made clear its intent that the legal services program, including support centers should continue to be funded through fiscal year 1974 in the Office of Economic Opportunity, pending the establishment of a national legal service corporation.

The House has passed both H.R. 8877, the Labor-HEW Appropriations Act, 1974, specifically including $71.5 million for continuation of legal services under OEO through fiscal year 1974, and pending action by the Senate on that measure, H. Res. 636, continuing the legal services program, at the rate of $71.5 million through September 30; the latter will be acted upon by the Senate this week.

It is also already clear that the Senate favors similar actions; in connection with H.R. 7447, the Second Supplemental Appropriations bill, the report of the Senate Committee on Appropriations, dated May 18, adopted by the Senate on May 31, states:

"In the budget submitted to Congress on January 29, the President indicated that a proposal would be forthcoming to establish a new legal services corporation. Since this legislative proposal has just been submitted (May 11), the Committee is somewhat concerned that the fiscal year will end and no funds will be available to continue the 900 neighborhood offices *and sixteen support centers* now in operation throughout the country. Since there is existing authority under the Economic Opportunity Act and further, since appropriations for legal services covering FY 1973 have been enacted this program would normally be covered under a continuing resolution at a level of $71,500,000. Should the Congress fail to complete action on the FY 1974 legislative proposal and subsequent appropriation, the Committee would work to ensure that this program is provided for under a continuing resolution based on existing authority and present level of funding." (emphasis added).

We support fully the concept of a national legal services corporation, and expect prompt action by the Committee on Labor and Public Welfare on the Administration's proposal, which has already passed the House.

But in the interim, until the corporation can be established and ongoing, it is essential that these vital back-up centers be fully funded in accordance with Congressional intent.

We recognize that the future of legal services support centers under a new corporation is an issue in dispute and we will welcome a review of that question in the context of considering legislation to establish a new corporation. However to permit these centers to go out of existence in the meantime would serve only to undermine the objective evaluation that is necessary, cause a diminution in current effective legal services for the poor and constitute a demoralizing and cost-ineffective break in continuity, should it later be determined that such centers are to be a part of the program under a new legal services corporation.

Even if legislation to establish a national legal services corporation is promptly enacted—as we hope it will be—it is doubtful that it could be fully ongoing before January 1, 1974. Accordingly we urge that you take appropriate affirmative action on pending applications under their terms for continuation, and in any event at least through December 31, 1973 or until a new corporation is ongoing.

Sincerely.

JACOB K. JAVITS, RICHARD S. SCHWEIKER, EDWARD W. BROOKE, ALAN CRANSTON, THOMAS F. EAGLETON, HAROLD E. HUGHES, HARRISON A. WILLIAMS, JR., CLAIBORNE PELL, WALTER F. MONDALE, EDWARD M. KENNEDY, and WILLIAM D. HATHAWAY.

OFFICE OF ECONOMIC OPPORTUNITY,
Washington, D.C., June 29, 1973.

Hon. JACOB JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: This responds to your letter of June 28 regarding funding of legal services back-up centers.

Prior to receipt of your letter, I had, as an administrative matter already lifted the month-by-month funding arrangement for these centers. In lieu of the month-by-month, I directed funding be made in each case for a six month period. I think that action, in effect, substantially meets the concern of your letter.

Sincerely,

ALVIN J. ARNETT,
Acting Director.

We the undersigned lawyers and candidates for admission to the Bar support the following resolution passed by the House of Delegates of the American Bar Association on February 16, 1973, and urge that no legal services programs be disbanded or disrupted pending appropriate legislation setting up a national independent legal services corporation:

Whereas: There is a continuing need for legal services for the poor.

Whereas: There are federally funded Legal Services Programs to meet this need in each of the states.

Whereas: These programs are facing an expanding demand for legal services and increased operating expenses.

Whereas: The funding for these programs has not increased since 1970 in spite of the increase in demand and operating expenses.

Whereas: This Association continues to support the need for adequate programs to provide this representation.

Now, therefore, it is resolved:

1. The United States government should increase the level of funding of Legal Services programs to enable them to provide adequate legal services to eligible clients and to prevent a serious deterioration of the quality and quantity of service because of increased expense and mounting caseloads.

2. Government at all levels and lawyers from both the public and private sectors should take every step necessary to insure that legal services lawyers remain independent from political pressures in the cause of representing clients.

3. The Congress of the United States should enact a legal services corporation of a design consistent with the foregoing principles and the need to maintain full and adequate legal services for the poor.

THE PEACE MOVEMENT AND THE MIDDLE EAST

Mr. HATFIELD. Mr. President, with the decline of our active military involvement in Southeast Asia the peace movement has been searching for ways in which to refocus its energies. One of the most needed areas of attention from both the perspectives of our national interest and the hopes for world peace is the dilemma faced in the Middle East.

In an attempt to focus on possible approaches the peace movement might take in this regard Mr. Robert Vogel, a Quaker member of the American Friends Service Committee, and Secretary of the Southern California Clergy and Laity Concerned, wrote a most perceptive article for the May 21, 1973, edition of the American Report which I ask unanimous consent to have printed in the RECORD.

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

MIDDLE EAST: STRUGGLE FOR PEACE

(By Robert S. Vogel)

Now is the time for the U.S. peace movement to take up the challenge of peace in the Middle East. This article addresses the very complex problem of a resolution to this conflict and examines the possible role of the American peace movement.

Ever since its birth 25 years ago, the state of Israel has not been officially recognized by the Arab states or the Palestinian organizations. Unofficially some Arab Government leaders and many Palestinians recognize the fact that Israel exists and must be accepted. Israel now occupies and administers all the lands won during the 1967 Six Day War; the Sinai, Gaza, the West Bank,

and the Golan Heights. It has incorporated East Jerusalem into Israel proper. There is no peace because no formula has yet been devised which will satisfy the national objectives of all the parties. Thus an armed truce continues with the constant danger that further armed conflict may break out at any time.

For many the Arab-Israeli conflict has become wearisome and frustrating. The literature is replete with justifying arguments and one-sided histories. Each party insists it is for peace, but then spells out conditions that are totally unacceptable to the other. Coupled with this is the lack of critical self-analysis or proposed actions which might create a climate for mutual accommodation. Although social critics do exist on both sides, they wield little political influence.

TERRITORY AND NATIONALISM

Much of the conflict centers around geography. Officially the Israeli Government, concerned primarily with survival and acceptance by the Arab states, takes the position that all territories are negotiable, but border settlements must be negotiated with the Governments involved. At the same time, leading Israeli officials have announced that Israel will not give up the Golan Heights or East Jerusalem; will oppose the creation of an independent Palestinian state or entity on the West Bank; wants to make the Jordan River its military, if not its political frontier; may be willing to share the Sinai with Egypt; and insists that the Gaza strip never become part of any foreign country again. Further, these officials, reflecting what polls reveal as the majority political opinion in Israel today, have said that Israel insists on direct negotiations, wants no international guarantees, and is prepared to negotiate with Governments directly involved on the payment of compensation for the refugees.

No Arab Government will long endure if it accepts a humiliating peace. Loss of territory is not as intrinsically important as it is an index of humiliation. King Hussein of Jordan insists on the return of the West Bank and East Jerusalem. The Egyptian Government insists on the return of the Sinai. Egypt announced early in 1971 that it would sign a peace agreement based on full implementation of U.N. Security Resolution 242, which it interpreted to mean total withdrawal of Israel's armed forces from the Sinai and Gaza, demilitarized zones astride borders, a U.N. peace-keeping force at Sharm el Sheikh, and freedom of navigation in the Suez Canal and the Straits of Tiran.

The inability of Palestinian Arab nationalists to form their own independent state and the resultant frustration has been a primary source of tension and conflict in the Middle East. Since the early 1920's Palestinian Arab nationalism clashed with Zionist nationalism over control of the territory between the Mediterranean and the Jordan River. But the Palestinians have lost all the territory to their foes because they have been weak and divided, and because they became dependent on and victims of competing Arab states which sought to gain control over this new political force. Thus in the September 1970 civil war in Jordan, the Palestinian guerrillas lost both popular support and backing by Arab Governments and were, at length, driven to find sanctuary and support primarily in Syria.

Although weak, poorly organized, and split ideologically, the Palestinian movement has the support of most Palestinians and Arabs because it is seen as representing the victims of injustice. Whether the Palestinians will ever achieve autonomy or independent statehood will depend on both the Arab states and Israel. Unless there is a clear recognition of the Palestinians and their rights to self-determination, the Middle East will remain an area of tension and conflict rather than peace and development.

JUSTICE AGAINST JUSTICE

Both sides emphasize their distinctive claims to the land. Although not all Jews would agree, the claim to the land from which they were expelled 2,000 years ago is based on religious, historical, and political arguments. For the religious Jew, Palestine is the land promised by God to Abraham and his descendents forever. It is the land in which Jewish history has had its most glorious and formative episodes, and in which despite nearly 20 centuries of exile, Jewish settlers maintained some foothold, often under great hardship. The promise of ultimate return has been a source of inspiration and encouragement to generations of Jews in Diaspora. The Passover prayer, "next year in Jerusalem," and the prayer at meals, "and rebuild Jerusalem, the holy city, speedily and in our day," reflect this yearning.

The discrimination and brutal treatment of Jews over the centuries, essentially by the Christian West, culminated in the genocidal policies of Hitler. These all gave added impetus to Zionism, the movement for a Jewish homeland and for a Jewish state—a place where any Jew would be welcome as a citizen.

The Arab claims to the land are equally as powerful though quite different in nature. While acknowledging that a great injustice has been visited upon the Jews, Arabs ask why they should be made to pay the price for the brutalities of the West. They point out that Arab inhabitants have made their homes and tilled their fields in this area since the 7th Century A.D. and have remained like the Jewish inhabitants a constant element in the population.

Their displacement after many centuries lends pathos to the situation. The strongest single element in their identity has been the sense of belonging to the soil of Palestine. Their loss of property through circumstances often beyond their control has caused bitter resentment, and no Palestinian Arab would question for a moment the justice of his claim either to be restored to his original home and property or be compensated for the loss.

So while justice clashes with justice, each side wants the exclusive use of the land and denies it to the other except in minority status. Efforts to partition the old British mandate by the United Nations in 1947 were unsuccessful. The Jewish Agency for Palestine accepted the portion allotted to it; the Arab leaders refused to consider any partition. Today, as a result of war, Israel has under its control the former mandate of Palestine, including more than one million Palestinians. Undaunted by these set-backs, the Palestinian liberation organizations continue to seek a new biternational state of Palestine shared by both Israelis and Arabs. Since such a state would be predominantly Arab, with uncertain status for the present inhabitants, this goal is unacceptable to most Israeli groups. For it would end the state of Israel and deny self-determination for the Israelis. Consequently, a political stand-off.

SOLUTIONS AND ACCOMMODATIONS

While there probably can be no military solution to the problem of the Arab-Israeli conflict, it is hard to convince the parties involved that political and diplomatic avenues are viable. The fact remains that it has been through military methods that the present truce lines have been established and maintained to date, and that diplomatic initiatives through the U.N. and other third parties have made only limited progress. The chief efforts have been the 1967 U.N. Security Council Resolution 242 which seeks an overall settlement by linking Israeli withdrawal from Arab territory with Arab *de jure* recognition of Israel and an end to the state of belligerency.

This resolution which has been subject to many interpretations continues to be the main hope for some progress toward a settlement. For most observers, the resolution, with all its inadequacies, is the only basis for an Israeli-Egyptian settlement. Such an agreement might then create the climate in which other Arab States and the Palestinians, now weak and divided, could find a psychological and political basis for reconciling themselves to Israel's existence.

It may well be that over-all solutions are not possible today. Yet, in the absence of a political settlement, changes do take place. About 50,000 Palestinian Arabs are working in Israel proper. Military-agricultural settlements are being established in these territories. The "open bridges" policy across the Jordan river has worked to the mutual advantage of Israel and Jordan; and in the summer of 1972 about 150,000 Arabs crossed into the West Bank for up to four-month visits. Jordanian tour groups can enter and leave Israel via the Jordan bridges rather than through Cyprus or Greece. Municipal elections in the West Bank have given a degree of local autonomy to Arab communities. East Jerusalemites are now included in Israel's old-age pension scheme. And Arab mothers and children are granted allowances under the national insurance laws.

In short, some adjustments are taking place. Whether they will lead to something lasting and mutually satisfactory remains to be seen. But some form of association, however politically organized, is slowly emerging between Israel and the occupied or administered territories.

Clearly the Israelis and Palestinian Arabs are going to have to learn to live together in mutual respect and absence of exploitation, or go through more bloody experiences which would be tragic for all concerned. What is still denied the more than one million Arabs in the territories is independence, political representation, and national rights. If these problems are not satisfactorily resolved, then sooner or later they are likely to emerge to haunt those who proclaim peace when there is only a lull in the conflict.

FUELING THE CONFLICT

The big powers have been involved in the Middle East conflict. Both the U.S. and U.S.S.R. have been concerned with stability in the area. While they seek to restrain the Governments of both sides from highly risky military adventures, they help to fuel the conflict by selling or giving arms to their clients. The Soviet Union arms Syria and Egypt; the U.S. provides sophisticated aircraft for Israel and at the same time supports the Governments of Lebanon and Jordan in their military repression of the Palestinian guerrilla forces.

But the primary interests of the big powers in the Middle East is economic. It is one of the ironies of history that the Arab states sit on approximately 70 percent of the world's known oil reserves. Western Europe, Japan, and, increasingly, the United States are dependent on this source of power, so critical to their development. The oil rich Arab states, sensing the value of their natural resources, are already increasing the price of crude oil. Whether in addition, they will make demands for political concessions is speculative, but certainly within the range of the possible.

Why has the U.S. peace movement not addressed itself to the Middle East conflict? Two reasons suggest themselves: 1) involvement with Indochina and other more immediate concerns; 2) fear of the reaction of its Jewish and Arab constituents. The often emotional reactions of some segments of these communities have been a deterrent to sober, objective inquiry.

Rabbi Maurice Eisendrath, President of the Union of American Hebrew Congregations (U.A.H.C.), writing in U.A.H.C.'s *Dimensions*

in the Fall of 1970, took note of this problem, and criticized the Jewish establishment of America for suppressing any "protest against a single scintilla of official Israeli foreign policy." He noted the "incredible freedom of expression that is manifest in Israel today," quoted extensively the criticism of Israeli policies by loyal Israeli citizens and members of the Knesset, and made a strong plea for an independent voice of American Jewry.

What then is the role for the U.S. peace movement? (Those organizations which work for a world of peace and justice through nonviolent methods.)

First of all, the peace movement must recognize its own limitations. It is not a government and its movement is not united. It is addressing itself to social conflict where the parties are governments and organizations which represent powerful political and economic interests.

Second, it must take both a pro-Israeli and a pro-Arab stance. It must be concerned for the rights and interests of both peoples. This does not mean that it is neutral or detached; for it is an exponent of a policy of reconciliation.

Third, the peace movement must understand the nature of the conflict, how it developed, and the claims by all sides for justice. Trying to determine historical justice is a blind alley. The debate which has raged for more than a quarter of a century, based on conflicting claims, can never be fully resolved to the total satisfaction of the parties. However, a clear recognition that the claims and feelings of each side are real can be one step toward resolution.

Fourth, the U.S. peace movement should give full backing and encouragement to those groups within Israel and within Arab societies that are seeking non-violent solutions. It needs to help publicize in the U.S. the diversity of opinion within Israel, the debate within the Labor party on the Palestinian problem, and the existence of groups for social change throughout the region.

Fifth, the peace movement should not support a policy of supplying arms to any of the parties involved. It can, however, support through economic assistance those groups which are trying to build hospitals, schools, to colleges, and technical training institutes to encourage social development. It can assist efforts for empowerment of people in nonviolent enterprises. And finally, it can create an international fund to assist both Palestinian and Jewish refugees who have been victims of the conflict.

Finally, the peace movement needs to help the United States recognize that it has been part of the problem as well as, hopefully, part of the solution. The United States and Western European Governments need to accept the responsibility for their own past anti-semitism which included both Jews and Arabs. Since U.S. policy is important in the Middle East, the U.S. peace movement has an obligation to study the situation and to take a responsible role in doing whatever it can to influence the course of that policy.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. HATHAWAY). Is there further morning business? If not, morning business is concluded.

LEAVE OF ABSENCE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the distinguished Senator from South Dakota (Mr. ABOUREZK) be excused from attendance on the Senate during this week and next. This week he is officially absent to attend the Aeronautics Symposium in Moscow, and next week he will be officially absent to attend a meeting of the U.N. Committee on Disarmament in Geneva.

The PRESIDING OFFICER. Without objection, leave is granted.

PUBLIC WORKS APPROPRIATIONS, 1974

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the unfinished business, H.R. 8947, which the clerk will state.

The legislative clerk read as follows:

A bill (H.R. 8947) making appropriations for public works for water and power development, including the Corps of Engineers—Civil, the Bureau of Reclamation, the Bonneville Power Administration and other power agencies of the Department of the Interior, the Appalachian regional development programs, the Federal Power Commission, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1974, and for other purposes.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. Time for debate is limited to 2 hours to be equally divided and controlled by the majority and minority leaders or their designees, with one-half hour on any amendment, debatable motion or appeal.

Mr. ROBERT C. BYRD. Mr. President, on behalf of the majority leader, I yield his time to the distinguished manager of the bill the Senator from Nevada (Mr. BIBLE).

Mr. BIBLE. Mr. President, I yield myself such time as I may use.

The PRESIDING OFFICER. The Senator from Nevada may proceed.

Mr. BIBLE. Mr. President, we have under consideration H.R. 8947, a bill making appropriations for Public Works for water and power development, including the Atomic Energy Commission, the Corps of Engineers—Civil, the Bureau of Reclamation, the Bonneville Power Administration and other power agencies of the Department of the Interior, the Appalachian regional development programs, the Federal Power Commission, the Tennessee Valley Authority, and related independent agencies and commissions for the fiscal year ending June 30, 1974, and for other purposes.

Mr. President, the hearings on the bill started on February 27 and continued through June 26. The subcommittee held 42 sessions for the purpose of taking testimony and two executive sessions for the purpose of marking up the bill. The committee received testimony and statements of 1,500 witnesses—actually, about 1,000 witnesses appeared before us—which included representatives of various organizations and local communities, many Governors and State agencies' heads, more than half of the Members of the Senate, and a large number of Members of the House.

As Members of the Senate know, our esteemed colleague, the distinguished Senator from Mississippi, JOHN C. STENNIS, is the chairman of the Public Works and AEC Appropriations Subcommittee. We have missed his guidance, counsel, and wisdom.

I have talked with him by telephone on numerous occasions and visited with him personally at Walter Reed, regarding the progress and preparation of this bill, and I believe I can say that he supports the actions and recommendations before the Senate. We, of course, continue our prayers and best wishes for his continued recovery.

I want to express my appreciation to the members of the subcommittee for their assistance in the lengthy hearings on this bill, particularly the distinguished Senator from Oregon (Mr. HATFIELD) the ranking minority member of the subcommittee, who has been of invaluable help. Special mention should be made of the work of the distinguished Senator from New Mexico (Mr. MONTOYA) who handled practically all of the hearings on the Atomic Energy Commission. He also rendered valuable assistance throughout the hearings and the preparation of the bill.

Senators MCGEE, BELLMON, STEVENS, and SCHWEIKER also chaired hearings during this long period of time. I believe that we have brought a bill to the floor of the Senate that will meet with its approval.

Mr President, the committee report explains the recommendations of the committee and I shall not take the time to detail all of the action and changes.

OVERALL SUMMARY

The 1973 public works and AEC appropriations totaled $5,658,156,000.

The budget estimates submitted in the President's 1974 budget totaled $4,757,469,000, which is more than $900 million less than last year's appropriation.

The bill as reported to the Senate provides $4,797,902,000 in new obligational authority; which is $40,433,000 above the budget estimate and $121,507,000 over the bill as passed by the House, and $860,254,000 less than last year's appropriation. Let me quickly point out, however, that there is included in the reported bill an authorization and appropriation in the amount of $25 million for interim financing of Indian roads and bridges which should be considered as a part and separate inasmuch as it would not normally be included as an appropriation in this bill. I shall explain the reasons for its inclusion later and will propose further action on this matter in a few minutes—the effect of which will be reducing the bill by withdrawing the $25 million amendment which we added in committee.

Not including this $25 million interim financing authority, the reported bill for Public Works and AEC items is $15.4 million over the budget and $96.5 million above the House bill.

Mr. President, this bill deals primarily with water resource and power development. In providing funding for these prorgams, we assure needed electric power, a more adequate water supply, flood control, additional and improved waterways for navigation, recreation, and other essential services for our expanding population.

This bill also strengthens the defense of our Nation by providing for research and development by the Atomic Energy

Commission—for military and military related missions—and for development of nuclear energy for peacetime purposes.

The bill has five titles, consisting of—title I, the Atomic Energy Commission; title II, the Corps of Engineers—Civil Works; title III, the Bureau of Reclamation, and Power agencies, Department of the Interior; title IV, related independent agencies—power and water resource commissions; and title V, general provisions.

TITLE I—ATOMIC ENERGY COMMISSION

For the Atomic Energy Commission the committee recommends an appropriation of $2,348,338,000, which is a reduction of $81 million below the budget request, and $45,950,000 above the House bill. Most of the reduction under the budget results from the reductions in the authorization.

The recommended appropriation of $1,722,563,000 for operating expenses and $625,775,000 for construction and equipment provides more funds to nonmilitary than to military activities.

The committee recommends increases in several programs above the House amounts to promote the use of nuclear power for peaceful purposes. Many programs of the AEC, which are not well known to the public, are contributing immeasurably to our health and to improving our environment.

TITLE II—CORPS OF ENGINEERS—CIVIL

The water resources program of the Corps of Engineers deals primarily with improvements for navigation, flood control, water supply, power, and recreation.

For the Corps of Engineers, the committee recommends $1,536,971,000, which is a decrease of $413 million from last year's appropriations.

Within the total amount for the corps, $57,356,000 is provided for general investigations, an increase of $4,456,000 above the budget and $3,417,000 over the House.

As in the past, the committee prefers not to make specific allocations of its increases to individual investigations. It desires, however, to call to the attention of the Corps of Engineers the testimony concerning the need for initiating unbudgeted surveys and increases in budgeted studies.

For construction, general, which also includes preconstruction planning, the bill provides $874,407,000, which is $15,890,000 over the budget and $9,838,000 above the House. The report carries the specific allocations to the projects. I believe a copy of this report is on the desk of each Senator.

For flood control, Mississippi River and tributaries, the committee has recommended $150 million, which is $40 million more than the budget, and $11 million more than the House. The increase is needed to advance the project and fill the gaps which are so evident as a result of this past spring's disastrous floods. The importance of this project can be realized when one considers that the drainage from almost half of the area of the continental United States funnels through the Mississippi River and its tributaries. It is estimated by the corps that the flood control works in place prevented $5.8 billion in damages this spring, and that cumulative damages prevented to date amount to $14.6 billion. The detailed allocations are listed in the committee report.

For operation and maintenance, the recommendation provides $414,625,000, which is $1,625,000 more than the budget estimate, to operate and maintain all of the completed projects.

For the flood control and coastal emergencies appropriation, $7 million is provided, the same as the budget and the House. This appropriation is required to finance flood emergency preparation, flood fighting and rescue operations, and repair of flood control and Federal hurricane protection works. In 1973, $136 million was appropriated, of which a large portion was associated with the Hurricane Agnes disaster. The committee has received testimony relative to the serious problems created as a result of the Mississippi River floods. Funds to repair and restore those damaged flood control works are derived from this appropriation. While some fiscal year 1973 funds from this account were used to prepare and fight the Mississippi River floods, funds to repair and restore the works in place have not been provided. In many places, the water has just recently receded enough to enable the corps to determine the extent of the damages. I shall return to this serious matter after completing the summary of the report bill.

For general expenses, the committee has approved the budget request of $32,883,000, the same as the House allowance.

TITLE III—DEPARTMENT OF THE INTERIOR: BUREAU OF RECLAMATION

For the Bureau of Reclamation, the committee is recommending $371,960,000, which, as I view it, is far too little. It is $95,857,000 below last year's appropriation, and it is such a lesser figure because of fiscal restraint. This amount provides $37,117,000 more than the budget estimate and $15,602,000 over the House.

I should point out that the budget for the Bureau was cut by OMB about as deep as any. While the recommended amount is still substantially below the 1973 appropriations, the committee has provided increases in the general investigations, construction, and rehabilitation, and one or two other appropriation accounts of the Bureau. The report lists all of the activities and projects with the committee recommendation.

The committee has also funded the several power agencies of the Department of the Interior—the Alaska Power Administration, the Bonneville Power Administration, the Southeastern and Southwestern Power Administrations, and the Underground electric power transmission research program.

TITLE IV—INDEPENDENT AGENCIES AND COMMISSIONS

In addition to AEC, the Corps, and the Bureau of Reclamation and power agencies, funds are recommended for the independent agencies and various water commissions, such as the Appalachian regional development programs, the Federal Power Commission, the Tennessee Valley Authority, and the Water Resources Council—$352,151,000 in new budget obligational authority is recommended for these agencies, including $270 million for the Appalachian programs, $27 million for the Federal Power Commission and $45,676,000 for TVA. There are no changes from the House allowances for these agencies and commissions. The report shows the recommendation for each and the total amount is less than the 1973 appropriation and the budget estimates.

TITLE V—GENERAL PROVISIONS

The committee has added a new section 502 under "title V—general provisions" in the bill which provides for an extension of the availability of appropriations provided in the Second Supplemental Appropriations Act, 1973.

Section 301 of the Second Supplemental Appropriations Act, 1973 (Public Law 93–50) reads as follows:

No part of any appropriation contained in this act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Since the supplemental was not enacted until the first day after the "current fiscal year," agencies were technically barred from obligating some of the funds appropriated under accounts no longer available for obligation after June 30, 1973. The language in section 502 of this bill confirms the intent of Congress to allow the obligation of all funds appropriated in the supplemental, including those which technically became unavailable after June 30, 1973. For this purpose, obligations will be permitted for 20 days following the enactment of this bill. Appropriations made available for longer periods will be unaffected by this section.

It is the committee's intention that obligations made within the 20-day period allowed by section 502 shall be considered for purposes of the 1974 Continuing Resolution (Public Law 93–52), part of the "current rate."

Mr. President, in conclusion, the committee feels that this is a good bill. We believe that we have a bill which is fiscally prudent, restrained, and responsible. It is an important bill; is in the national and public interest; and provides for progress in our country.

I ask unanimous consent to have printed in the RECORD a table which shows the present value to the Nation of completed projects for water supply, power development, flood control, navigation, reclamation, and recreation.

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

PROJECT BENEFITS—COMPLETED PROJECTS

The present value to the Nation of completed projects for water supply, power development, flood control, navigation, reclamation, and recreation is evident from the following table:

PROJECT BENEFITS

Annual water supply benefits

Gallons of water furnished, 11,000 billion.
Number of people served, 20 million.

Annual power benefits

Installed generating capacity (kilowatts) 42.5 million.

Net generation (kilowatt hours) 215.2 billion.

Gross revenues, $1.06 billion.

Flood control benefits to date

Estimated value of flood damage prevented, $31.7[1] billion.

Expenditures for flood control facilities, $7.2 billion.

Annual navigation benefits

Annual traffic tonnage, 1.6 billion.

Reclamation benefits

Acres irrigated, 9 million.

Annual value of crops produced, $2.1 billion.

Recreation benefits

Annual visitor days, 403 million.

Mr. BIBLE. I particularly call the attention of Senators to the value of this table in view of the frequent attacks that have been made on the bill in the past in calling this a pork-barrel bill. I think such attacks are unfounded. It is no such thing, in my judgment. If one analyzes the power and flood control projects and the recreational benefits which are detailed in this very thorough table, he will come to a different conclusion.

Just underscoring one point, flood control benefits to date, which is used in the focus of most attacks, it is estimated that the value of flood damage prevented by completed projects is $31.7 billion. All this was accomplished at a Federal expenditure of $7.2 billion. Just in that one category alone, projects have repaid the cost by about 4.5:1. This is illustrative of the value that should be associated with these projects which are in the Nation's best interests.

At this time I am delighted to yield the floor. My distinguished colleague, the senior Senator from Oregon, as I said earlier, has been invaluable in the marking up of this bill and in conducting many of the hearings, and I know he has a few remarks he would like to make.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, I commend the distinguished acting chairman of the Public Works and Atomic Energy Commission Appropriations Subcommittee. In Senator STENNIS' absence, Senator BIBLE has done a tremendous job in bringing this bill to the floor of the Senate. The job he has done is even more remarkable when you consider that he also has the responsibility of chairing the Interior Appropriations Subcommittee. I am also a member of that subcommittee and I can assure Senators that Senator BIBLE is doing a fine job there as well.

Mr. President, I want to thank the distinguished Senator from Nevada for his very kind cooperation throughout the hearings and markups of this bill.

This would be an appropriate time also to recognize the important input and role played by the staff of the Committee on Appropriations. For many years the staff leader of the majority party was Ken Bousquet. His long years of service there gave him a background and comprehension of all the projects that are considered and acted upon by the Committee on Appropriations.

It was thought by many that when the time came for Ken Bousquet's retirement his shoes would be hard to fill, but I would like to say that Proctor Jones has taken over that responsibility and has done a remarkable job not only of acquainting himself with present requests, but also for having a vast understanding of past projects on which present ones are built. I thank him for his extraordinary work for this committee.

This may sound like a plug for the needs of the minority party, but I wish to say that Jim Bond, who is our minority staff member, has done an extraordinary job in keeping me informed on the activities of the subcommittee, and this is all the more extraordinary if one considers that he serves on two other subcommittees of the Committee on Appropriations; so this kind of broad range responsibility gives him not only fewer hours in which to work, but he does an excellent job with all these subcommittees.

The fiscal year 1974 appropriation request for Public Works and the Atomic Energy Commission as reported by the committee is, I believe, a good and sensible bill. While we are somewhat over the budget, when you consider the number of requests we have had, and the nature of this particular bill, I think we are within a safe range of the budget.

The distinguished acting chairman has already done an excellent job of explaining the bill. However, there are a few items I would like to comment on.

Under the AEC section of the bill we have provided increased funding for some very worthwhile programs in applied energy technology and controlled thermonuclear research; as well, we have concurred with the House in providing funding for geothermal research. Mr. President, as I have said in the past, these are programs that I believe the AEC should emphasize. Here we are talking about activities that actually help improve the well-being of our people and the state of our environment. Here we are not talking about bombs, the big atomic bombs we build. We are not talking about the business of building big powerplants, which are very important and I support them, but the programs I have mentioned might be able to broaden the base of public support and understanding that I believe the AEC deserves.

Mr. President, far too often this bill is described by some as "pork barrel" or "Christmas tree" legislation. These are undeserving labels. Funds provided in this bill for water and power development go a long way in providing a better quality of life for our people, and in helping to advance the general economic development of our country.

The demand of the country for more power is obvious. With this bill I believe we are taking an integrated approach in trying to provide increased power generation, as well as searching for new sources of marketable power supplies We are attempting to put more power on the line as soon as possible, while looking into the future by continuing with planning and construction of hydroelectric projects, and going ahead with research and development of solar, geothermal, and nuclear energy. This, together with the research provided by funds in the Interior appropriations bill on production and utilization of coal resources, including gasification and liquefaction—and research on improved petroleum and natural gas extractions techniques, will provide the integrated approach to the energy problem that I believe is necessary.

Mr. President, there are three other very important programs in the bill that I should mention. These are recreation, irrigation, and navigation and harbor improvement. An offshoot from many of our water and power projects has been the development of recreation areas around these projects. This has been a great benefit for our citizens as is shown by the increased visitation each year. In many cases the production of fish and wildlife has improved significantly. A good example of this is the wetlands that were created by various water developments in the Columbia Basin project.

The committee has also provided funds for irrigation purposes. We are able to use the vast amounts of water stored in reservoirs to irrigate land that might not otherwise be productive. The benefit of irrigation is all but self-explanatory, and with continued development it is hoped that this aspect of our water and power projects will help to improve the supply and price of foodstuffs.

In the area of navigation and harbor improvement we are providing funds to insure the free flow of goods in and out of our harbors and navigable waterways. I personally know of the importance of this, having seen the closing of some harbors in Oregon and Washington on several occasions.

Mr. President, we have worked long and hard on this bill, and I believe it to be a good piece of legislation. It is my hope that the Senate will pass the bill substantially in the same form that it was reported by the committee.

Again, I want to give my thanks and praise to the distinguished acting chairman of the subcommittee, as well as to the distinguished chairman and ranking member of the full committee.

At this time I would like to ask the Senator from Nevada one question, so that we may have the record clear as to some work of the committee that does not appear in the actual report. My question has to do with the Yellowtail-Wyodat transmission line, with which the chairman is very familiar.

Last year we had some committee report language which more or less addressed itself to this continuing problem, which is nearly resolved. I think it would be well to place in the RECORD at this point some statement as to the future of this transmission line.

Mr. BIBLE. I am happy to respond to the distinguished Senator from Oregon. As he well knows, the problem of building this line has been with us for a number of years. It is not a new problem. It is a new problem in a different area, but it is a question of private power versus public power and the duplication of powerlines.

As the Senator said, language was written into the report a year ago. The

[1] Includes $7.4 billion damages prevented during recent Mississippi River flooding.

House concluded not to put any such type language in their report or any type mandate or prohibition of any kind within the bill itself.

There is provided within this bill some $650,000 to initiate the powerline, but I was advised, on the very day that we went to our markup in the full committee, that it appeared that an agreement had been reached or was about to be reached. It is my judgment that in the face of that record and in the fact of language in the preceding Bureau of Reclamation bill report of a year ago, fiscal 1973, there is eonugh pressure upon both the private sector and the public sector to resolve this problem. So it was for that reason that we put no language in at all. There is, as I say, $650,000 in the bill for the purpose of constructing this Bureau of Reclamation transmission line.

I am sure that if those who are sitting around the negotiating table continue to negotiate and reduce their agreement to writing, certainly the Bureau of Reclamation is not going to spend that amount of money. I think the record is good in that respect. I think there is sufficient pressure to bring them around to signing on the dotted line.

Mr. HATFIELD. I thank the Senator for his comments, because they reflect my opinion exactly. I think the taxpayers need not spend money to duplicate power transmission lines where an agreement should be reached, and where we have proved that they can be reached in the Pacific Northwest, as the Senator knows. And any way we can keep pressure on them to get to an agreement is in the interest of the taxpayers and the operation of these facilities.

Mr. BIBLE. That is why we have done exactly that. If we can do that, we will have a final signing of the agreement. It is just a matter of a short time in the future until the agreement is completed. It is not completed as of today. I do not want to mislead anybody. But there is every prospect that there will be an agreement.

Mr. HATFIELD. Certainly it is our expectation, as we received the information in the committee.

Mr. BIBLE. That is my information, as well.

Mr. President, I yield to the Senator from North Dakota.

Mr. YOUNG. I thank the Senator.

Mr. President, I want to commend the distinguished acting chairman of the Subcommitte on Public Works of the Committee on Appropriations (Mr. BIBLE) and the distinguished Senator from Oregon (Mr. HATFIELD) for their work in bringing out a very fair and reasonable bill.

My friend from Nevada has been working for many years for irrigation projects. He is one of the strongest proponents for these projects I have ever known in the Senate. If it were not for these irrigation projects, we would have a much more serious food problem today than we have now. It never would have been possible to bring about what I call this great empire in the western half of the United States if it had not been for irrigation.

This bill also contains much needed money for navigation. The late Senator Allen Ellender, who headed this committee for many years, was a great proponent of navigation. If it were not for him, our transportation problem would be much more serious than it is today. Through his efforts, we now have a far better navigation system in all our rivers than would otherwise have been possible.

He also was responsible for the improvement of harbors over the United States. It was not popular to fight as he did for those projects.

I just want to give credit for these worthwhile accomplishments in the public works appropriation bills, not only in this bill but in previous bills.

Mr. BIBLE. I thank the Senator from North Dakota.

I yield now to the Senator from North Dakota (Mr. BURDICK).

Mr. BURDICK. Mr. President, now that the Senate is about to vote on the public works appropriations bill, I would like to express my thanks to Senator BIBLE, Senator HATFIELD, and all the members of the Appropriations Committee for their diligent work. Contained in the bill was $17.78 million which will continue construction of the project which will deliver more benefits to North Dakota than any other Federal endeavor—Garrison Diversion. It is calculated that the irrigation of 250,000 acres of North Dakota cropland will yield a total benefit of $107 million annually to the people of the State. Further, it will bring much needed municipal and industrial water to many of our cities and communities. In a rural area such as North Dakota, this is a significant impact. Mr. President, the project has had extensive planning and the people of my State are anxious for its completion. Favorable action today will allow the construction to continue toward that end. Again, in behalf of North Dakota, I thank the committee and the Senate, and urge approval of this bill.

Mr. BIBLE. I appreciate the sentiments of the Senator from North Dakota.

Mr. President, I am going to yield next to the Senator from Washington. But before I do, I ask unanimous consent that the committee amendments except the committee amendment beginning at the top of page 22, section 305, be agreed to en bloc and that the bill as thus amended be regarded for the purpose of amendment as original text, provided that no point of order shall have been considered to have been waived if the request is agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments agreed to en bloc are as follows:

On page 1, line 4, after the word "appropriated," insert "and shall be made available for expenditure except as specifically provided by law,".

On page 2, line 22, after the word "vehicles", strike out "$1,681,263,000" and insert "$1,722,563,000".

On page 3, line 24, after the word "aircraft" strike out "$621,125,000" and insert "$625,775,000".

On page 4, at the beginning of line 24, strike out "$53,939,000" and insert "$57,356,000"; and, on page 5, line 1, after the word "That", strike out "$1,000,000" and insert "$1,175,000".

On page 5, line 17, after the word "construction", strike out "$864,569,000" and insert "$874,407,000".

On page 6, line 11, after "(33 U.S.C. 702a, 702–1)", strike out "$139,000,000" and insert "$150,000,000".

On page 7, line 7, after the word "navigation", strike out "$403,625,000" and insert "$414,625,000".

On page 8, line 1 after the word "expended", strike out "$1,000,000" and insert "$700,000".

On page 10, line 7, after the word "expended", strike out "$15,880,000" and insert "$17,350,000".

On page 10, line 22, after the word "expended", strike out "$184,360,000" and insert "$196,065,000".

On page 11, at the beginning of line 22, strike out "$24,526,000" and insert "$26,903,000"; and, in the same line, after the word "which", strike out "$23,926,000" and insert "$26,303,000".

On page 13, line 15, after the word "program", strike out "$18,372,000" and insert "$18,422,000".

On page 14, line 3, after the word "fund", insert a colon and "*Provided*, That the Post Falls Irrigation District, Rathdrum Prairie Project Idaho, be eligible for use of emergency funds herein appropriated under the Act of June 26, 1948 (62 Stat. 1052), with repayment to be accomplished under conditions satisfactory to the Secretary of the Interior."

At the top of page 26, insert a new section, as follows:

SEC. 502. Notwithstanding the provisions of section 301 of the Second Supplemental Appropriations Act, 1973 (Public Law 93–50), appropriations contained in that Act shall remain available for obligation for a period of 20 days following the enactment of this Act into law.

Mr. BIBLE. Mr. President, I now yield myself such time as I may require, inasmuch as the pending matter is the committee amendment appearing at the top of page 22, section 305.

At the time of the full committee meeting to markup and report this bill last Thursday, July 19, a serious problem was brought to the attention of the committee, resulting in the pending committee amendment. The committee recommended including this provision to provide $25 million in new contract authority for road construction programs of the Bureau of Indian Affairs. This amount represents one-third of the budget estimate in new obligational authority for the Bureau in fiscal year 1974. Normally, the authority would be provided in the Federal-Aid Highway Act. However, at the time of committee action, it was believed that the highway legislation, which was involved in conference committee, would not be completed before the August recess. Subsequently, after reporting this bill, the highway legislation conference committee agreed to file a conference report last Friday, thereby obviating the need for the authority recommended in this bill. If the conference committee had not

agreed, and without the interim authority recommended in this bill, the Interior Department reports that the road construction program for Indian reservations would terminate by July 31, 1973, creating unacceptably high Indian unemployment in areas of limited economic resources.

I am pleased that the highway legislation conference report is forthcoming. Accordingly, I am authorized by the committee—the committee members I have talked to—to withdraw the committee amendment at this time.

The PRESIDING OFFICER. The committee amendment is withdrawn.

Mr. BIBLE. Mr. President, I want to join in the compliments paid to Mr. Proctor Jones, who replaced Mr. Kenneth Bousquet, and who is doing terrific work on the committee and deserves all the compliments he has received.

I have always said, in passing these bouquets, that I hope they are reflected in an increase in salary, but that, of course, is up to the chairman of the committee.

Likewise, the same compliments can be paid to Dave Gwaltney and Jim Bond.

I particularly want to mention Dorothy Ward, who has been doing such an outstanding job, and who was formerly the strong right arm on the Interior Appropriation Subcommittee and who is now doing great work on the Public Works Subcommittee. She has been of invaluable help to us. I understand that she has announced her intention to retire and she has our best wishes for health and happiness in her well-earned retirement.

Now I yield 5 minutes to the Senator from Washington (Mr. MAGNUSON).

Mr. MAGNUSON. I thank the Senator.

Mr. President, I want to join in the compliments that have been paid to the staff. No one knows better than the Senator from Washington what a difficult bill this is and what hard work the Senator from Nevada put in on the bill. There are literally hundreds of witnesses to be heard. Everyone wants his own project as a priority item. One has to draw a pretty fine line to figure out which projects are needed in the country and which should be delayed.

That brings me to the subject I want to speak on. The committee saw fit, on behalf of the Senator from Oregon, myself, and other members of the committee, to put in the bill a comparatively small amount of money to keep the hydroelectric projects in the Pacific Northwest moving ahead. These projects will benefit the entire area served by the Bonneville Power Administration.

This seems to me to be a very wise program. No one will disagree with the fact that we have an energy crisis in this country today. We have hydroelectric projects that are well underway and some others that are 10, 15, or 20 percent underway. They are all there, just waiting for us to complete them. I have spoken about the energy crisis. The Senator from Oregon has spoken about it, and I suppose that almost everyone else on the committee has mentioned it, and most Members of the Senate have also.

It seems penny wise and pound foolish not to complete the projects, because they are already constructed. They may well produce the lowest cost hydroelectric power in the United States. We need the power. And we are talking about millions of kilowatts of power that can help to reduce the existing energy crisis in the Nation.

I am pleased that the committee saw fit to put in the bill $450,000 for Little Goose, $450,000 for Lower Granite, and $330,000 for Lower Monumental fan units 4, 5, and 6 at each of these respective dams.

The committee recommends further that we expedite the work and get those generators on the line as soon as possible. The Senator from Oregon and I have talked about this problem for a long time. We need to develop potential of the Bonneville system.

There is no sense to let it sit there when we have an energy crisis.

I hope that we can sustain each of these amendments in the conference committee, because it makes good sense to keep these projects on schedule. It means a great deal of difference to the energy crisis in the United States. If it will relieve the energy problem in the Pacific Northwest, it means that we can use some petroleum resources in other areas of the country.

I think that we are on sound ground. The Senator from Nevada and other members of the committee have agreed with us, including the Senator from North Dakota and others. We deeply appreciate this.

We think that it is a wise move to make.

Mr. President, this is not as if we were starting something new. These projects are waiting for funding to produce additional kilowatts of low-cost hydroelectric power.

The Senator from North Dakota reminds me that there is no pollution involved in the hydroelectric project. It furnishes clean, low-cost power. We ought to take advantage of such potential to help take care of the energy shortage.

Mr. HATFIELD. Mr. President, if the Senator would yield, I think that the Senator will agree that for all practical purposes, we are not starting to get new sites, such as building new dams in the Columbia or Snake River areas. Therefore, it seems all the more important to us at the present time and in the future.

Mr. MAGNUSON. Mr. President, every year we wait, if we do not keep them on schedule, the best information I have from the Corp of Engineers is that the costs increase from 10 to 12 percent.

The administration and the Office of Management and Budget for a long time have sought to pour cold water on efforts to go ahead.

I would hope that we can sustain these amendments in conference.

Mr. President, the committee has previously recommended $1,055,000 for the second Bacon Tunnel and siphon. We have provided this funding in a prior year. However, the administration has seen fit to impound the money. This means the key to opening up another feasible and wise project, the development of the second half of the Columbia Basin project, is delayed.

The committee saw fit to add language urging the Nixon administration to release entire $1,055,000 in order to get this project started.

The House has consistently suggested, and sometimes in almost the strongest language I have ever seen in a conference committee report, that the impounded money be freed.

The Senator from Oregon and I have been talking about projects that will pay back funds to the Treasury. It is a loan. We pay it back with 3-percent interest. We are right up to date with our payments. And with the energy crisis, I do not see how any reasonable person could deny the committee action on these projects.

Mr. President, I thank the Senator from Nevada for his outstanding support as acting chairman of the Public Works Appropriation Subcommittee. He has provided great leadership in this important field.

Mr. BIBLE. Mr. President, I certainly appreciate the statement of the Senator from Washington. His sentiments are sentiments with which I fully concur and agree.

I am particularly happy that the Senator from Washington and the Senator from Oregon are working together on this. We will do our level best to prevail.

Mr. President, I yield myself 5 minutes on the bill.

On June 25, 1973, the House Committee on Appropriations reported this appropriation bill, which was considered and passed by the House on June 28, 1973. On June 25, 1973, the same day the House committee reported the bill, the Senate subcommittee received testimony from Maj. Gen. Charles C. Noble, president of the Mississippi River Commission and Division Engineer, Lower Mississippi Valley Division, who was requested to brief the subcommittee on the disastrous Mississippi River floods which began in the St. Louis area in mid-March. At this hearing, and in response to my questions, it was learned that the corps had serious problems confronting it as far as repairing and restoring battered and damaged flood control works. Furthermore, the requirements are such that funds should be available now to repair and restore the damages. General Noble, in response to my question, stated that most of the critical work, or as much as could possibly be done, should be accomplished by December 1, when the high water season normally begins again, in order to be prepared for any eventuality. Water is still standing in many places and I understand that it is receding rather slowly in those areas.

The corps testified that approximately $105 million is needed to repair and restore the damaged levees, flood control structures, and other in-place works.

We have learned that a request for a budget amendment, to the original $7 million budget estimate transmitted to the Congress in January for the flood control and coastal emergencies appropriation, was prepared and submitted to the Secretary of the Army, who, in turn, submitted the amended request to OMB,

where it apparently rests in the bosom of bureaucratic entanglement. I have had many discussions with committee members and colleagues as to the best procedure to follow in this situation. This is a matter that must be met at some point. The corps has testified that it is needed now; OMB is probably sitting on the request, knowing that the Congress would undoubtedly approve the additional needed funds; and then we can be accused of being "budgetbusters."

Mr. President, under the Public Law 99, the emergency fund account, the Corps of Engineers can draw from any funds available to it to perform emergency work. Accordingly the corps can draw from any of the 1974 appropriations made available to perform the necessary repair and restoration work in the areas affected by the Mississippi River floods, and it is the intention of the committee that the corps accomplish this work as soon as possible from funds available. Since a budget amendment is in preparation and the committee would have more detailed and firmer information as to the requirements from the executive branch, we anticipate providing the necessary funds to replenish the flood control and coastal emergency fund in the first supplemental bill that comes before us. And I believe that it will be within the next few months, and in any event certainly prior to sine die adjournment. In the meantime, as I say, the corps may use any available funds to perform the required work.

Mr. President, I urge and press the OMB on this as strongly as I can. And I am joined in that effort by the distinguished senior Senator from Arkansas (Mr. McCLELLAN) and the distinguished ranking minority member of the subcommittee, the senior Senator from North Dakota (Mr. YOUNG), the distinguished ranking minority member of the subcommittee, the Senator from Oregon (Mr. HATFIELD) and other members of the committee.

So I would hope that we would receive a supplemental budget request at a very early date.

Mr. President, do we have anyone else to be heard? Are there any amendments to the bill?

The PRESIDING OFFICER. The bill is open to amendment.

Mr. BIBLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BIBLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CLARK). Without objection, it is so ordered.

Mr. BIBLE. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

Mr. BIBLE. Mr. President, I again suggest the absence of a quorum and we will hope that the Senator who wants to offer his amendment will get here before I ask for third reading of the bill.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BIBLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATHAWAY. Mr. President, the bill before us today contains $800,000 for the Dickey Lincoln School hydroelectric power project.

The project as originally authorized by Congress in 1965 would be located on the St. John River in northeastern Maine. It would provide comprehensive development and conservation of the St. John River Basin.

Electric power will constitute the major benefit from the project, with onsite annual power generation of 1.2 billion kilowatt-hours to provide low cost power for Maine and New England.

Not only would the Dickey project provide a nonpolluting source of power, it would provide flood control and recreational benefits as well.

The advent of low cost power and flood protection would contribute significantly to the advancement and future development of the economic climate of the State of Maine.

The project would be located in an area of Arostock County which has been classified as an economic development area. Numerous employment opportunities would arise as a result of the project construction and the future operation and maintenance would result in substantial relief to this economically depressed area.

The most current Corps of Engineers estimate of Dickey's cost is about $273 million. To date $2.1 million has been appropriated for preconstruction planning on the project.

Despite increased construction costs due to inflation in recent years, the benefit-to-cost ratio of the project is still nearly 2 to 1—much higher than many other public works projects the corps—at the behest of Congress—has undertaken.

And of course the costs of Dickey's hydroelectric power must be looked at in comparison to the cost of alternative power sources. We have a shortage of coal and oil, and the prices of these materials is going up. So, too, are the prices of fissionable materials for nuclear power plants. Moreover, as a nonpolluting, renewable resource, Dickey Lincoln is far less costly to our environment than are the alternatives.

Both for its feasibility and its contribution to the power supplies of the Northeast, funds for Dickey Lincoln should be approved.

In the past, the principal opposition to the project has come from private investor-owned utilities. Their powerful opposition has resulted in the deletion of Dickey funds in the House on a number of occasions. To diffuse some of this opposition, the House Public Works Committee reported out a resolution late in 1971 authorizing a restudy of the St. John River power potential, with a view toward constructing a smaller facility with power, recreational, and irrigational benefits confined to the State of Maine.

It is for a study of the St. John River Basin oriented toward this smaller, more parochial project for which the House appropriated $50,000.

This figure represents a compromise that would benefit Maine, and for that reason it is commendable. But this compromise compromises the consumers of the Northeast, where power brownouts and blackouts are becoming an annual affair. Dickey Lincoln's peaking power could help keep the lights on in the Northeast.

I hope the conferees will carefully consider the energy crisis and the need for Dickey's peaking power. As our energy consumption continues to rise and our energy supplies continue to dwindle, there is a need to utilize the vast hydroelectric power potential of the St. John River.

Mr. MUSKIE. Mr. President, I am pleased that the Senate Appropriations Committee has included in H.R. 8947 a sum of $800,000 for the Army Corps of Engineers to complete its planning and engineering design for a hydroelectric power generating plant on the St. John River in northern Maine.

The Dickey-Lincoln School project, as it is known, has been authorized by the Congress since 1965. At a time when the "energy crisis" is very much a topic of public debate, I would like to reiterate to my colleagues the anticipated benefits of this project—830,000 megawatts of power for New England and New York State from a nonpolluting generation source.

Last week, the Senate completed debate on the trans-Alaskan oil pipeline. We heard a great deal of talk about the environmental hazards associated with petroleum as well as the critical need for taking prompt action to increase our Nation's supplies of oil for fuel. At the same time, the Senate recognized that one of the major factors causing the increased demand for petroleum products is the use of fuel oil by electrical power generating plants.

Mr. President, too often, the solutions proposed to the "energy crisis" are seen in terms of "tradeoffs" between the environment and energy. The Dickey-Lincoln School project, I would like to emphasize, involves no such tradeoff and would meet the objectives of both those concerned with the environment and those concerned with the limits on the supply of fossil fuel. The Dickey-Lincoln project would provide power without any added drain on our supplies of oil. Moreover, none of the safety and health hazards associated with nuclear power generation are present.

If the Congress is truly serious about dealing with the energy crisis, then I would urge them to consider the Dickey-Lincoln School project as an alternative to more fossil fuel and nuclear power plants.

The costs associated with the construction of such alternatives explain, in part, the continuing favorable benefit-cost ratios assigned to this project. Mr. President, at this point I ask unanimous consent that a summary of the latest analysis of the Dickey-Lincoln School project supplied to me by the Army Corps of

Engineers be inserted in the RECORD at the conclusion of my remarks. The analysis, prepared by the Army Corps of Engineers, gives clear justification for the project on economic grounds.

For the past 9 years, my colleagues in the Senate have consistently supported the project, and I appreciate the support for the full $800,000 appropriation which they have given it today.

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

BENEFIT-COST RATIOS FOR DICKEY-LINCOLN SCHOOL (PROVIDED BY THE ARMY CORPS OF ENGINEERS, JULY 1973)

Interest rate (percent)	Annual charge	Annual benefit	B/C ratio
3¼	$17,305,000	$32,987,000	1.9
5½	27,525,000	32,987,000	1.2

The Dickey-Lincoln School Lakes hydroelectric power project alone is clearly economically feasible having a benefit to cost ratio of 1.9 to 1 at a 3¼ percent interest rate. The 3¼ percent interest rate has been retained in accordance with provisions included in the Water Resources Council's revisions to the discount rate used for Federal water resource projects effective 26 December 1968. The then prevailing interest rate could be retained on any project for which reasonable assurances of local cooperation were received prior to 31 December 1969. These assurances were received from the State of Maine. However, even at a 5½ percent interest rate the benefit-cost ratio would be 1.2 to 1.

ESTIMATED COSTS DICKEY-LINCOLN SCHOOL LAKES (100-YEAR PROJECT LIFE)

	Cost in thousands	
Interest rate	3¼ percent	5½ percent
Investments: Dickey-Lincoln School:		
First cost	$348,000	$348,000
Interest during construction	28,200	46,115
Subtotal	376,200	394,115
Transmission:		
First cost	117,225	117,225
Interest during construction	5,709	9,671
Subtotal	122,934	126,896
Tota investment	499,134	521,011
Annual charges:		
Interest and amortization	12,747	21,779
Operation and maintenance	1,491	1,491
Major replacements	242	187
Loss of land taxes	96	96
Subtotal	14,576	23,553
Transmission	2,729	3,972
Total annua charges	17,305	27,525

Annual benefits of Dickey-Lincoln School Lakes Alone

Power:		
Capacity: 830,000 KW x 0.95 x 21.50		$16,953,000
Energy:		
372,000,000 KWH x 0.95 x 0.0116		4,099,000
782,000,000 KWH x 0.929 x 0.0116		8,427,000
Downstream: 350,000,000 372,000,000 KWH x 0.006		2,100,000
Total power value		30,879,000
Miscellaneous:		
Area redevelopment [1]		799,000
Recreation		1,250,000
Flood control		59,000
Total miscellaneous		2,108,000
Total annual benefits		32,987,000

[1] Computed at 3¼% interest rate. If computed at 5½% interest rate the change would not be of sufficient magnitude to affect B.C. ratio.

Mr. DOLE. Mr. President, I send an amendent to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read, as follows:

On page 5, line 17, strike "$874,407,00" and insert for lieu thereof "$874,487,000."

Mr. DOLE. Mr. President, I offer an amendment to the 1974 public works appropriations bill to provide $80,000 in planning funds for the Cedar Point Lake project on the Cottonwood River in Kansas.

This money, when added to the $140,000 remaining from last year's appropriation, would enable the planning stage for this project to be completed at the earliest possible date.

I point out that the Corps of Engineers has estimated that if this dam had been in operation during this spring's heavy rainfall and runoff, damages in the basin would have been virtually eliminated, so, instead of $1,680,000 in damages, only some $20,000 would have been encountered.

I believe it is important to move forward as quickly as possible in cases where such clear evidence of a project's need is present.

I have no other comment to make, unless the chairman or the ranking member of the committee have questions.

Mr. BIBLE. Mr. President, the Senator has offered an amendment that would provide $80,000 for continued planning of Cedar Point Lake. There is $140,000 in reserve. The requested amount by amendment is for $80,000, which would make available a total of $220,000 for this project.

I am not at all convinced that the House will take this figure, in view of the amount in the reserve account; nor am I convinced, even if the House takes it, that the Bureau of the Budget will spend it.

However, since the Senator from Kansas is a Member of the body in power—on the administrative level that is—it may be that he can persuade OMB to take a different viewpoint than they have in the past. I am not going to oppose this matter or ask for a rollcall vote. I will accept the amendment and take it to conference, but I cannot promise what will happen to it in conference.

Mr. DOLE. I appreciate that.

Mr. President, I yield back the remainder of my time.

Mr. BIBLE. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kansas.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. BIBLE. I ask unanimous consent that I may ask for a quorum call without it being taken out of my time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BIBLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIBLE. Mr. President, as I understand the parliamentary situation, the bill has been read the third time.

The PRESIDING OFFICER. That is correct.

Mr. BIBLE. I yield 5 minutes to the Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, with reluctance, I intend to vote against H.R. 8947, the Public Works appropriation bill. I will vote against it reluctantly because I want to thank the distinguished Senator from Nevada, who has handled this bill so well, as he always does.

No one goes into more detail and thoughtful consideration of all matters in a bill than does the distinguished Senator from Nevada. He has considered projects in my State with great care and fairness.

I commend the committee for bringing these appropriations down from the fiscal year 1973 level by $860.2 million. But the bill still appropriates a whopping $4.8 billion, an excessive cost at a time when the need for fiscal restraint is so great.

The bill contains a number of environmentally destructive and economically undesirable projects; $13 million is appropriated for construction of the Teton Dam project in eastern Idaho. This 300-foot high dam will drown the rugged Teton Canyon and wipe out 17 miles of the river running through it, destroying one of the Nation's most spectacular hunting and fishing grounds. In order to justify this project the Bureau of Reclamation must prove that its benefits would exceed the cost of the project itself. Not surprisingly, the Bureau managed to come up with a benefit-cost ratio of 1.2 to 1. However, by pinpointing areas of inflated benefits, independent analysis has reduced this figure to 0.73 to 1. The Bureau had based its own calculations on an annual interest rate of 3.25 per cent—a ridiculously low figure. Using a more realistic rate such as 6 per cent, the benefit-cost ratio is further reduced to 0.4 to 1. Congress must not continue to fund such projects which destroy the environment and at the same time manage to cost more than twice the worth of their supposed benefits.

One of the worst projects funded by the bill is the Oakley—Springer—Dam in Illinois. The Corps has asked for $1.5

million for land acquisition and construction in fiscal year 1974. Total cost estimates for this project have nearly tripled to $80.9 million since it was authorized in 1962. The Oakley Dam proposal has been convincingly attacked by the Environmental Policy Center as one of the most wasteful of all Corps of Engineers proposals. The Corps' own benefit-cost figures indicate that the benefits from the project are only 6 percent greater than the cost. Defects in that analysis put the ratio far below 1 to 1. Supporters of the project claim that it will greatly improve the water supply for the area and provide great flood control benefits for farmlands. This ignores the fact that alternate water supplies at far less cost are already available and the project will end production on three times as much farmland as it will protect in an average year.

The Committee on Allerton Park, a group organized to fight the dam which will gravely damage a wildlife preserve given to the University of Illinois as an outdoor laboratory and ecological research center, has listed four compelling reasons why this project should not be funded for fiscal year 1974:

First. The fiscal year 1974 request—$1.5 million—is primarily for land acquisition and construction. Triple this amount—$4.6 million—has been allocated to the project in the past and has not yet been spent according to the Senate Public Works testimony for fiscal year 1973. Thus the Corps should have more than enough carryover funds to meet any needs in fiscal year 1974.

Second. The project is presently tied up in litigation in Federal court in Illinois. A suit challenging State participation is about to be refiled in an Illinois circuit court. Funds for the Telico Dam have been held up pending the outcome of litigation. There is no reason to appropriate money for Lake Springer if there is a chance that court action will stop the project outright or prohibit the expenditure of funds through injunctive action.

Third. Illinois Gov. Daniel Walker set down five conditions that he said would have to be met before the project moves ahead. It will take time to meet these conditions, if they can be met at all. We see no reason to appropriate money until they are met since failure to meet these conditions would leave the project without a local sponsor.

Fourth. The project is highly controversial and clearly not needed as a source of water for Decatur.

Mr. President, these and other projects are far too costly for the benefits they provide. I believe such aspects of the bill need further study and I intend to vote against the bill itself as reported.

Mr. HATFIELD. Mr. President, will the Senator yield?

Mr. PROXMIRE. I am happy to yield to the Senator from Oregon.

Mr. HATFIELD. I would like to ask the Senator if his comments regarding this bill are strictly selective rather than general because I recall his support for three Wisconsin projects.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HATFIELD. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. HATFIELD. I note in the LaFarge Lake and channel improvement there is $2.8 million as a budget allowance which is $200,000 less than the Senate has approved. I note the Northport Harbor project and the State Road and Ebner Coulee projects. Those are three Wisconsin projects, which I take it the Senator would support on behalf of his own State. I assume they would not be included in his general remarks about the bill.

Mr. PROXMIRE. The Senator knows perfectly well that he puts the Senator from Wisconsin on a spot, and he is absolutely right in doing so. But the Senator from Oregon's reasoning would mean there is no way a Senator could vote against the bill if there were projects which he approves.

There are projects in Oregon that I could support; there are projects in many other States that I could support. I have singled out some projects which I think are particularly bad. I oppose the cost of the bill. I think we should cut whereever we can.

I commend the Senator from Nevada for reducing the bill from what it was last year. There are projects that I approve, and projects which I disapprove. This is an enormous bill, including billions and billions of dollars. Certainly I do not want to be put in opposition to every single, last project in the bill.

By and large, this is a bill which greatly benefits the western part of our country, but not the eastern part. Oregon is about the same size as Wisconsin in area but not in population. But Oregon gets about 20 times as much money as does the State of Wisconsin, and it has done so consistently over the years. I do not object if Oregon can justify its projects.

Mr. HATFIELD. Speaking as a conferee, going to a conference with the House, I assume that the Senator from Wisconsin would like to have us stand firm on Wisconsin projects rather than to yield on them, if we have to readjust the overall number of projects.

Mr. PROXMIRE. The Senator is correct.

Mr. BIBLE. The only observation I was going to make is one that the Senator from Oregon has already made. I am sure that the Senator from Wisconsin has not made our task any easier, because House Members have the very, very unusual habit of carefully reading the RECORD to see what has been said, and they will read what the Senator from Wisconsin has said on the floor of the Senate today. We do not want to do a disservice to the Senator's very worthwhile Wisconsin projects, so we will battle along and do the best we can.

Actually, this is really a very good bill. It is $15.4 million over the budget; it is about $885 to $900 million less than the amount appropriated last year.

Mr. PROXMIRE. The Senator will recall that I voted against last year's bill, and also the bill of the year before.

Mr. BIBLE. I know. But now we have reduced it close to $900 million since last year. I hope that is getting closer and closer to where it will fit in with the Senator from Wisconsin's ideas of fiscal responsibility.

Mr. PROXMIRE. It is, indeed.

Mr. HATFIELD. Mr. President, I yield 3 minutes to the distinguished Senator from West Virginia.

SENATOR RANDOLPH AGAIN EMPHASIZES IMPORTANCE AND SUPPORT FOR CAREFULLY CONSIDERED PUBLIC WORKS PROGRAMS

Mr. RANDOLPH. Mr. President, I am appreciative of the cooperation of Senator ALAN BIBLE and Senator MARK HATFIELD, the two gentlemen who are handling this very important bill.

In our work on the Committee on Public Works, we have responsibility of giving very careful consideration and very careful markup to all the measures that flow from our authorization process to the Subcommittee on Public Works Appropriations.

The Public Works projects for which funding is contained in the bill before the Senate have been reviewed in detail. The approval of the Committee on Public Works is not given lightly even though our country continues to have great need for a wide variety of public facilities.

We are frequently subjected to the charge that public works projects are merely pork-barrel activities distributed solely on the basis of political influence. Members of Congress—particularly those who serve on the Public Works Committee and the Public Works Appropriations Subcommittee—know that this is not true. All projects must be fully justified as to their need and as to the return they will provide on the investments of public funds necessary to bring them into being.

Mr. President, there occasionally are dramatic examples of the value to the American people of Public Works investments. Throughout the spring of this year the Mississippi River Valley suffered from prolonged and extensive flooding. Millions of acres were inundated and the losses were heavy. Damage in the flood has been estimated at approximately $500 million. What is less widely known, however, are the staggering losses that would have occurred without the existing flood protection that was available in the stricken region. The Corps of Engineers estimates that had there been no flood control system in effect in the Mississippi Valley, damages this year would have amounted to more than $7.6 billion. In the years that the construction of flood protection facilities has been underway, the Federal Government has invested less than $2 million in the Mississippi Valley. The savings this year alone has repaid that investment about threefold.

Desirable as many Public Works projects are, we obviously cannot approve every recommendation that is made to us. Our Subcommittee on Water Resources, ably chaired by Senator MIKE GRAVEL, carefully reviews every proposal for projects. Extensive hearings are held and many witnesses are heard, including those both for and against individual projects. Members of the Subcommittee on Water Resources, including Senators BENTSEN, BURDICK, CLARK, BIDEN, SCOTT of Virginia, BUCKLEY, STAFFORD, and Mc-

CLURE, devote considerable time to these project proposals before making their decisions.

As chairman of the Committee on Public Works, which authorizes the projects contained in today's bill, and as an ex-officio member of the Appropriations Committee, I commend especially the work of Senators MCCLELLAN, BIBLE, and HATFIELD for their diligence and for their consideration of these projects at the appropriations level. The legislation before the Senate indicates a realistic financial balance for a responsible Public Works program.

I congratulate the members of the Appropriations Committee and join very, very strongly in support of this urgently needed measure.

Mr. MONTOYA. Mr. President, today the Senate has before it H.R. 8947, the fiscal year 1974 appropriation bill for Public Works—AEC.

I want to commend my colleagues, and especially Senator BIBLE, for the diligent manner in which they conducted hearings on this measure and brought it to the floor. This task was especially difficult this year due to the unfortunate absence of Senator STENNIS. His expertise and skill in the area of Public Works—AEC is well known to all Senators. His absence was, therefore, deeply felt by all members of the subcommittee who look forward to having him back next year.

The committee was fortunate, however in having Senator BIBLE ready to take over the reins. The Senate knows Senator BIBLE as the able chairman of the Interior Appropriations Subcommittee. By now they know that he is equally able at Public Works—AEC.

Mr. President, this is a sizable bill. We are appropriating $4.8 billion for a multitude of projects—for concrete dams and for abstract research. My interest extends to every item in the bill, but I especially wanted to call my colleagues' attention to several items which are of special importance to me and to my State.

The first of these concerns Brantley Dam, for which the committee included $325,000 for preconstruction planning. Although the House, through an oversight did not include any money for Brantley, I understand that Congressman EVINS has promised Congressman RUNNELS that the money would be retained in conference if the Senate added it.

The money is needed so that work on Brantley Dam may proceed. The proposed Brantley Dam is no ordinary reclamation project. It is primarily a replacement structure—a dam to replace the existing McMillan Dam which, after many years, is structurally weak and a recognized hazard.

In 1969, the McMillan Dam was evaluated by the Bureau of Reclamation as part of that Agency's "Safety of Dams" investigation. After careful study, the BOR concluded that the spillway of this facility was inadequate to pass a flood. In the event of heavy and sustained rains, water rising in Lake McMillan would over-top the dam, causing it to fail and sending a wall of water into Carlsbad.

Mr. President, major floods occur along the Pecos River on the average of once every 11 years. We know that sooner or later the McMillan Dam must be replaced. I am glad that the Senate has taken the position that this should be done sooner, before a catastrophe, rather than later, after one has occurred.

A second item of concern to me is the Elephant Butte irrigation system in southern New Mexico. The current system is composed of earthen canals, some of which are 100 to 150 years old. The Bureau of Reclamation merely tied these old canals together in 1915 to produce the current system. This old system is inefficient now. It wastes precious water and is costly to operate.

What is proposed is a modernization of this system. Use of closed conduits and other improvements should increase substantially the water available to farmers in the region. This will enable them to begin producing vegetables and should improve the economic vitality of the region on which once grew cotton and has been hard hit by the use of synthetic fabrics.

The administration and the House had included $60,000 for a study of the modernization of the Elephant Butte system. The Senate has included the entire $100,000 which the BOR has the capability to spend on a study of the so-called Archer plan. I commend this action on the part of the Senate.

A third concern of mine is for the proposed National Security and Resources Study Center, to be built at Los Alamos, N. Mex. This project consists of an office/seminar building and an adjoining building to house the technical library at Los Alamos Scientific Laboratory.

Despite U.S. predominance in the world of science, this country has no center where groups of scientists can come together under secure surroundings, to conduct seminars lasting 2 to 6 weeks. The building of the study center at Los Alamos would rectify this situation.

Moreover, the new library, which would be available to persons using the seminar facilities, is badly needed. Los Alamos Scientific Laboratory has one of the best technical libraries in the world, but it is being thinned out because of a lack of space. The thinning process is damaging the quality of the collection.

This project has the endorsement of the Atomic Energy Commission, of H. Guyford Stever, Director of the National Science Foundation, and of W. C. Gritwall, Jr., the Army Chief of Research and Development.

I note, also, that the full committee of the Senate has restored the $17.7 billion which the House cut from the weapons program. I endorse this restoration.

I also endorse the action of both the House and the Senate in adding $4.7 million to the administration request for research in geothermal energy. The inexhaustible heat of the earth itself, if properly tapped, offers a potentially inexhaustible source of energy for the world. At a time when the severity of the energy crisis is every day more and more apparent, I think it is highly appropriate that $4.7 million be spent for research into this area.

Finally, Mr. President, I wish to endorse the action of both House and Senate in restoring funds for the Animas-La Plata project in southwestern Colorado. This project is part of the overall plan for water development in northwest New Mexico and southwest Colorado. Moreover, this project is going to provide a supply of water sufficient to meet the needs of the Ute Indians in southwest Colorado and also to provide enough additional water to meet the needs of the town of Mancos, Colo. The new supply of water will solve a potentially difficult situation which pits the needs of the town of Mancos for water against the rights of the Ute Indians to the same water.

Mr. President, I believe the committee bill is a good bill, a responsible bill. I hope that when we go to conference, the Senate conferees will fight for the Senate bill and I further hope that the projects I have discussed will be retained.

Mr. RIBICOFF. Mr. President, I wish to thank the distinguished acting chairman of the Appropriations Subcommittee on Public Works (Mr. BIBLE) and members of the subcommittee and full committee for including in this bill $700,000 for the U.S. Army Corps of Engineers to begin construction of the last stage of the Still River Flood Control Project in Danbury, Conn.

I was Governor of Connecticut when the floods of August and October 1955 devastated the State. Among the most severely damaged communities at that time was Danbury where the Still River overflowed its banks and inundated major sections of the city.

As a result of that disaster the Army Corps of Engineers developed a three-stage plan for preventing similar occurrences. As of this date two of the three stages have been completed. Construction on the final stage was to be started soon but the administration eliminated the necessary funds from the corps' fiscal year 1974 budget request.

The perils inherent in the administration's cutback became obvious on February 2, 1973, when after heavy rains the Still River flooded again. Had the weather conditions not improved Danbury would have experienced a major disaster.

It would have been tragic if, after so much work has been done and so much local and Federal money, time and effort have been expended, the project was curtailed.

I know the citizens of Danbury who have to live with the fear of another disastrous flood join me in thanking the committee for reallocating the necessary funds to keep this important project going.

Mr. DOLE. Mr. President, I am pleased to voice my support for the fiscal year 1974 funding of water resource developments in Kansas.

At the outset I would say that the most persuasive testimony on behalf of the expenditures under consideration today is to be found out in the States.

TWO TYPES OF TESTIMONY

There are two kinds of testimony. One was seen in the flood-ravaged areas of various rivers, where the spring's heavy

rainfall and runoff brought record flood crests and wide scale damage and destruction. Of course, the Mississippi River's flooding received the widest publicity, but other rivers also overflowed their banks, and in the State of Kansas flood damages prompted the designation of 54 counties as Federal disaster areas. I would note that the Arkansas River and its tributaries were the major source of this damage—more than $3.5 million. It was grim testimony, painfully etched on the faces of homeowners, farmers, and businessmen who saw the ugly brown waters sweep over their property and wash away investments, dreams, and years of effort. These scenes have been recorded before in other years, in many areas in numerous States, and each time the message of death and human suffering and loss is the same.

But this year we have also seen a different kind of testimony as heavy rains and melting snow set runoff records throughout the Midwest. This testimony was seen particularly in the Missouri and Kansas River basins in Kansas. In these areas thousands of acres of low-lying farmland which, while soggy and wet, only needed a few days of drying sun and wind to be ready for the tractors and plows and are now producing record crops. Families went about life pretty much as usual instead of sandbagging their homes and moving furniture to second floors. Anxious but thankful glances were cast by businessmen toward the nearby rivers which, although bankfull and churning with silt and debris, remained within their banks or levees.

And most impressively, this testimony was seen in the growing impoundments and remaining reserve capacities of lake after lake constructed with Federal appropriations over the years. It was estimated that only some $200,000 in flood damages were suffered in all the Kansas-Missouri River Basin in Kansas. This is an amazingly small figure when compared to the hundreds of millions in damages these same areas experienced in years before the construction of these projects.

I would point out also that although Kansas flood damage in the Arkansas basin was in excess of $3.5 million this year, without the existing projects and improvements it is estimated that damages would have run nearly three times as large.

Both kinds of testimony are powerful. But fortunately, this year there is more of the good kind than ever before. And with the continued support from Congress, we will, hopefully, have more and more positive evidence of these projects' values each year.

FISCAL YEAR 1974 APPROPRIATIONS

Turning to the specifics of funding the fiscal year 1974 program for Kansas, I would first agree, generally, with the budget requests which have been submitted. Of course, we would all like to see every project completed at a maximum rate, but there are limitations in terms of overall Government spending policies designed to control inflation and the simple fact that everything cannot be done at once.

GENERAL INVESTIGATIONS

In the category of general investigations and studies, I believe the importance of continued progress and forward movement is vitally important to an orderly program. I believe the Senate Committee has acted wisely in increasing the funds for flood control and navigation studies. In Kansas the Great Bend-Tulsa Navigation Study is a top priority. A great deal has been accomplished in making the Arkansas one of the world's greatest commercial waterways, but the job is not yet finished, and we cannot afford to slack our efforts at this point.

PLANNING

Preconstruction planning category deserves careful attention. Once a project receives the green light it is important to move forward to meet the recognized needs to which it is intended to be responsive. Progress on projects is naturally slow enough, and if great delay is caused in the planning phase serious consequences can easily result, both in terms of continued damage by flooding and the toll of inflation on total cost. I was particularly pleased to note the approval of increased planning funds for the El Dorado local flood protection project—$50,000—and the Onaga Lake project—$110,000. The total planning funds for five projects is $667,000.

CONSTRUCTION AND MAINTENANCE

Administration construction fund requests were generally felt to be adequate, for delays in these areas have chiefly been due to factors outside the control of Congress or the executive branch. Maintenance requests are generally adequate. I would point out both the Senate and House Committees have approved the additional $600,000 for construction of the Clinton Lake project.

CONCLUSION

So, Mr. President, I would close by again expressing my belief in the need for strong funding support for wise and well-planned water resource development projects.

Water is a precious natural asset. Left unmanaged, it can be capricious and harmful; but subjected to thoughtful, prudent and far-sighted control, it can enrich the lives of millions and contribute significantly to the improvement of our American way of life. The bill before us today represents sound support for these projects, at a level which reflects the need to limit Federal expenditures in the fight against inflation and is at the same time responsive to the necessity of providing good management for a great national resource.

Mr. SCHWEIKER. Mr. President, as a new member of the Appropriations Committee and the Public Works Subcommittee, I would like to compliment the acting chairman of the subcommittee, Senator BIBLE, the ranking Republican, Senator HATFIELD and, of course, the subcommittee staff, for the fine work they have done on the fiscal year 1974 Public Works Appropriations bill. I would like to thank them in particular, for the help they have given me, as a new member, in my work on the subcommittee.

Our appropriations bill for fiscal year 1974, at $4.8 billion is over $860 million less than last year's appropriation, and certainly a responsible bill in today's tight fiscal situation.

This bill also contains over $40 million in construction funds for flood control projects in Pennsylvania, a very timely and important area to my State and to the entire Northeast, in view of the damages which resulted from Hurricane Agnes last year. The 10 projects under construction are scattered broadly around the State, ranging from the Raystown Lake, Tyrone, and Dubois projects in the central part of the State, to Blue Marsh Lake near Reading in the east, Tioga-Hammond and Cowanesque in the north, and Chartiers Creek, Woodcock Creek, and Union City in the west. A number of other flood control and recreation projects are already authorized and in the planning and/or land acquisition stages pending the beginning of construction.

Other funds are also included in this bill with an important impact upon Pennsylvania, among them $1.5 million for the Appalachian Regional Commission, which will include a total Federal commitment to the Scranton Mill section subsidence project of over $5 million, almost $70,000 for the Delaware River Basin Commission, $765,000 for the continuation of the Susquehanna River Basin Study, under provisions of Public Law 92–500.

Pennsylvania was very badly hit by Agnes, and there remain many unmet needs, which only some form of Federal help can meet. In my new responsibilities as a member of the Appropriations Committee, I will continue to make every effort to see that our needs are well represented, and our requirements are fairly met by the Federal Government.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Nevada (Mr. CANNON), the Senator from Alaska (Mr. GRAVEL), the Senator from Minnesota (Mr. HUMPHREY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Minnesota (Mr. MONDALE), and the Senator from Maine (Mr. MUSKIE) are necessarily absent.

I further announce that the Senator from South Dakota (Mr. ABOUREZK) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY), the Senator from Alaska (Mr. GRAVEL), the Senator from South Dakota (Mr. ABOUREZK), and the Senator from South Dakota (Mr. MCGOVERN) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from New Hampshire (Mr. COTTON) is absent because of illness.

The Senator from Massachusetts (Mr. BROOKE), the Senator from Colorado

(Mr. DOMINICK), and the Senator from Ohio (Mr. TAFT) are necessarily absent.

The Senator from Nebraska (Mr. HRUSKA) and the Senator from New York (Mr. JAVITS) are absent on official business.

On this vote, the Senator from Ohio (Mr. TAFT) is paired with the Senator from New Hampshire (Mr. COTTON). If present and voting, the Senator from Ohio would vote "yea" and the Senator from New Hampshire would vote "nay."

The result was announced—yeas 82, nays 3, as follows:

[No. 314 Leg.]

YEAS—82

Aiken	Fong	Montoya
Allen	Fulbright	Moss
Baker	Goldwater	Nelson
Bartlett	Griffin	Nunn
Bayh	Gurney	Packwood
Beall	Hansen	Pastore
Bellmon	Hart	Pearson
Bennett	Hartke	Pell
Bible	Haskell	Percy
Brock	Hatfield	Randolph
Buckley	Hathaway	Ribicoff
Burdick	Helms	Roth
Byrd, Harry F., Jr.	Hollings	Schweiker
	Huddleston	Scott, Pa.
Byrd, Robert C.	Hughes	Scott, Va.
Case	Inouye	Sparkman
Chiles	Jackson	Stafford
Church	Johnston	Stevens
Clark	Kennedy	Stevenson
Cook	Long	Symington
Cranston	Magnuson	Talmadge
Curtis	Mansfield	Thurmond
Dole	Mathias	Tower
Domenici	McClellan	Tunney
Eagleton	McClure	Weicker
Eastland	McGee	Williams
Ervin	McIntyre	Young
Fannin	Metcalf	

NAYS—3

Biden	Proxmire	Saxbe

NOT VOTING—15

Abourezk	Dominick	McGovern
Bentsen	Gravel	Mondale
Brooke	Hruska	Muskie
Cannon	Humphrey	Stennis
Cotton	Javits	Taft

So the bill (H.R. 8947) was passed.

Mr. BIBLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BIBLE. Mr. President, I move that the Senate insist upon its amendments and request a conference with the House, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. BIBLE, Mr. MCCLELLAN, Mr. MAGNUSON, Mr. ROBERT C. BYRD, Mr. PASTORE, Mr. MCGEE, Mr. MONTOYA, Mr. HATFIELD, Mr. YOUNG, Mr. HRUSKA, Mr. CASE, Mr. STEVENS, Mr. SCHWEIKER, Mr. BELLMON, and Mr. RANDOLPH conferees on the part of the Senate.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had passed the following bills of the Senate, each with an amendment, in which it requested the concurrence of the Senate:

S. 1090. An act to amend the Communications Act of 1934, to extend certain authorizations for the Corporation for Public Broadcasting and for certain construction grants for noncommercial educational television and radio broadcasting facilities, and for other purposes; and

S. 1888. An act to extend and amend the Agricultural Act of 1970 for the purpose of assuring consumers of plentiful supplies of food and fiber at reasonable prices.

ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (S. 59) to amend title 38 of the United States Code to provide improved and expanded medical and nursing home care to veterans; to provide hospital and medical care to certain dependents and survivors of veterans; to provide for improved structural safety of Veterans' Administration facilities; to improve recruitment and retention of career personnel in the Department of Medicine and Surgery; and for other purposes.

The enrolled bill was subsequently signed by the Acting President pro tempore (Mr. BURDICK).

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries.

AMENDMENT OF AGRICULTURAL ACT OF 1970

Mr. TALMADGE, Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1888.

The PRESIDING OFFICER (Mr. CLARK) laid before the Senate the amendment of the House of Representatives to the bill (S. 1888) "to extend and amend the Agricultural Act of 1970 for the purpose of assuring consumers of plentiful supplies of food and fiber at reasonable prices," which was to strike out all after the enacting clause, and insert:

That the Agricultural Act of 1970 is amended as follows: Title I is amended to read as follows:

"TITLE I—PAYMENT LIMITATION

SEC. 101. Notwithstanding any other provision of law—

"(1) The total amount of payments which a person shall be entitled to receive under one or more of the annual programs established by titles IV, V, and VI of this Act for the 1974 through 1978 crops of the commodities shall not exceed $20,000.

"(2) The term 'payments' as used in this section includes all price support payments, set-aside payments, diversion payments, and resource adjustment payments but does not include loans or purchases, or any part of any payment which is determined by the Secretary to represent compensation for public access for recreation.

"(3) If the Secretary determines that the total amount of payments which will be earned by any person under the program in effect for any crop will be reduced under this section, the set-aside acreage for the farm or farms on which such person will be sharing in payments earned under such program shall be reduced to such extent and in such manner as the Secretary determines will be fair and reasonable in relation to the amount of the payment reduction.

"(4) (a) In any case in which the owner or operator of a farm leases any portion of the farm to one or more persons, the payment limitation applicable to such person as prescribed by this section, shall be reduced in the same proportion as the allotment remaining in the farm bears to the total allotment prior to such lease: *Provided*, That the payment limitation shall also be reduced on the leased portion of the farm in proportion to the allotment accredited to such portion if the lessee is a member of the lessor's family or is a corporation in which the lessor or member of his family is a stockholder, or a partnership in which the lessor or a member of his family is a partner.

"(b) In any case in which the owner or operator of a farm sells or leases any portion of the acreage allotment for the farm to one or more persons, the payment limitation prescribed by this section shall apply in the same manner as if the lessor or seller had not leased or sold the acreage allotment.

"(5) The Secretary shall issue regulations defining the term 'person' and prescribing such rules as he determines necessary to assure an effective and economical application of such limitation: *Provided*, That the provisions of this Act which limit payments to any person shall not be applicable to lands owned by States, political subdivisions, or agencies thereof, so long as such lands are farmed primarily in the direct furtherance of a public function, as determined by the Secretary."

DAIRY PROGRAM

Milk Marketing Orders

(2) Section 201 is amended by—

(A) amending section 201(e) by striking out "1973" and inserting "1977", and by striking out "1976" and inserting "1980", and

(B) adding at the end thereof the following:

"(f) The Agricultural Adjustment Act as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, is further amended by:

"(1) striking the period at the end of subsection 8c(17) and adding in lieu thereof the following: ': *Provided further*, That if one-third or more of the producers as defined in a milk order apply in writing for a hearing on a proposed amendment of such order, the Secretary shall call such a hearing if the proposed amendment is one that may legally be made to such order. Subsection (12) of this section shall not be construed to permit any cooperative to act for its members in an application for a hearing under the foregoing proviso and nothing in such proviso shall be construed to preclude the Secretary from calling an amendment hearing as provided in subsection (3) of this section. The Secretary shall not be required to call a hearing on any proposed amendment to an order in response to an application for a hearing on such proposed amendment if the application requesting the hearing is received by the Secretary within ninety days after the date on which the Secretary has announced his decision on a previously proposed amendment to such order and the two proposed amendments are essentially the same.

"(2) inserting after the phrase 'pure and wholesome milk' in section 8c(18) the phrase 'to meet current needs and further to assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs'."

Milk Price Support, Butterfat Price Support Suspension

(3) Section 202 is amended by—

(A) striking the introductory clause which precedes subsection (a);

(B) effective April 1, 1974, inserting in sub-

section (b) before the period at the end of the first sentence in the quotation the following: "of pure and wholesome milk to meet current needs, reflect changes in the cost of production, and assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs"; and

(C) inserting in subsection (b) in the first sentence "80 per centum" in lieu of "75 per centum".

Veterans Hospitals

(4) Section 203 is amended by striking out "1973" and inserting "1977".

Dairy Indemnity Program

(5) Section 204 is amended by—

(A) striking out "1973" and inserting "1977"; and

(B) striking subsection (b) and substituting therefor the following:

"(b) Section 1 of said Act is amended to read as follows:

"'SECTION 1. The Secretary of Agriculture is authorized to make indemnity payments for milk or cows producing such milk at a fair market value, to dairy farmers who have been directed since January 1, 1964 (but only since the date of enactment of the Agriculture Act of 1973 in the case of indemnity payments not authorized prior to such date of enactment), to remove their milk, and to make indemnity payments for dairy products at fair market value to manufacturers of dairy products who have been directed since the date of enactment of the Agricultural Act of 1970 to remove their dairy products from commercial markets because of residues of chemicals registered and approved for use by the Federal Government at the time of such use. Any indemnity payment to any farmer shall continue until he has been reinstated and is again allowed to dispose of his milk on commercial markets.'"

(6) Title II is amended by adding at the end thereof the following:

'Dairy Import Licenses

"SEC. 205. Section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) is amended by adding at the end thereof the following:

"'(g) The President is authorized to provide that dairy products may be imported only by or for the account of a person or firm to whom a license has been issued by the Secretary of Agriculture. In issuing a license for dairy products not currently being imported but sought to be imported under this section during any period after the enactment of the Agriculture Act of 1973, the Secretary shall make licenses available for a thirty-day period before issuing licenses to other applicants to domestic producers and processors who agree to import such dairy products: *Provided, however,* That such licenses shall not be sold, transferred or assigned. For purposes of this subsection, dairy products include (1) all forms of milk and dairy products, butterfat, milk solids-not-fat, and any combination or mixture thereof; (2) any article, compound, or mixture containing 5 per centum or more of butterfat, or milk solids-not-fat, or any combinations of the two; and (3) lactose, and other derivatives of milk, butterfat, or milk solids-not-fat, if imported commercially for any food use. Dairy products do not include (1) casein, caseinates, industrial casein, industrial caseinates, or any other industrial products, not to be used in any form for any food use, or an ingredient of food; or (2) articles not normally considered to be dairy products, such as candy, bakers goods, and other similar articles: *Provided,* That dairy products in any form, in any such article are not commercially extractable or capable of being used commercially as a replacement or substitute for such ingredients in the manufacture of any food product.'

PRODUCER HANDLERS

"SEC. 206. The legal status of producer handlers of milk under the provisions of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, shall be the same subsequent to the adoption of the amendments made by the Agriculture Act of 1973 as it was prior thereto."

WOOL PROGRAM

(7) Section 301 is amended by—

(A) striking out "1973" each place it occurs and inserting "1977", and by striking out the word "three" each place it occurs; and

(B) adding at the end thereof the following:

"(6) Strike out the first sentence of section 708 and insert the following: 'The Secretary of Agriculture is authorized to enter into agreements with, or to approve agreements entered into between, marketing cooperatives, trade associations, or others engaged or whose members are engaged in the handling of wool, mohair, sheep, or goats or the products thereof for the purpose of developing and conducting on a national, State, or regional basis advertising and sales promotion programs and programs for the development and dissemination of information on product quality, production management, and marketing improvement, for wool, mohair, sheep, or goats or the products thereof. Advertising and sales promotion programs may be conducted outside of the United States for the purpose of maintaining and expanding foreign markets and uses for mohair or goats or the products thereof produced in the United States.'."

WHEAT PROGRAM

Wheat Production Incentives

(8) Effective beginning with the 1974 crop section 401 is amended by striking out "1971, 1972, and 1973" and inserting "1971 through 1977" and section 107 of the Agricultural Act of 1949, as it appears therein, is amended by—

(A) amending section 107(a) to read as follows:

"(a) Loans and purchases on each crop of wheat shall be made available at such level as the Secretary determines appropriate, taking into consideration competitive world prices of wheat, the feeding value of wheat in relation to feed grains, and the level at which price support is made available for feed grains: *Provided,* That in no event shall such level be in excess of the parity price for wheat or less than $1.49 per bushel."

(B) substituting the word "payments" for the word "certificates" in section 107(b);

(C) striking the quotation mark at the end of section 107(b); and

(D) adding at the end of the section the following:

"(c) Payments shall be made for each crop of wheat to the producers on each farm in an amount determined by multiplying (1) the amount by which the higher of—

"(1) the national weighted average market price received by farmers during the first five months of the marketing year for such crop, as determined by the Secretary, or

"(2) the loan level determined under subsection (a) for such crop

is less than the established price of $2.05 per bushel, adjusted for each of the 1975 through 1977 crops to reflect any changes in the index of prices paid by farmers for production items, interest, taxes, and wage rates, times (ii) the allotment for the farm for such crop, times (iii) the projected yield established for the farm with such adjustments as the Secretary determines necessary to provide a fair and equitable yield: *Provided,* That any increase that would otherwise be made in the established price to reflect a change in the index of prices paid by farmers shall be adusted to reflect any change in (i) the national average yield per acre of wheat for the three calendar years preceding the year for which the determination is made, over (ii) the national average yield per acre of wheat for the three calendar years preceding the year previous to the one for which the determination is made. If the Secretary determines that the producers are prevented from planting, or if planted, prevented from harvesting any portion of the farm acreage allotment to wheat or other nonconserving crop, because of drought, flood, or other natural disaster or condition beyond the control of the producer, the rate of payment on such portion shall be the larger of (A) the foregoing rate, or (B) one-third of the established price. The Secretary shall provide for the sharing of payments made under this subsection for any farm among the producers on the farm on a fair and equitable basis."

Termination of Wheat Certificate Program, Farm Acreage Allotments

(9) Section 402 is amended by inserting "(a)" after the section designation and adding the following at the end of the section:

"(b)(A) Section 379b of the Agricultural Adjustment Act of 1938 (which provides for a wheat marketing certificate program) shall not be applicable to the 1974 through 1977 crops of wheat, except as provided in paragraphs (B) and (C) of this subsection.

"(B) Section 379b(c) of the Agricultural Adjustment Act of 1938, as amended by subsection (a) of this section (which provides for a set-aside program), shall be effective with respect to the 1974 through 1977 crops of wheat with the following changes:

"(i) The phrase 'payments authorized by section 107(c) of the Agricultural Act of 1949' shall be substituted for the word 'certificates' and the phrases 'certificates authorized in subsection (b)' and 'marketing certificates' each place they occur.

"(ii) The word 'domestic' shall be stricken each place it occurs.

"(iii) The second sentence of section 379b(c)(1) is amended to read as follows: 'If a set-aside of cropland is in effect under this subsection (c), then as a condition of eligibility for loans, purchases, and payments authorized by section 107(c) of the Agricultural Act of 1949, the producers on a farm must set aside and devote to approved conservation uses an acreage of cropland equal to (i) such percentage of the wheat allotment for the farm as may be specified by the Secretary and will be estimated by the Secretary to result in a set-aside not in excess of thirteen and three-tenths million acres in the case of the 1971 crop; plus, if required by the the Secretary, (ii) the acreage of cropland on the farm devoted in preceding years to soil conserving uses, as determined by the Secretary.'

"(iv) The third sentence in 379b(c)(1) is amended to read as follows: 'The Secretary is authorized for the 1974 through 1977 crops to limit the acreage planted to wheat on the farm to a percentage of the acreage allotment.'

"(v) '1971 through 1977' shall be substituted for '1971, 1972, and 1973' each place it occurs other than in the third sentence of section 379b(c)(1).

"(vi) After the second sentence of section 379b(c)(3) the following shall be inserted: 'The Secretary may, in the case of programs for the 1974 through 1977 crops, pay an appropriate share of the cost of practices designed to carry out the purposes of the foregoing sentences.'

"(C) Sections 379(d), (e), (g), and (i) of the Agricultural Adjustment Act of 1938, as

amended by subsection (a) of this section, shall be effective for the 1974 through 1977 crops amended to read as follows:

"'(d) The Secretary shall provide for the sharing of payments made under this section for any farm among producers on the farm on a fair and equitable basis.

"'(e) In any case in which the failure of a producer to comply fully with the terms and conditions of the program formulated under this section precludes the making of loans, purchases, and payments, the Secretary may, nevertheless, make such loans, purchases, and payments in such amounts as he determines to be equitable in relation to the seriousness of the default.

"'(g) The Secretary is authorized to issue such regulations as he determines necessary to carry out the provisions of this title.

"'(i) The Secretary shall carry out the program authorized by this section through the Commodity Credit Corporation.'

"(D) Section 379c of the Agricultural Adjustment Act of 1938, effective only with respect to the 1974 through 1977 crops of wheat, is amended to read as follows:

"'SEC. 379c. (a)(1) The farm acreage allotment for each crop of wheat shall be determined as provided in this section. The Secretary shall proclaim the national acreage allotment not later than April 15 of each calendar year for the crop harvested in the next succeeding calendar year. Such national allotment shall be the number of acres he determines on the basis of the estimated national average yield for the crop for which the determination is being made will produce the quantity (less imports) that he estimates will be utilized domestically and for export during the marketing year for such crop. If the Secretary determines that carryover stocks are excessive or an increase in stocks is needed to assure a desirable carryover, he may adjust the allotment by the amount he determines will accomplish the desired decrease or increase in carryover stocks. The national acreage allotment for any crop of wheat shall be apportioned by the Secretary among the States on the basis of the apportionment to each State of the national acreage allotment for the preceding crop (1973 national domestic allotment in the case of apportionment of the 1974 national acreage allotment) adjusted to the extent deemed necessary by the Secretary to establish a fair and equitable apportionment base for each State, taking into consideration established crop rotation practices, the estimated decrease in farm acreage allotments, and other relevant factors.

"'(2) The State acreage allotment for wheat, less a reserve of not to exceed 1 per centum thereof for apportionment as provided in this subsection, shall be apportioned by the Secretary among the counties in the State, on the basis of the apportionment to each such county of the wheat allotment for the preceding crop, adjusted to the extent deemed necessary by the Secretary in order to establish a fair and equitable apportionment base for each county taking into consideration established crop-rotation practices, the estimated decrease in farm allotments, and other relevant factors.

"'(3) The farm allotment for each crop of wheat shall be determined by apportioning the county wheat allotment among farms in the county which had a wheat allotment for the preceding crop on the basis of such allotment, adjusted to reflect established crop-rotation practices and such other factors as the Secretary determines should be considered for the purpose of establishing a fair and equitable allotment. Notwithstanding any other provision of this subsection, the farm allotment shall be adjusted downward to the extent required by subsection (b).

"'(4) Not to exceed 1 per centum of the State allotment for any crop may be apportioned to farms for which there was no allotment for the preceding crop on the basis of the following factors: suitability of the land for production of wheat, the past experience of the farm operator in the production of wheat, the extent to which the farm operator is dependent on income from farming for his livelihood, the production of wheat on other farms owned, operated, or controlled by the farm opertor, and such other factors as the Secretary determines should be considered for the purpose of establishing fair and equitable farm allotments. No part of such reserve shall be apportioned to a farm to reflect new cropland brought into production after the date of enactment of the set-aside program for wheat.

"'(5) The planting on a farm of wheat or any crop for which no farm allotment was established shall not make the farm eligible for an allotment under subsection (a)(3) nor shall such farm by reason of such planting be considered ineligible for an allotment under subsection (a)(4).

"'(6) The Secretary may make such adjustments in acreage under this Act as he determines necessary to correct for abnormal factors affecting production, and to give due consideration to tillable acreage, crop rotation practices, types of soil, soil and water conservation measures, and topography, and in addition, in the case of conserving use acreages, to such other factors as he deems necessary in order to establish a fair and equitable conserving use acreage for the farm.

"'(b)(1) If for any crop the total acreage of wheat planted on a farm is less than the farm allotment, the farm allotment used as a base for the succeeding crop shall be reduced by the percentage by which such planted acreage was less than such farm allotment, but such reduction shall not exceed 20 per centum of the farm allotment for the preceding crop. If no acreage has been planted to wheat for three consecutive crop years on any farm which has an allotment, such farm shall lose its allotment. Producers on any farm who have planted to wheat not less than 90 per centum of the allotment for the farm shall be considered to have planted an acreage equal to 100 per centum of such allotment. An acreage on the farm which the Secretary determines was not planted to wheat because of drought, flood, or other natural disaster or condition beyond the control of the producer shall be considered to be an acreage of wheat planted for harvest. For the purpose of this subsection, the Secretary may permit producers of wheat to have acreage devoted to soybeans, feed grains for which there is a set-aside program in effect, guar, castor beans, cotton, triticale, oats, rye, or such other crops as the Secretary may deem appropriate considered as devoted to the production of wheat to such extent and subject to such terms and conditions as the Secretary determines will not impair the effective operation of the program.

"'(2) Notwithstanding the provisions of subsection (b)(1), no farm allotment shall be reduced or lost through failure to plant the farm allotment, if the producer elects not to receive payments for the portion of the farm allotment not planted, to which he would otherwise be entitled under the provisions of section 107(c) of the Agricultural Act of 1949.'"

Repeal of Processor Certificate Requirement

(10) Section 403 is amended by inserting "(a)" after the section designation and by inserting at the end thereof the following: "(b) Sections 379d, 379e, 379f, 379g, 379h, 379i, and 379j of the Agricultural Adjustment Act of 1938 (which deal with marketing certificate requirements for processors and exporters) shall not be applicable to wheat processed or exported during the period July 1, 1973 through June 30, 1978; and section 379g is amended by adding the following new subsection (c):

"(c) The Secretary is authorized to take such action as he determines to be necessary to facilitate the transition from the certificate program provided for under section 379d to a program under which no certificates are required. Notwithstanding any other provision of law, such authority shall include, but shall not be limited to the authority to exempt all or a portion of wheat or food products made therefrom in the channels of trade on July 1, 1973, from the marketing restrictions in subsection (b) of section 379d, or to sell certificates to persons owning such wheat or food products made therefrom at such price and under such terms and conditions as the Secretary may determine. Any such certificate shall be issued by the Commodity Credit Corporation. Nothing herein shall authorize the Secretary to require certificates on wheat processed after June 30, 1973.'."

Suspension of Wheat Marketing Quotas

(11) Section 404 is amended by striking "1971, 1972, and 1973" wherever it appears and inserting "1971 through 1977", and by striking "1972 and 1973" and inserting "1972 through 1977".

State Agency Allotments, Yield Calculations

(12)(a) Section 405 is amended by striking out "1971, 1972, and 1973" and inserting "1971 through 1977"; and by repealing paragraph (2) effective with the 1974 crop; by inserting "(a)" after the section designation; by changing the period and quotation mark at the end of the section to a semicolon; and by adding at the end of the section the following:

"(b) Effective with respect to the 1974 through 1977 crops section 301(b)(13)(K) of the Agricultural Adjustment Act of 1938 is amended by adding after 'three calendar years' the following: '(five calendar years in the case of wheat)', and section 708 of Public Law 89-321 is amended by inserting in the second sentence after 'determining the projected yield' the following '(except that in the case of wheat, if the yield is abnormally low in any one of the calendar years of the base period because of drought, flood, or other natural disaster, the Secretary shall take into account the actual yield proved by the producer in the other four years of such base period'."

Suspension of Quota Provisions

(13) Section 406 is amended by striking out "1971, 1972, and 1973" and inserting "1971 through 1977".

Reduction in Wheat Stored To Avoid Penalty

(14) Section 407 of the Agricultural Act of 1970 is amended by adding at the end thereof the following: "Notwithstanding the foregoing, the Secretary may authorize release of wheat stored by a producer under section 379c(b) of the Agricultural Adjustment Act of 1938, as amended, prior to the 1971 crop, whenever he determines such release will not significantly affect market prices for wheat. As a condition of release, the Secretary may require a refund of such portion of the value of certificates received in the crop year the excess wheat was produced as he deems appropriate considering the period of time the excess wheat has been in storage and the need to provide fair and equitable treatment among all wheat program participants.".

Application of the Agricultural Act of 1949

(15) Section 408 is amended by striking out "1971, 1972, and 1973" and inserting "1971 through 1977".

Commodity Credit Corporation Sales Price Restrictions

(16) Section 409 is amended by striking out "1971, 1972, and 1973" and inserting "1971 through 1977".

Set-Aside on Summer Fallow Farms

(17) Section 410 is amended by striking out "1971, 1972, and 1973" and inserting "1971 through 1977".

FEED GRAIN PROGRAM

(18) Effective only with respect to the 1974 through 1977 crops of feed grains, section 501 is amended by—

(A) striking out that portion through the first colon and section 105(a) of the Agricultural Act of 1949, as it appears therein, and inserting the following:

"SEC. 501. (a) Effective only with respect to the 1971 through 1977 crops of feed grains, section 105(a) of the Agricultural Act of 1949, as amended, is further amended to read as follows:

" 'SEC. 105. Notwithstanding any other provision of laws—

" '(a)(1) The Secretary shall make available to producers loans and purchases on each crop of corn at such level, not less than $1.19 per bushel nor in excess of 90 per centum of the parity price therefor, as the Secretary determines will encourage the exportation of feed grains and not result in excessive total stocks of feed grains in the United States.

" '(2) The Secretary shall make available to producers loans and purchases on each crop of barley, oats, and rye, respectively, at such level as the Secretary determines is fair and reasonable in relation to the level that loans and purchases are made available for corn, taking into consideration the feeding value of such commodity in relation to corn and the other factors specified in section 401(b), and on each crop of grain sorghums at such level as the Secretary determines is fair and reasonable in relation to the level that loans and purchases are made available for corn, taking into consideration the feeding value and average transportation costs to market of grain sorghums in relation to corn.'."

(B) adding at the end thereof the following:

"(b) Effective only with respect to the 1974 through 1977 crops of feed grains, section 105(b) of the Agricultural Act of 1949, as amended, is further amended to read as follows:

" '(b)(1) In addition, the Secretary shall make available to producers payments for each crop of corn, grain, sorghums, and, if designated by the Secretary, barley, computed by multiplying (1) the payment rate, times (2) the allotment for the farm for such crop, times (3) the yield established for the farm for the preceding crop with such adjustments as the Secretary determines necessary to provide a fair and equitable yield. The payment rate for corn shall be the amount by which the higher of—

" '(1) the national weighted average market price received by farmers during the first five months of the marketing year for such crop, as determined by the Secretary, or

" '(2) the loan level determined under subsection (a) for such crop

is less than the established price of $1.38 per bushel, adjusted for each of the 1975 through 1977 crops to reflect any changes in the index of prices paid by farmers for production items, interest, taxes, and wage rates: Provided, That any increase that would otherwise be made in the established price to reflect a change in the index of prices paid by farmers shall be adjusted to reflect any change in (i) the national average yield per acre of feed grains for the three calendar years preceding the year for which the determination is made, over (ii) the national average yield per acre of feed grains for the three calendar years preceding the year previous to the one for which the determination is made. The payment rate for grain sorghums and, if designated by the Secretary, barley, shall be such rate as the Secretary determines fair and reasonable in relation to the rate at which payments are made available for corn. If the Secretary determines that the producers on a farm are prevented from planting or if planted, prevented from harvesting any portion of the farm acreage allotment to feed grains or other nonconserving crop, because of drought, flood, or other natural disaster or condition beyond the control of the producer, the rate of payment on such portion shall be the larger of (A) the foregoing rate, or (B) one-third of the established price.

" '(2) The Secretary shall, prior to January 1 of each calendar year, determine and proclaim for the crop produced in such calendar year a national acreage allotment for feed grains, which shall be the number of acres he determines on the basis of the estimated national average yield of the feed grains included in the program for the crop for which the determination is being made will produce the quantity (less imports) of such feed grains that he estimates will be utilized domestically and for export during that marketing year for such crop. If the Secretary determines that carryover stocks of any of the feed grains are excessive or an increase in stocks is needed to assure a desirable carryover, he may adjust the feed grain allotment by the amount he determines will accomplish the desired decrease or increase in carryover stocks. State, county, and farm feed grain allotments shall be established on the basis of the feed grain allotments established for the preceding crop (for 1974 on the basis of the feed grain bases established for 1973), adjusted to the extent deemed necessary to establish a fair and equitable apportionment base for each State, county, and farm. Not to exceed 1 per centum of the State feed grain allotment may be reserved for apportionment to new feed grain farms on the basis of the following factors: suitability of the land for production of feed grains, the extent to which the farm operator is dependent on income from farming for his livelihood, the production of feed grains on other farms owned, operated, or controlled by the farm operator, and such other factors as the Secretary determines should be considered for the purpose of establishing fair and equitable feed grain allotments.

" '(3) If for any crop the total acreage on a farm planted to feed grains included in the program formulated under this subsection is less than the feed grain allotment for the farm, the feed grain allotment for the farm for the succeeding crops shall be reduced by the percentage by which the planted acreage is less than the feed grain allotment for the farm, but such reduction shall not exceed 20 per centum of the feed grain allotment. If no acreage has been planted to such feed grains for three consecutive crop years on any farm which has a feed grain allotment, such farm shall lose its feed grain allotment: *Provided*, That no farm feed grain allotment shall be reduced or lost through failure to plant, if the producer elects not to receive payment for such portion of the farm feed grain allotment not planted, to which he would otherwise be entitled under the provisions of this Act. Any such acres eliminated from any farm shall be assigned to a national pool for the adjustment of feed grain allotments as provided for in subsection (e)(2). Producers on any farm who have planted to such feed grains not less than 90 per centum of the feed grain allotment shall be considered to have planted an acreage equal to 100 per centum of such allotment. An acreage on the farm which the Secretary determines was not planted to such feed grains because of drought, flood, or other natural disaster or condition beyond the control of the producer shall be considered to be an acreage of feed grains planted for harvest. For the purpose of this paragraph, the Secretary may permit producers of feed grains to have acreage devoted to soybeans, wheat, guar, castor beans, cotton, triticale, oats, rye, or such other crops as the Secretary may deem appropriate, considered as devoted to the production of such feed grains to such extent and subject to such terms and conditions as the Secretary determines will not impair the effective operation of the program.'."

(C) striking out "1971, 1972, 1973" where it appears in that part which amends section 105(c)(1) of the Agricultural Act of 1949 and inserting "1971 through 1977", and by amending the second sentence of section 105(c)(1) to read as follows: "If a set-aside of cropland is in effect under this subsection (c), then as a condition of eligibility for loans, purchases, and payments on corn, grain sorghums, and, if designated by the Secretary, barley, respectively, the producers on a farm must set aside and devote to approved conservation uses an acreage of cropland equal to (i) such percentage of the feed grain allotment for the farm as may be specified by the Secretary, plus, if required by the Secretary (ii) the acreage of cropland on the farm devoted in preceding years to soil conserving uses, as determined by the Secretary."

(D) amending the third sentence of section 105(c)(1) to read as follows: "The Secretary is authorized for the 1974 through 1977 crops to limit the acreage planted to feed grains on the farm to a percentage of the farm acreage allotment.",

(E) striking out paragraphs (1) and (3) of subsection (e), and striking out all of subsection (g),

(F) inserting after the second sentence of section 105(c)(3) the following: "The Secretary may, in the case of programs for the 1974 through 1977 crops, pay an appropriate share of the cost of practices designed to carry out the purposes of the foregoing sentences."

COTTON PROGRAM

Suspension of Marketing Quotas for Cotton, Minimum Base Acreage Allotment

(19) Section 601 is amended by—

(A) striking out "1971, 1972, and 1973" wherever it appears therein and inserting "1971 through 1977",

(B) striking "1970, 1971, and 1972" from paragraph (2) and inserting "1970 through 1976",

(C) effective beginning with the 1974 crop, striking out the following from section 344(a) in section 601 "for which a farm base acreage allotment is established (other than pursuant to section 350(e)(1)(A))",

(D) striking "1974" from paragraph (3)(1) and inserting "1978", and by striking "1972 and 1973" from paragraph (4) and inserting "1972 through 1977",

(E) effective beginning with the 1974 crop, adding at the end of section 350(a) in paragraph (4) of section 601 the following: "The national base acreage allotment for the 1974 through 1977 crops shall not be less than eleven million acres.",

(F) effective beginning with the 1974 crop, striking "soybeans, wheat or feed grains" from the last sentence of section 350(e)(2) in paragraph (4) of section 601 and inserting "soybeans, wheat, feed grains, guar, castor beans, or such other crops as the Secretary may deem appropriate",

(G) effective beginning with the 1974 crop, striking the words "an adjoining" in the first sentence of section 350(h) as found in paragraph (4) of section 601, and inserting in lieu thereof "any other nearby",

(H) effective beginning with the 1974 crop,

striking subsection 350(g) in paragraph (4) of section 601 and redesignating subsection (h) as subsection (g).

Cotton Production Incentives

(20) Section 602 is amended by—

(A) striking "1971, 1972, and 1973" wherever it appears therein and inserting "1971 through 1977", by striking "the 1972 or 1973 crop" where it appears in that part amending section 103(e)(1) of the Agricultural Act of 1949 and inserting "any of the 1972 through 1977 crops", and by striking out "acreage world price" in that part amending section 103(e)(1) of the Agricultural Act of 1949, and substituting "average price of American cotton in world markets";

(B) in that part amending section 103(e)(1) of the Agricultural Act of 1949 striking out "two-year period" whenever it appears therein and substituting "three-year period"; and by striking out that part beginning with "except that" in the first sentence and substituting "except that if the loan rate so calculated is higher than the then current level of average world prices for American cotton of such quality, the Secretary is authorized to adjust the current calculated loan rate for cotton to 90 per centum of the then current average world price.";

(C) effective beginning with the 1974 crop, amending section 103(e)(2) of the Agricultural Act of 1949 as it appears in such section 602 to read as follows:

"(2) Payments shall be made for each crop of cotton to the producers on each farm at a rate equal to the amount by which the higher of—

"(1) the average market price received by farmers for upland cotton during the calendar year which includes the first five months of the marketing year for such crop, as determined by the Secretary, or

"(2) the loan level determined under paragraph (1) for such crop

is less than the established price of 38 cents per pound adjusted for each of the 1975 through 1977 crops to reflect any changes in the index of prices paid by farmers for production items, interest, taxes, and wage rates: *Provided*, That any increase that would otherwise be made in the established price to reflect a change in the index of prices paid by farmers shall be adjusted to reflect any change in (i) the national average yield per acre of cotton for the three calendar years preceding the year for which the determination is made, over (ii) the national average yield per acre of cotton for the three calendar years preceding the year previous to the one for which the determination is made. If the Secretary determines that the producers on a farm are prevented from planting, or if planted, prevented from harvesting any portion of the allotment to cotton, because of drought, flood, or other natural disaster, or condition beyond the control of the producer, the rate of payment for such portion shall be the larger of (A) the foregoing rate, or (B) one-third of the established price. The payment rate with respect to the producer who (i) is on a small farm (that is, a farm on which the base acreage allotment is ten acres or less, or on which the yield used in making payments times the farm base acreage allotment is five thousand pounds or less, and for which the base acreage allotment has not been reduced under section 350(a)), (ii) resides on such farm, and (iii) derives his principal income from cotton produced on such farm, shall be increased by 30 per centum; but, notwithstanding paragraph (3), such increase shall be made only with respect to his share of cotton actually harvested on such farm within the quantity specified in paragraph (3)."

(D) effective beginning with the 1974 crop, section 103(e)(3) of the Agricultural Act of 1949 is amended (A) by striking out all of the first sentence after the word "multiplying" and substituting "the farm base acreage allotment for the farm for the crop by the average yield established for the farmer." and (B) by striking out the second sentence,

(E) the fourth sentence of section 103(e)(4)(A) of the Agricultural Act of 1949 as found in section 602 is amended to read as follows: "The Secretary shall permit producers to plant and graze on set-aside acreage sweet sorghum, and the Secretary may permit, subject to such terms and conditions as he may prescribe, all or any of the set-aside acreage to be devoted to hay and grazing or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, oats, rye, or other commodity, if he determines that such production is needed to provide an adequate supply, is not likely to increase the cost of the price-support program, and will not adversely affect farm income."

(F) inserting after the second sentence of section 103(e)(5) of the Agricultural Act of 1949 as it appears in such section 602 the following: "The Secretary may in the case of programs for the 1974 through 1975 crops, pay an appropriate share of the cost of practices designed to carry out the purposes of the foregoing sentences."

Commodity Credit Corporation Sales Price Restrictions for Cotton

(21) Section 603 is amended by striking out "1974" and inserting "1978", and by deleting "110 per centum" and inserting in lieu thereof "115 per centum".

Miscellaneous Cotton Provisions

(22) Sections 604, 605, 606, and 607 are each amended by striking out "1971, 1972, and 1973" and inserting "1971 through 1977."

Cotton Market Development

(23) Section 610 is amended by inserting after the words "shall be" in the second sentence the following words "10 million dollars." and by striking the balance of said sentence, and further by striking out "1972 and 1973" and inserting "1972 through 1977" in the third sentence.

Cotton Insect Eradication

(24) Title VI is amended by adding at the end thereof the following:

"SEC. 611. Section 104 of the Agricultural Act of 1949, as amended, is amended by adding a new subsection (d) as follows:

"'(d) In order to reduce cotton production costs, to prevent the movement of certain cotton plant insects to areas not now infected, and to enhance the quality of the environment, the Secretary is authorized and directed to carry out programs to destroy and eliminate cotton boll weevils in infested areas of the United States as provided herein and to carry out similar programs with respect to pink bollworms or any other major cotton insect if the Secretary determines that methods and systems have been developed to the point that success in eradication of such insects is assured. The Secretary shall carry out the eradication programs authorized by this subsection through the Commodity Credit Corporation. In carrying out insect eradication projects, the Secretary shall utilize the technical and related services of appropriate Federal, State, private agencies, and cotton organizations. Producers and landowners in an eradication zone, as established by the Secretary, and who are receiving benefits from any program administered by the United States Department of Agriculture, shall, as a condition of receiving or continuing any such benefits, participate in and cooperate with the eradication project, as specified in regulations of the Secretary.

"'The Secretary may issue such regulations as he deems necessary to enforce the provisions of this section with respect to achieving the compliance of producers and landowners who are not receiving benefits from any program administered by the United States Department of Agriculture. Any person who knowingly violates any such regulation promulgated by the Secretary under this subsection may be assessed a civil penalty of not to exceed $5,000 for each offense. No civil penalty shall be assessed unless the person shall have been given notice and opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged. In determining the amount of the penalty the Secretary shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. Where special measures deemed essential to achievement of the eradication objective are taken by the project and result in a loss of production and income to the producer, the Secretary shall provide reasonable and equitable indemnification from funds available for the project, and also provide for appropriate protection of the allotment, acreage history, and average yield for the farm. The cost of the program in each eradication zone shall be determined, and cotton producers in the zone shall be required to pay up to one-half thereof, with the exact share in each zone area to be specified by the Secretary upon his finding that such share is reasonable and equitable based on population levels of the target insect and the degree of control measures normally required. Each producer's pro rata share shall be deducted from his cotton payment under this Act or otherwise collected, as provided in regulations of the Secretary. Insofar as practicable, cotton producers and other persons engaged in cotton production in the eradication zone shall be employed to participate in the work of the project in such zone. Funding of the program shall be terminated at such time as the Secretary determines and reports to the Congress that complete eradication of the insects for which programs are undertaken pursuant to this subsection has been accomplished. Funds in custody of agencies carrying out the program shall, upon termination of such program, be accounted for to the Secretary for appropriate disposition.

"'The Secretary is authorized to cooperate with the Government of Mexico in carrying out operations or measures in Mexico which he deems necessary and feasible to prevent the movement into the United States from Mexico of any insects eradicated under the provisions of this subsection. The measure and character of cooperation carried out under this subsection on the part of the United States and on the part of the Government of Mexico, including the expenditure or use of funds made available by the Secretary under this subsection, shall be such as may be prescribed by the Secretary. Arrangements for the cooperation authorized by this subsection shall be made through and in consultation with the Secretary of State. There are hereby authorized to be appropriated to the Commodity Credit Corporation such sums as the Congress may from time to time determine to be necessary to carry out the purposes of this subsection.'."

(25) Section 374(a) of the Agriculture Adjustment Act of 1938, as amended, is hereby amended by adding the following new sentence: "Where cotton is planted in skiprow patterns, the same rules that were in effect for the 1971 through 1973 crops for classifying the acreage planted to cotton and the area skipped shall also apply to the 1974 through 1977 crops."

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(26) Title VII is amended—

(A) by striking out "1973" and inserting "1977" in section 701; and

(B) by adding a new section 703 as follows:

"SEC. 703. Title IV of such Act is amended by adding at the end thereof the following:

"'SEC. 411. No agricultural commodities

shall be sold under title I or title III or donated under title II of this Act to North Vietnam, unless by an Act of Congress enacted subsequent to July 1, 1973, assistance to North Vietnam is specifically authorized.' "

MISCELLANEOUS PROVISIONS

(27) Title VIII is amended as follows:

Beekeeper Indemnities

(A) Section 804 is amended by striking out "December 31, 1973" and inserting "December 31, 1977".

Export Sales Reporting

(B) By adding the following new sections:

"SEC. 807. All exporters of wheat and wheat flour, feed grains, oil seeds, cotton and products thereof, and other commodities the Secretary may designate produced in the United States shall report to the Secretary of Agriculture, on a weekly basis, the following information regarding any contract for export sales entered into or subsequently modified in any manner during the reporting period: (a) type, class, and quantity of the commodity sought to be exported, (b) the marketing year of shipment, (c) destination, if known. Individual reports shall remain confidential but shall be compiled by the Secretary and published in compilation form each week following the week of reporting. All exporters of agricultural commodities produced in the United States shall upon request of the Secretary of Agriculture immediately report to the Secretary any information with respect to export sales of agricultural commodities and at such times as he may request. Any person (or corporation) who knowingly fails to report export sales pursuant to the requirements of this section shall be fined not more than $25,000 or imprisoned not more than one year, or both. The Secretary may suspend the requirement for publishing data with respect to any commodity or type or class thereof during any period in which he determines that there is a domestic supply of such commodity substantially in excess of the quantity needed to meet domestic requirements, and that total supplies of such commodity in the exporting countries are estimated to be in surplus, and that anticipated exports will not result in excessive drain on domestic supplies, and that to require the reports to be made will unduly hamper export sales. Such suspension shall not remain in effect for more than sixty days unless extended by the Secretary. Extensions of such suspension, if any, shall also be limited to sixty days each and shall only be promulgated if the Secretary determines that the circumstances at the time of the commencement of any extension meet the conditions described herein.

"SEC. 808. The Secretary shall, within sixty (60) days from the enactment of this Act, submit to the Congress a detailed report indicating what steps are being taken to implement the recommendations of the Comptroller General of the United States in his Report to the Congress dated July 9, 1973, entitled Russian Wheat Sales and Weaknesses in Agriculture's Management of Wheat Export Subsidy Program (B 176943).

"Wheat and Feed Grains Research

"SEC. 809. In order to reduce fertilizer and herbicide usage in excess of production needs, to develop wheat and feed grain varieties more susceptible to complete fertilizer utilization, to improve the resistance of wheat and feed grain plants to disease and to enhance their conservation and environmental qualities, the Secretary of Agriculture is authorized and directed to carry out regional and national research programs.

"In carrying out such research, the Secretary shall utilize the technical and related services of the appropriate Federal, State, and private agencies.

"There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this section, but not more than $1,000,000 in any fiscal year.

"Emergency Reserve

"SEC. 810. (a) Notwithstanding any other provision of law, the Secretary of Agriculture shall under the provisions of this Act establish, maintain, and dispose of a separate reserve of inventories of wheat, feed grains, and soybeans for the purpose of alleviating distress caused by a natural disaster.

"Such reserve inventories shall include such quantities of grain that the Secretary deems needed to provide for the alleviation of distress as the result of a natural disaster.

"(b) The Secretary shall acquire such commodities through the price support program.

"(c) Except when a state of emergency has been proclaimed by the President or by concurrent resolution of Congress declaring that such reserve should be disposed of, the Secretary shall not offer any commodities in the reserve for sale or disposition.

"(d) The Secretary is also authorized to dispose of such commodities only for (1) use in relieving distress (a) in any State, the District of Columbia, Puerto Rico, Guam, or the Virgin Islands and (b) in connection with any major disaster determined by the President to warrant assistance by the Federal Government under Public Law 875, Eighty-first Congress, as amended (42 U.S.C. 1855 et seq.), or (2) for use in connection with a state of civil defense emergency as proclaimed by the President or by concurred resolution of the Congress in accordance with the provisions of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251–2297).

"(e) The Secretary may sell at an equivalent price, allowing for the customary location and grade price differentials, substantially equivalent quantities in different locations or warehouses to the extent needed to properly handle, rotate, distribute, and locate such reserve.

"(f) The Secretary may use the Commodity Credit Corporation to the extent feasible to fulfill the purposes of this section; and to the maximum extent practicable consistent with the fulfillment of the purposes of this section and the effective and efficient administration of this section shall utilize the usual and customary channels, facilities, and arrangements of trade and commerce.

"(g) The Secretary may issue such rules and regulations as may be necessary to carry out the provisions of this section.

"(h) There is hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

"Imported Commodities

"SEC. 811. Notwithstanding any other provisions of this Act, the Secretary shall encourage the production of any crop of which the United States is a net importer and for which a price support program is not in effect by permitting the planting of such crop on set-aside acreage and with no reduction in the rate of payment for the commodity.

"Emergency Supply of Agriculture Products

"SEC. 812. (a) Notwithstanding any other provision of law, the Secretary of Agriculture shall, under the provisions of this Act, assist farmers, processors, and distributors in obtaining such prices for agricultural products that an orderly, adequate and steady supply of such products will exist for the consumers of this nation.

"(b) The President shall make appropriate adjustments in the maximum price which may be charged under the provisions of Executive Order 11723 (dated June 13, 1973) or any subsequent Executive Order for any agricultural products (at any point in the distribution chain) as to which the Secretary of Agriculture certifies to the President that the supply of the product will be reduced to unacceptably low levels as a result of the freeze or subsequent modification thereof and that alternative means for increasing the supply are not available.

"(c) Under this section, the term 'agricultural products' shall include meat, poultry, vegetables, fruits and all other agriculture commodities."

(28) By adding the following new title X:

"TITLE X—RURAL ENVIRONMENTAL CONSERVATION

"SEC. 1001. Notwithstanding any other provision of law, the Secretary shall carry out the purposes specified in clauses (1), (2), (3), (4), and (6) of section 7(a) of the Soil Conservation and Domestic Allotment Act, as amended, section 16(b) of such Act, and in the Water Bank Act (16 U.S.C. 1301 et seq.) by entering into contracts of three, five, ten, or twenty-five years with, and at the option of, eligible owners and operators of land as determined by the Secretary and having such control as the Secretary determines to be needed on the farms, ranches, wetlands, forests, or other lands covered thereby. In addition, the Secretary is hereby authorized to purchase perpetual easements to promote said purposes of this Title, including the sound use and management of flood plains, shore lands, and aquatic areas of the Nation. Such contracts shall be designed to assist farm, ranch, wetland, and nonindustrial private forest owners and operators, or other owners or operators, to make, in orderly progression over a period of years, such changes, if any, as are needed to effectuate any of the purposes specified in clauses (1), (2), (3), (4), and (6) of section 7(a) of the Soil Conservation and Domestic Allotment Act, as amended; section 16(b) of such Act; the Water Bank Act (16 U.S.C. 1301 et seq.); in enlarging fish and wildlife and recreation sources; improving the level of management of nonindustrial private forest lands; and in providing long-term wildlife and upland game cover. In carrying out the provisions of this title, due regard shall be given to the maintenance of a continuing and stable supply of agricultural commodities and forest products adequate to meet consumer demand at prices fair to both producers and consumers.

"SEC. 1002. Eligible landowners and operators for contracts under this title shall furnish to the Secretary a plan of farming operations or land use which incorporates such practices and principles as may be determined by him to be practicable and which outlines a schedule of proposed changes, if any, in cropping systems or land use and of the conservation measures which are to be carried out on the farm, ranch, wetland, forests, or other land during the contract period to protect the farm, ranch, wetland, forests or other land and surrounding areas, its wildlife, and nearby populace and communities from erosion, deterioration, pollution by natural and manmade causes or to insure an adequate supply of timber and related forest products. Said plans may also, in important migratory waterfowl nesting and breeding areas which are identified in a conservation plan developed in cooperation with a soil and water conservation district in which the lands are located, and under such rules and regulations as the Secretary may provide, include a schedule of proposed changes, if any, to conserve surface waters and preserve and improve habitat for migratory waterfowl and other wildlife resources and improve subsurface moisture, including, subject to the provisions of section 1001 of this title, the reduction of areas of new land coming into production, the enhancement of the natural beauty of the landscape, and the promotion of comprehensive and total water management study.

"SEC. 1003. (a) Approved conservation plans of eligible landowners and operators developed in cooperation with the soil and water conservation district or the State forester or other appropriate State official in

which their lands are situated shall form a basis for contracts under this title. Under the contract the landowner or operator shall agree—

"(1) to effectuate the plan for his farm, ranch, forest, wetland, or other land substantially in accordance with the schedule outlined therein;

"(2) to forfeit all rights to further payments or grants under the contract and refund to the United States all payments or grants received thereunder upon his violation of the contract at any stage during the time he has control of the land if the Secretary, after considering the recommendations of the Soil and Water Conservation District Board, or the State forester or other appropriate official in a contract entered into under the provisions of section 1009 of this title, determines that such violation is of such a nature as to warrant termination of the contract, or to make refunds or accept such payment adjustments as the Secretary may deem appropriate if he determines that the violation by the owner or operator does not warrant termination of the contract;

"(3) upon transfer of his right and interest in the farm, ranch, forest, wetland, or other land during the contract period to forfeit all rights to further payments or grants under the contract and refund to the United States all payments or grants received thereunder unless the transferee of any such land agrees with the Secretary to assume all obligations of the contract;

"(4) not to adopt any practice specified by the Secretary in the contract as a practice which would tend to defeat the purposes of the contract;

"(5) to comply with all applicable Federal, State, or local laws, and regulations, including those governing environmental protection and noxious weed abatement; and

"(6) to such additional provisions as the Secretary determines are desirable and includes in the contract to effectuate the purposes of the program or to facilitate the practical administration of the program: *Provided*, That all contracts entered into to effectuate the purposes of the Water Bank Act for wetlands shall contain the further agreement of the owner or operator that he shall not drain, burn, fill, or otherwise destroy the wetland character of such areas, nor use such areas for agricultural purposes: *And provided further*, That contracts entered into for the protection of wetlands to effectuate the purposes of the Water Bank Act may include wetlands covered by Federal or State government easement which permits agricultural use, together with such adjacent areas as determined desirable by the Secretary.

"(b) In return for such agreement by the landowner or operator the Secretary shall agree to make payments in appropriate circumstances for the use of land maintained for conservation purposes as set forth in this title, and share the cost of carrying out those conservation practices and measures set forth in the contract for which he determines that cost-sharing is appropriate and in the public interest. The portion of such cost (including labor) to be shared shall be that part which the Secretary determines is necessary and appropriate to effectuate the physical installation of the conservation practices and measures under the contract, but, in the case of a contract not entered into under an advertising and bid procedure under the provisions of section 1009(d) of this title, not less than 50 per centum or more than 75 per centum of the actual costs incurred by the owner or operator.

"(c) The Secretary may terminate any contract with a landowner or operator by mutual agreement with the owner or operator if the Secretary determines that such termination would be in the public interest, and may agree to such modification of contracts previously entered into as he may determine to be desirable to carry out the purposes of the program or facilitate the practical administration thereof or to accomplish equitable treatment with respect to other similar conservation, land use, or commodity programs administered by the Secretary.

"SEC. 1004. The Secretary is authorized to make available to eligible owners and operators conservation materials including seeds, seed inoculants, soil conditioning materials, trees, plants, and, if he determines it is appropriate to the purposes of this title, fertilizer and liming materials.

"SEC 1005. (a) Notwithstanding the provisions of any other title, the Secretary may establish multiyear set-aside contracts for a period not to extend beyond the 1977 crop. Producers agreeing to a multiyear set-aside agreement shall be required to devote this acreage to vegetative cover capable of maintaining itself throughout such period to provide soil protection, water quality enhancement, wildlife production, and the natural beauty. Grazing of livestock under this section shall be prohibited. Producers entering into agreements under this section shall also agree to comply with all applicable State and local law and regulation governing noxious weed control.

"(b) The Secretary shall provide cost-sharing incentives to farm operators for such cover establishment, whenever a multiyear contract is entered into on all or a portion of the set-aside acreage.

"SEC 1006. The Secretary shall issue such regulations as he determines necessary to carry out the provisions of this title. The total acreage placed under agreements which result in their retirement from production in any county or local community shall in addition to the limitations elsewhere in this title be limited to a percentage of the total eligible acreage in such county or local community which the Secretary determines would not adversely affect the economy of the county or local community. In determining such percentage the Secretary shall give appropriate consideration to the productivity of the acreage being retired, if any, as compared to the average productivity of eligible acreage in such county or local community which the Secretary determines would not adversely affect the economy of the county or local community.

"SEC. 1007. (a) The Secretary of Agriculture shall appoint an advisory board in each State to advise the State committee of that State (established under section 8(b) of the Soil Conservation and Domestic Allotment Act) regarding the types of conservation measures that should be approved to effectuate the purposes of this title. The Secretary shall appoint at least six individuals to the advisory boards of each State who are especially qualified by reason of education, training, and experience in the fields of agriculture, soil, water, wildlife, fish, and forest management. Said appointed members shall include, but not be limited to, the State soil conservationist, the State forester, the State administrator of the water quality programs, and the State wildlife administrator or their designees: *Provided*, That such board shall limit its advice to the State committees to the types of conservation measures that should be approved affecting the water bank program; the authorization to purchase perpetual easements to promote the purposes of this title, as described in section 1001 of this title; the providing of long-term upland game cover; and the establishment and management of approved practices on multiyear set-aside contracts as provided in section 1005 of this title.

"(b) The Secretary of Agriculture, through the establishment of a national advisory board to be named in consultation with the Secretary of the Interior, shall seek the advice and assistance of the appropriate officials of the several States in developing the programs under this title, especially in developing guidelines for (1) providing technical assistance for wildlife habitat improvement practices, (2) evaluating effects on surrounding areas, (3) considering aesthetic values, (4) checking compliance by cooperators, and (5) carrying out programs of wildlife management authorized under this title: *Provided*, That such board shall limit its advice to subjects which cover the types of conservation measures that should be approved regarding the water bank program; the authorization to purchase perpetual easements to promote the purposes of this Act, as described in section 1001 of this title; the providing of long-term upland game cover; and the establishment and management of approved practices on multiyear set-aside contracts as provided in section 1005 of this title.

"SEC. 1008. In carrying out the programs authorized under sections 1001 through 1006 of this title, the Secretary shall, in addition to appropriate coordination with other interested Federal, State, and local agencies, utilize the services of local, county, and State committees established under section 8 of the Soil Conservation and Domestic Allotment Act, as amended. The Secretary is also authorized to utilize the facilities and services of the Commodity Credit Corporation in discharging his functions and responsibilities under this program. The Secretary shall also utilize the technical services of the Soil Conservation Service, the Forest Service, State forestry organizations, soil and water conservation districts, and other State, and Federal agencies, as appropriate, in development and installation of approved conservation plans under this title.

"SEC. 1009. (a) In furtherance of the purposes of this title, the Secretary of Agriculture is authorized and directed to develop and carry out a pilot forestry incentives program to encourage the development, management, and protection of nonindustrial private forest lands. The purposes of such a program shall be to encourage landowners to apply practices which will provide for the afforestation of suitable open lands and reforestation of cutover and other nonstocked and understocked forest lands and intensive multiple-purpose management and protection of forest resources so as to provide for production of timber and related benefits.

"(b) For the purposes of this section, the term 'nonindustrial private forest lands' means lands capable of producing crops of industrial wood and owned by any private individual, group, association, corporation, or other legal entity. Such term does not include private entities which regularly engage in the business of manufacturing forest products or providing public utilities services of any type, or the subsidiaries of such entities.

"(c) The Secretary shall consult with the State forester or other appropriate official of the respective States in the conduct of the forestry incentives program under his section, and Federal assistance shall be extended in accordance with section 1003(b) of this title. The Secretary shall for the purposes of this section distribute funds available for cost sharing among and within the States only after assessing the public benefit incident thereto, and after giving appropriate consideration to the number and acreage of commercial forest lands, number of eligible ownerships in the State, and counties to be served by such cost sharing; the potential productivity of such lands; and the need for reforestation, timber stand improvement, or other forestry investments on such land. No forest incentives contract shall be approved under this section on a tract greater than five hundred acres, unless the Secretary finds that significant public benefit will be incident to such approval.

"(d) The Secretary may, if he determines that such action will contribute to the effec-

tive and equitable administration of the program established by this section, use an advertising and bid procedure in determining the lands in any area to be covered by agreements.

"(e) In implementing the program under this section, the Secretary will cause it to be coordinated with other related programs in such a manner as to encourage the utilization of private agencies, firms, and individuals furnishing services and materials needed in the application of practices included in the forestry incentives improvement program. The Secretary shall periodically report to the appropriate congressional committees of the progress and conduct of the program established under this section.

"SEC. 1010. There are hereby authorized to be appropriated annually such sums as may be necessary to carry out the provisions of this title. The programs, contracts, and authority authorized under this title shall be in addition to, and not in substitution of, other programs in such areas authorized by this or any other title or Act, and shall not expire with the termination of any other title or Act: *Provided*, That not more than $25,000,000 annually shall be authorized to be appropriated for the programs authorized under section 1009 of this Act."

SEC. 2. Section 301 of the Act of August 14, 1946 (Public Law 79–733), as amended (7 U.S.C. 1628), is hereby repealed.

FOOD STAMPS

SEC. 3. The Food Stamp Act of 1964, as amended, is amended—

(a) That (a) the second sentence of section 3(e) of the Food Stamp Act of 1964 (7 U.S.C. 2012(e)) is amended—

(1) by striking out "or"; and

(2) by inserting before the period at the end thereof of the following: ", or (3) any narcotics addicts or alcoholic who lives under the supervision of a private non-profit organization or institution for the purpose of regular participation in a drug or alcoholic treatment and rehabilitation program."

(b) Section 3 of the Food Stamp Act of 1964 (7 U.S.C. 2012) is amended by adding at the end thereof the following new subsection:

"(n) The term 'drug addiction or alcoholic treatment and rehabilitation program' means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private nonprofit organization or institution which is certified by the State agency or agencies designated by the Governor as responsible for the administration of the State's programs for alcoholics and drug addicts pursuant to Public Law 91–616 'Comprehensive Alcohol Abuse and Alcohol Prevention, Treatment, and Rehabilitation Act' and Public Law 92–255 'Drug Abuse Office and Treatment Act of 1972' as providing treatment that can lead to the rehabilitation of drug addicts or alcoholics."

(c) Section 5 of the Food Stamp Act of 1964 (7 U.S.C. 2014) is amended by adding at the end thereof the following new subsection:

"(d) The Secretary shall establish uniform national standards of eligibility for households described in section 3(e)(3) of this Act: *Provided*, That the standards established by the Secretary shall take into account payments in kind received from an employer by members of a household, if such payments are in lieu of or supplemental to household income."

(d) Section 5(c) of the Food Stamp Act of 1964 (7 U.S.C. 2014(c)) is amended by adding at the end thereof the following "For the purposes of this section, the term 'able-bodied adult person' shall not include any narcotics addict or alcoholic who regularly participates, as a resident or nonresident, in any drug addiction or alcoholic treatment and rehabilitation program."

(e) Section 10 of the Food Stamp Act of 1964 (7 U.S.C. 2019) is amended by inserting at the end thereof the following new subsection:

"(i) Subject to such terms and conditions as may be prescribed by the Secretary in the regulations pursuant to this Act, members of an eligible household who are narcotics addicts or alcoholics and regularly participate in a drug addiction or alcoholic treatment and rehabilitation program may use coupons issued to them to purchase food prepared for or served to them during the course of such program by a private nonprofit organization or institution which meets requirements (1), (2), and (3) of subsection (h) above. Meals served pursuant to this subsection shall be deemed 'food' for the purposes of this Act."

(f) By amending subsection (a) of section 7 of the Food Stamp Act of 1964 (7 U.S.C. 2016(a)) to read as follows:

"The face value of the coupon allotment which State agencies shall be authorized to issue to any households certified as eligible to participate in the food stamp program shall be in such amount as the Secretary determines to be the cost of a nutritionally adequate diet, adjusted semi-annually by the nearest dollar increment that is a multiple of two to reflect changes in the prices of food published by the Bureau of Labor Statistics in the Department of Labor, to be implemented commencing with the allotments of January 1, 1974, incorporating the changes in the prices of food through August 31, 1973, but in no event shall such adjustment be made for households of a given size unless the increase in the face value of the coupon allotment for such households, as calculated above, is a minimum of $2.00.

(g) By adding at the end of subsection (h) of section 10, the following: "Subject to such terms and conditions as may be prescribed by the Secretary, in the regulations issued pursuant to this Act members of an eligible household who are sixty years of age or over or elderly persons and their spouses may also use coupons issued to them to purchase meals prepared by senior citizens' centers, apartment buildings occupied primarily by elderly persons, any public or nonprofit private school which prepares means especially for elderly persons, any public or nonprofit private eating establishment which prepares meals especially for elderly persons during special hours, and any other public or nonprofit private establishment approved for such purpose by the Secretary."

(h) By striking out "June 30, 1972, and June 30, 1973" in the first sentence of subsection (a) of section 16, and substituting "June 30, 1972, through June 30, 1977."

(i) Section 3(b) of the Food Stamp Act of 1964 (7 U.S.C. 2012(b)) is amended to read as follows: "The term 'food' means any food or food product for home consumption except alcoholic beverages and tobacco and shall also include seeds and plants for use in gardens to produce food for the personal consumption of the eligible household."

(j) Section 3(f) of the Food Stamp Act of 1964 (7 U.S.C. 2012(f)) is amended by striking the second sentence and inserting in lieu thereof the following new sentence: "It shall also mean a political subdivision or a private nonprofit organization or institution that meets the requirements of section 10(h) or 10(i) of this Act."

(k) Notwithstanding any other provision of law, a household shall not participate in the food stamp program while its principal wage-earner is, on account of a labor dispute to which he is a party or to which a labor organization of which he is a member is a party, on strike: *Provided*, That such ineligibility shall not apply to any household that was eligible for and participating in the food stamp program immediately prior to the start of such strike, dispute, or other similar action in which any member of such household engages: *Provided further*, That such ineligibility shall not apply to any household if any of its members is subject to an employer's lockout.

(l) Section 3 of such Act is further amended by adding at the end thereof the following new subsections:

"(o) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or condition of work.

"(p) The term 'strike' includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement)."

(m) By inserting at the end of section 3(e) of the Food Stamp Act of 1964 the following new sentence: "Residents of federally subsidized housing for the elderly, built under either section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), or section 236 of the National Housing Act (12 U.S.C. 1715z–1) shall not be considered residents of an institution or boarding house for purposes of eligibility for food stamps under this Act."

CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT AMENDMENTS

SEC. 4. The Consolidated Farm and Rural Development Act is amended as follows:

(a) Section 306(a) of such Act is amended by adding at the end thereof the following:

"(13)(A) The Secretary, under such reasonable rules and conditions as he shall establish, shall make grants to eligible volunteer fire departments for up to 50 per centum of the cost of firefighting equipment needed by such departments but which such departments are unable to purchase through the resources otherwise available to them, and for the cost of the training necessary to enable such departments to use such equipment efficiently.

"(B) For the purposes of this subsection, the term 'eligible volunteer fire department' means any established volunteer fire department in a rural town, village, or unincorporated area where the population is less than two thousand but greater than two hundred, as reasonably determined by the Secretary."

(b) Section 310B(d) of subtitle A of such Act is amended by adding at the end thereof the following:

"(4) No grant or loan authorized to be made under this section, section 304, or section 312 shall require or be subject to the prior approval of any officer, employee, or agency of any State.

"(5) No certificates issued by the Secretary or any private entity evidencing beneficial ownership in a block of notes insured or guaranteed under this title shall be subject to laws administrated by the Securities and Exchange Commission: *Provided*, That the Secretary shall require any private entity offering such certificates to place the insured or guaranteed notes in the custody of an institution chartered by a Federal or State agency to act as trustee and shall require periodic reports as to the sale of such certificates: *Provided further*, That any sale by the Secretary of such certificates shall be treated as a sale of assets for the purpose of the Budget and Accounting Act of 1921."

RURAL DEVELOPMENT ACT AMENDMENTS

SEC. 5. The Rural Development Act of 1972 is amended as follows:

(a) Section 401 of such Act is amended by substituting the words "fire" and "fires" for the words "wildfire" and "wildfires", respectively, wherever such words appear.

(b) Section 404 of such Act is amended to read as follows:

"SEC. 404. APPROPRIATIONS.—There is authorized to be appropriated to carry out the

provisions of this title $7,000,000 for each of three consecutive fiscal years beginning with the fiscal year for which funds are first appropriated and obligated by the Secretary of Agriculture carrying out this title."

SEC. 6. This Act may be cited as the "Agriculture Act of 1973".

Mr. TALMADGE. Mr. President, I move that the Senate disagree to the amendment of the House on S. 1888 and ask for a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. TALMADGE, Mr. EASTLAND, Mr. MCGOVERN, Mr. ALLEN, Mr. CURTIS, Mr. AIKEN, and Mr. YOUNG conferees on the part of the Senate.

ROLLING STOCK UTILIZATION AND FINANCING ACT OF 1973

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 1149, which the clerk will report.

The assistant legislative clerk read as follows:

Calendar No. 285 (S. 1149), a bill to increase the supply of railroad rolling stock and to improve its utilization to meet the needs of commerce, users, shippers, national defense, and the consuming public.

Accordingly, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce with an amendment to strike out all after the enacting clause and insert:

TITLE I—FORMAL PROVISIONS

SHORT TITLE AND TABLE OF CONTENTS

SEC. 101. (a) This Act may be cited as the "Rolling Stock Utilization and Financing Act of 1973".

(b) Table of contents.

TITLE I—FORMAL PROVISIONS

Sec. 101. Short title and table of contents.
Sec. 102. Findings and purposes.
Sec. 103. Definitions.

TITLE II—RAILROAD EQUIPMENT FINANCING

Sec. 201. Establishment of Board and Fund.
Sec. 202 Authorization to guarantee equipment obligations.
Sec. 203. Issuance of notes or obligations.
Sec. 204. Audit of transactions.
Sec. 205. Default.

TITLE III—INCREASED ROLLING STOCK UTILIZATION

Sec. 301. National rolling stock information system.
Sec. 302. Utilization measurement and oversight.

TITLE IV—RAILROAD EQUIPMENT CORPORATION

Sec. 401. Prerequisites to establishment.
Sec. 402. Railroad Equipment Corporation.
Sec. 403. General powers of Corporation.
Sec. 404. Financing.
Sec. 405. Conversion to nongovernmental Corporation.
Sec. 406. National rolling stock information system.
Sec. 407. Use of equipment supplied by the Corporation.
Sec. 408. Commission review.
Sec. 409. Enforcement.
Sec. 410. Annual report.

TITLE V—GENERAL PROVISIONS

Sec. 501. Protective arrangements for employees.
Sec. 502. Separability.

FINDINGS AND PURPOSES

SEC. 102. (a) FINDINGS.—The Congress finds and declares that—

(1) There is at present a shortage of general service railroad freight cars available to producers of goods and manufacturers of products.

(2) This shortage results both from an inadequate number of such cars and from their underutilization.

(3) This shortage of available general service railroad freight cars has caused—

(A) losses to producers of goods and manufacturers of products which have resulted in higher prices to consumers of goods and products;

(B) losses to railroads of revenue, thereby threatening their financial condition.

(b) PURPOSES.—The Congress hereby declares that the purposes of this Act are—

(1) to improve the utilization and distribution of rolling stock to meet the needs of commerce, users, shippers, the national defense, and the consuming public;

(2) to assist railroads in acquiring additional rolling stock and equipment or facilities to provide expeditious service to meet the increasing demands of the Nation's economy; and

(3) to assist in achieving full employment by assuring adequate equipment necessary to transport the products of American industry.

DEFINITIONS

SEC. 103. As used in this Act—

(1) "Board" means the Obligation Guarantee Board established under title II of this Act.

(2) "Car-pooling company" means a company that furnishes rolling stock to three or more railroads on a shared ownership or cooperative or condominium-type basis.

(3) "Commission means the Interstate Commerce Commission.

(4) "Corporation" means the Railroad Equipment Corporation authorized under title IV of this Act.

(5) "Directors" means the Board of Directors of the Corporation.

(6) "Equipment or facilities" includes data processing and other computer technology; machines and systems for loading and unloading rolling stock; yards and terminals for originating, modifying, or terminating the movement of rolling stock; and other equipment or facilities, including ferries and related shoreside facilities designed primarily for the transportation of rolling stock by water, necessary to improve the utilization of rolling stock.

(7) "Equipment obligations" means a bond note, conditional sale agreement, equipment trust certificate, lease obligation, security agreement, or other obligation issued or granted to finance or refinance rolling stock or equipment or facilities.

(8) "Fund" means the Obligation Guarantee Fund.

(9) "Holder" means, unless otherwise provided, the holder of an equipment obligation. If a bank or trust company is acting as agent or trustee for the holder of the equipment obligation, such bank or trust company shall be regarded as the holder.

(10) "Includes" should be read as if the phrase "but is not limited to" were also set forth.

(11) "Lease" means a contractual arrangement under which the legal owner of rolling stock or equipment or facilities furnishes such rolling stock or equipment or facilities to a railroad or a car pooling company and such railroad or car pooling company receives the benefits, through reduced rentals, of any tax benefits available.

(12) "Lease obligation" means all of the lessee's payment obligations under a lease including rentals, termination payments, and tax indemnification payments.

(13) "Obligor" means the debtor under an equipment obligation. The term includes the original obligor and any successor or assignee of such obligor who is approved by the Board.

(14) "Railroad" means a common carrier by railroad, as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3)), and includes, where the Board makes an appropriate finding, a railroad controlled by another railroad within the meaning of paragraph (b) of such section. The term does not include the Corporation.

(15) "Rolling stock" includes any type of new or rebuilt standard gauge locomotive, caboose, or general service railroad freight car the use of which is not limited to any specialized purpose by particular equipment, design, or other features. General service railroad freight car includes a boxcar, gondola, open top or covered hopper car, and flatcar. The Board may designate other types of cars as rolling stock upon a written finding, with reasons therefor, that such designation is consistent with the purposes of this Act.

(16) "Secretary" means the Secretary of Transportation.

(17) "State" means any State or the District of Columbia.

TITLE II—RAILROAD EQUIPMENT FINANCING

ESTABLISHMENT OF BOARD AND FUND

SEC. 201. (a) BOARD.—There shall be established in the Department of Transportation an independent agency to be known as the Obligation Guarantee Board. The Board shall be composed of six members and a chairman. Two of the members shall be the Secretary of Transportation and the Secretary of the Treasury, or their duly authorized representatives, who shall serve ex officio with the same powers as other members of the Board. The President shall, within ninety days of the enactment of this Act, appoint the other members and the chairman of the Board, by and with the advice and consent of the Senate, on the following basis—

(1) three, to be selected from lists of qualified individuals recommended by shippers and organizations representative of significant shipping interests including small business users of railroad transportation services;

(2) one, to be selected from lists of qualified individuals recommended by consumer organizations, community organizations, and recognized consumer leaders;

(3) one, to be selected from lists of qualified individuals recommended by the national organization of the State commissions, referred to in sections 202(b) and 205(f) of the Interstate Commerce Act (49 U.S.C. 202 (b), 205(f)), who shall be a member of a State agency authorized by the law of any State to set rates for transportation by railroad.

As used in this subsection, a list of qualified individuals shall consist of not less than three individuals.

(b) FUND.—An Obligation Guarantee Fund is established. The fund shall be administered by the Board as a revolving fund to carry out the provisions of sections 202 through 205 of this Act. Moneys in the fund shall be deposited in the Treasury of the United States to the credit of such fund or invested in bonds or other obligations of the United States approved by the Secretary of the Treasury.

(c) COMPENSATION.—A member of the Board who is not otherwise an employee of the Federal Government may receive $150 per diem when engaged in the actual performance of duties vested in the Board plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(d) TERMS OF OFFICE.—The terms of office of the members first taking office (other than those of the two members who shall serve ex officio) shall expire as designated by the President at the time of nomination, three

at the end of the third year, and two at the end of the sixth year. The member appointed by the President, by and with the advice and consent of the Senate, to be chairman of the Board shall serve as chairman until his term of office as a member expires and a successor is duly appointed. Successors to members of the Board shall be appointed in the same manner as the original members and shall have a term of office expiring six years from the date of expiration of the term for which their predecessors were appointed. Any member appointed to fill a vacancy on the Board occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

AUTHORIZATION TO GUARANTEE EQUIPMENT OBLIGATIONS

SEC. 202. (a) GENERAL.—The Board is authorized, in accordance with the provisions of this section, to guarantee and to make commitments to guarantee the payment of interest on and the principal balance of an equipment obligation prior to, on, or after the date of execution or the date of disbursement of such obligation: *Provided*, That no equipment obligation in the form of a lease obligation shall be guaranteed unless and until the Board finds, after notice and an opportunity for comment by interested persons and publication in the Federal Register of this finding and the reasons therefor, that no other reasonable means of equipment financing or refinancing is reasonably available to the applicant and that approval of the guarantee application will serve the public interest. Each guarantee of an equipment obligation shall be made in accordance with the provisions of this Act and such rules as the Board may prescribe to reasonably protect the interests of the United States. Each application for the guarantee of an equipment obligation shall be made in writing to the Board in such form and with such content as the Board prescribes. An application shall be granted if the Board determines that the proposed, negotiated, or executed equipment obligation is eligible for a guarantee under this Act. Each guarantee and commitment to guarantee shall be extended in such form, under such terms and conditions, and pursuant to such regulations as the Board deems appropriate, consistent with the purposes of this Act. Each guarantee and commitment to guarantee shall inure to the benefit of the holder of the equipment obligation to which such guarantee or commitment applies. In the case of a lease obligation, the guarantee shall run to and be for the benefit of any holder thereof. In no event shall any such holder receive or be entitled to retain payment from said guarantee in a total amount which, together with any other recovery, including a security interest in the rolling stock or equipment or facilities, exceeds the actual loss of such holder.

(b) MAXIMUM PERMISSIBLE GUARANTEE.—Except as otherwise provided, the Board shall not guarantee payment of the principal of an equipment obligation in an amount in excess of 50 per centum of the value of the rolling stock or equipment or facilities which are being financed or refinanced thereby. The Board may guarantee an amount not in excess of 80 per centum of such value upon a finding made in writing by the Board and published with detailed reasons therefor in the Federal Register that the applicant would not otherwise be able in its present financial condition to acquire such equipment or facilities or rolling stock on reasonable terms and conditions and that such acquisition by the applicant is necessary to achieve the purposes of this Act. In the case of a lease obligation, the Board may guarantee payment of the entire principal together with the amount necessary to guarantee to the lessor, upon default of such obligation, the cost of tax recapture under sections 47 and 1245 of the Internal Revenue Code of 1954 (26 U.S.C. 47, 1245), upon a finding made in writing by the Board and published with detailed reasons therefor in the Federal Register that the applicant is a railroad which has filed a petition for reorganization under section 77 of the Bankruptcy Act (11 U.S.C. 205); that such petition has been approved; and that the judge in such proceeding certifies to the Board that the railroad is making all reasonable efforts to achieve reorganization and that such guarantee is reasonable and necessary. In all cases, the Board shall make a determination of the value of the rolling stock or equipment or facilities which are being financed or refinanced thereby, and such determination of value shall be conclusive and not subject to review in any court.

(c) MODIFICATIONS.—The Board is authorized to approve any modification of any provision of a guarantee or a commitment to guarantee such obligation, including the rate of interest, time of payment of interest or principal, security, or any other terms and conditions, upon a finding in writing by the Board that such modification is equitable and not prejudicial to the interests of the United States under this Act. Such approval shall not be granted without prior consent by the holder of such obligation.

(d) MAXIMUM OBLIGATIONAL AUTHORITY.—The aggregate unpaid principal amounts of equipment obligations and interest thereon which may be guaranteed by the Board under this title shall not exceed $2,000,000,000 at any one time; and at least 70 per centum of the aggregate shall guarantee equipment obligations financing or refinancing rolling stock.

(e) RATE OF INTEREST.—Interest (exclusive of premium charges for guarantee and service fees) shall be payable on each equipment obligation, other than a lease obligation guaranteed by the Board. The rate of interest shall not exceed the per centum per annum rate on the unpaid principal of such obligation determined by the Board to be reasonable upon consideration of the range of interest rates currently prevailing in the private market for similar obligations. In the case of lease obligations guaranteed by the Board, such lease obligation shall contain a rental rate which reflects an effective interest rate not to exceed a per centum per annum rate on the unpaid principal of such obligation determined by the Board to be reasonable upon consideration of the range of effective interest rate prevailing in the private market for similar obligations.

(f) NOTICE.—Upon receipt of an application for an equipment obligation guarantee, the Board shall cause a notice of such application to be published in the Federal Register and shall invite and afford interested persons an opportunity to submit comments on such application at a proceeding to commence within twenty-one days of the date of the publication of such application. General notice of such proceedings shall be published in the Federal Register. Such notice shall include—

(1) a statement of the time, place, and nature of the proceedings; and

(2) a description of the subjects and issues involved.

(g) REQUIREMENTS FOR GUARANTEES.—No equipment obligation shall be guaranteed under this Act unless the Board makes a finding in writing that—

(1) the equipment obligation (other than a lease obligation) is secured by rolling stock or equipment or facilities which are being financed or refinanced thereby;

(2) payment of the equipment obligation is required by its terms within fifteen years of the date of its execution;

(3) the leasing, financing, or refinancing of the rolling stock or of equipment or facilities directly related to improving the utilization of rolling stock is justified by the present and probable future demand for transportation services to be rendered by the applicant;

(4) the operations of the applicant are sufficiently efficient as of the date of application as to give reasonable assurance that any rolling stock in the control of such applicant or which may come within the control of such applicant will be economically and efficiently utilized;

(5) the purchase or lease of the rolling stock or equipment or facilities will serve to meet demonstrable needs for rail transportation services and to provide shippers with adequate rolling stock for their transportation needs;

(6) the probable value of such rolling stock or equipment or facilities is sufficient to provide the United States reasonable security and protection in case of default and repossession by the holder of the equipment obligation or in case of possession or purchase by the Board; and

(7) the incurrence of such obligation will result in a net increase in the total load-carrying capacity of such obligor's rolling stock.

(h) CONDITIONS OF GUARANTEES.—No guarantee or commitment to guarantee an equipment obligation shall be extended under this Act unless the obligor first agrees in writing that so long as any interest or principal on such obligation is due and payable—

(1) there will be no net decrease in the load-carrying capacity of such obligor's rolling stock;

(2) there will be no increase in discretionary dividend payments over the average amount paid during the five years preceding the enactment of this Act without prior approval of the Secretary in writing, based on findings, published, with reasons therefor, in the Federal Register, made after public hearings with opportunity for submission of comments by all interested parties, that such increase in dividends will not decrease the ability of the obligor to provide improved car service;

(3) the obligor will not use assets or revenues related to or derived from railroad operations in nonrailroad enterprises without prior approval of the Secretary in writing based on findings, published, with reasons therefor, in the Federal Register, made after public hearings with opportunity for submission of comments by all interested parties, that such use of assets or revenues will not decrease the ability of the obligor to provide improved car service;

(4) the obligor shall take all reasonable and practical steps possible, in accordance with such guidelines as may be established by the Secretary and the Commission, to improve the equitable distribution and efficient and expeditious use of all rolling stock and equipment, including cooperating with the Secretary in programs under title III of this Act.

(i) BREACH OF CONDITIONS.—The Secretary is authorized and directed to commence an action in the district courts of the United States to enjoin any activity found by the Secretary to be in violation of the conditions specified in subsection (h) of this section. In addition, any person who knowingly violates or contributes to the violation of any of the conditions specified in such subsection shall be subject to a civil penalty, to be levied by the Secretary, of not to exceed $10,000.

(j) LEASE OBLIGATION.—Before guaranteeing lease obligation under this section the Board shall find that—

(1) the terms of the lease or leases provide that in event of default by the lessee and demand for payment by the Board that the Board shall have the right in its discretion—

(A) to demand possession of the leased property from the lessee or to purchase the leased property for fair market value but in no event for an amount greater than the sum of lease rentals and other financial obligations for the remaining term of the lease; or

(B) to permit the lessor to repossess the leased property from the lessee for the purpose of leasing in good faith at not less than fair market value to other lessees provided that any amounts collected from such lessees in excess of the amount to which the lessor would have been entitled under the original lease, plus costs, shall be paid over to the United States and deposited in the fund and that in the event any amounts collected from such lessees are less than the amount to which the lessor would have been entitled under the original lease, plus costs, then such difference shall be paid to the lessor from the fund; and

(2) the terms of the lease shall provide that, in event of default, any amounts paid to the holder of the lease obligation in settlement, including amounts received from the Board pursuant to the guarantee, are income and proceeds from the equipment subject to said lease and subject to claims of any holder of an equipment obligation in an amount equal to the holder of the lease obligation's outstanding obligation to said holder under any equipment obligation.

(k) INVESTIGATION CHARGE.—The Board shall charge and collect from the obligor such amounts as it may deem reasonable for the investigation of applications for a guarantee, for the appraisal of properties offered as security for a guarantee, or for the issuance of commitments. Such charges shall not aggregate more than one-half of 1 per centum of the original principal amount of the obligation to be guaranteed.

(l) PREMIUM CHARGE.—The Board shall set a premium charge of not more than 1 per centum per annum for an equipment obligation guaranteed under this Act. The premium charge shall be computed on the basis of the principal amount of the equipment obligation which is outstanding. The premium charge shall be paid when the obligation is first guaranteed by the Board, and thereafter annually, on the anniversary date of such guarantee.

(m) ADMINISTRATIVE COSTS.—All moneys received by the Board under this title shall be deposited in the fund. An amount which shall not exceed five per centum of the total annual premium charges collected under subsection (l) of this section may be used by the Board to pay administrative costs and expenses incurred by it pursuant to this title.

ISSUANCE OF NOTES OR OBLIGATIONS

SEC. 203. (a) AUTHORITY.—The Board is authorized to issue notes or other obligations to the Secretary of the Treasury in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Board, with the approval of such Secretary, may prescribe. Such obligations may be issued whenever the moneys in the fund are not sufficient to pay any amount which the Board is required to pay under an agreement under section 202 of this Act. Such obligations shall bear interest at a rate to be determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States on comparable maturities during the month preceding the issuance of such obligations. The Secretary of the Treasury is authorized and directed to purchase any such obligations and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities under the Second Liberty Bond Act, as amended. The purposes for which securities may be issued under such Act are extended to include any purchase of notes or other obligations issued under this subsection. At any time, the Secretary of the Treasury may sell any such obligations; and all sales, purchases, and redemptions of such obligations by the Secretary of the Treasury shall be treated as public debt transactions of the United States. Funds borrowed under this subsection shall be deposited in the fund and redemptions of any such obligations shall be made by the Board from the fund.

(b) DISPOSITION OF PROPERTY.—Notwithstanding any other provision of law, the Board is authorized to perform any acts which it considers necessary, in its discretion, to complete, recondition, reconstruct, renovate, repair, maintain, manage, operate, charter, lease, rent, sell, or otherwise dispose of any property or other interests acquired by the Board under an agreement pursuant to section 202 of this Act.

(c) EVIDENCE.—No contract or commitment to guarantee an equipment obligation entered into by the Board pursuant to this Act shall be terminated, canceled, or otherwise revoked, except in accordance with lawful terms and conditions prescribed by the Board. Such a contract or commitment shall be conclusive evidence that the underlying obligation is in compliance with the provisions of this Act and that such obligation has been approved and is legal as to principal, interest, and other terms, Such a contract or commitment shall be valid and incontestable in the hands of a holder as of the date when the Board entered into such contract or commitment, except as to fraud, duress, mutual mistake of fact, or material misrepresentation by or involving such holder.

AUDIT OF TRANSACTIONS

SEC. 204. (a) GENERAL.—The financial transactions of the Board shall be audited by the Comptroller General of the United States, in accordance with such rules and regulations as he may prescribe. Representatives of the Comptroller General shall have access to all books, accounts, records, reports, files, and other papers, things, or property pertaining to such transactions by the Board and necessary to facilitate an audit. Such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such property of the Board shall remain in the possession and custody of the Board.

(b) ACCESS TO INFORMATION.—The representatives of the Comptroller General shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by any obligor for which the Board has guaranteed an equipment obligation to the extent they pertain to such obligor's financial transactions and are deemed by the Comptroller General to be necessary to facilitate any audit of the financial transactions of the Board. Such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such property of such obligor shall remain in the possession and custody of the obligor.

(c) REPORT.—The Comptroller General shall make a report of each such audit to the Congress. Such report shall contain all comments and information which the Comptroller General deems necessary to inform Congress of the financial operations and condition of the fund and any recommendations which he deems advisable. Such report shall indicate specifically and describe in detail any program, expenditure, or other financial transaction or undertaking observed in the course of such audit which the Comptroller General deems to have been carried on or made without lawful authority. A copy of such report shall be furnished to the President, the Secretary, the Commission, and the Board at the time it is submitted to the Congress.

DEFAULT

SEC. 205. (a) GENERAL.—If there is a default in any payment by the obligor of principal or interest due under an equipment obligation guaranteed under this title, which has continued for thirty days, the holder of such obligation or his agents have the right to demand payment by the Board of the unpaid interest on and the unpaid principal of such obligation. Such payment may be demanded after or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than ninety days from the date of such default. Within such period as may be specified in the guarantee or related agreements but not later than thirty days from the date of such demand, the Board shall promptly pay to the obligee or his agent the unpaid interest on and the unpaid principal of such obligation. However, the Board shall not be required to make any such payment if, prior to the expiration of such period, the Board finds that there was no default by the obligor in the payment of interest or principal or that such default has been remedied.

(b) RIGHTS OF BOARD.—If the Board makes a payment under subsection (a) of this section, the Board shall have all the rights in any security which it held with respect to its guarantee of such obligations as are conferred upon the Board under any security agreement with the obligor. Notwithstanding any other provision of law, the Board is authorized, in its discretion, to complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, rent, sell, or otherwise dispose of any property acquired by it pursuant to such security agreement with the obligor. The terms of any such sale or other disposition shall be as approved by the Board.

(c) PAYMENT.—Any amount required to be paid by the Board pursuant to subsection (a) of this section shall be paid in cash.

(d) ACTION AGAINST OBLIGOR.—If there is a default under any contract or commitment to guarantee an equipment obligation, the Board shall take such action against the obligor or any other parties liable thereunder as is, in its discretion, necessary to protect the interests of the United States. Such a suit may be brought in the name of the United States or in the name of the holder. Such holder shall make available to the United States all records and evidence necessary to prosecute any such suit. The Board shall have the right, in its discretion, to accept a conveyance of title to and possession of property from the obligor or other parties liable to the Board and may purchase the property for an amount not greater than the unpaid interest on and unpaid principal of such obligation. If the Board receives, through the sale of property, an amount greater than the amount paid to the obligee under subsection (a) or (b) of this section together with the expenses of collection, the Board shall pay such excess to the obligor.

TITLE III—INCREASED ROLLING STOCK UTILIZATION

NATIONAL ROLLING STOCK INFORMATION SYSTEM

SEC. 301. (a) PLAN.—(1) The Secretary shall, not more than six months after the date of enactment of this Act, designate a plan or alternative plans to establish a national rolling stock information system which shall be designed to facilitate equitable distribution and expeditious utilization of rolling stock operated within the continental United States and/or owned directly or indirectly by railroads and car-pooling companies. Such a system shall be capable of furnishing such information as the Secretary determines to be necessary for the expeditious utilization of rolling stock, including information related to the—

(A) length of time each piece of rolling stock is moving and loaded, moving and unloaded, idled and loaded, and idled and unloaded;

(B) owner, type, size, and capacity, year of manufacture, identifying number, and special features of each piece of rolling stock;

(C) origin and destination of cargo;

(D) railroad in control of rolling stock movement, expected time of interchange, and degree of utilization of each piece of rolling stock by the controlling railroad; and

(E) current status and location of each piece of rolling stock, time such status and location is expected to change, and anticipated future commitments of such rolling stock.

(2) The Secretary shall develop such plan or plans after consultation and discussion with the Secretary of Defense, the Director of the National Aeronautics and Space Administration, the executive officers of major private manufacturers and suppliers of information location and retrieval systems, shippers, railroads, the Commission, and any other Government agency, private organization, or private citizen that presents a useful submission regarding such a system. The Secretary is authorized to pay reasonable expenses, including honoraria, for individuals invited by him to present their submissions in person. The Secretary shall cause such plan or plans to be published in the Federal Register and shall invite interested persons to comment thereon at a public hearing pursuant to section 553 of title 5, United States Code, to be held not less than ninety days after the date of such publication. After such hearing, and not more than one year after the date of enactment of this Act, the Secretary shall publish the final plan for a national rolling stock information system. This final plan shall include technical specifications and other details for the equipment required under such plan. Such plan shall include means for coordinating or integrating such system with any existing information systems to the extent the Secretary finds such coordination will contribute in an expeditious, cost effective, and technically feasible manner to the implementation of an effective national system. The Secretary from time to time may cause such plan to be modified or amended, pursuant to section 553 of title 5, United States Code.

(b) IMPLEMENTATION.—Following the publication of the final plan required under subsection (a) of this section, the Secretary shall take all action necessary, including the issuance of rules, regulations, and guidelines, to cause such plan to be implemented within a reasonable time. The Secretary is authorized to contract with and provide technical assistance to individual railroads or groups of railroads working together, including the sharing of costs and the funding in part of demonstration projects, to assist in the establishment of the national rolling stock information system.

(c) ANTITRUST LAWS INAPPLICABLE.—The antitrust laws of the United States are inapplicable to the extent necessary to carry out the purposes of this section as to any person who contracts with the Secretary or acts in conformity with the final plan under subsection (a) of this section.

(d) CENTER.—The Secretary may establish and maintain or assist in establishing and maintaining a centrally locted national rolling stock information center. The Secretary of Defense may assist the Secretary to establish such center. Such center may operate as a depository and dissemination center for all such information as may be provided by the national rolling stock information system. The Secretary may make information gathered in such center available to any person subject to such rules as the Commission might prescribe to insure the confidentiality of certain kinds of competitive information supplied for use in connection with the system.

(e) REPORT.—The Secretary shall report semiannually directly to the Congress, without modification of such report by any other Federal agency, with respect to the progress made in implementing the national system provided for in subsection (a) of this section. Such reports shall include recommendations for such additional funding as may be necessary to make the national system fully effective.

(f) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated to the Secretary out of money in the Treasury not otherwise appropriated, the sum of $10,000,000 for purposes of this section.

UTILIZATION MEASUREMENT AND OVERSIGHT

SEC. 302. (a) ROLLING STOCK UTILIZATION INDEX.—Not less than ninety days after the enactment date of this Act, the Secretary shall develop and promulgate an index to measure the degree of utilization of rolling stock. The Secretary shall cause to be compiled data required by such index. At least once each quarter per annum, the Secretary shall publish such index, together with a report setting forth any changes in such utilization and his evaluation of the reasons therefor.

(b) COMMISSION REPORT.—The Commission shall publish a report on utilization of rolling stock thirty days after the publication of each report by the Secretary under subsection (a) of this section. The Commission in its report shall consider and comment upon the latest such report by the Secretary.

(c) ENFORCEMENT.—The Secretary shall, with the assistance of the Attorney General, make full use of existing law to bring about improvements in the utilization of rolling stock. The Secretary shall have such standing as is necessary to bring or intervene in proceedings before Federal regulatory agencies and courts. Attorneys appointed by the Secretary may appear for and represent him in any such case or hearing.

(d) UTILIZATION STUDY.—The Secretary shall prepare a study on the utilization of freight cars and means to improve such utilization including consideration of per diem and other car hire charges, demurrage, car service rules and orders of the Commission and of the railroads, the practice of assigning cars to specific traffic or shippers, payments for use of privately owned cars, and publicly and privately owned carpools. The Secretary shall submit legislative recommendations based upon such study within two years after the date of enactment of this Act.

TITLE IV—RAILROAD EQUIPMENT CORPORATION

PREREQUISITES TO ESTABLISHMENT

SEC. 401. (a) GENERAL.—The Corporation authorized by section 402 of this Act shall be established only if—

(1) two years or more after the date of enactment of this Act—

(A) the Commission finds, in accordance with section 553 of title 5 of the United States Code, that there is still, as a result of inadequate utilization or inadequacy of supply or both, a continuing shortage of rolling stock in the Nation. In determining whether there is such a shortage, the Commission may consider, without incorporating in such a finding, the following factors—

(i) whether any category of rolling stock is not available to meet a demand equivalent to the average peak demand for such category of rolling stock in the four years prior to the time of such finding;

(ii) any governmental program, regulation, or action affecting demand for or supply of freight cars;

(iii) the extent, duration, and impact of seasonal peaks in demand for rolling stock;

(iv) the local, regional or national scope of any reported problems of demand or supply related to rolling stock;

(v) the impact of severe weather conditions which disrupt marketing, distribution, or railroad operating factors;

(vi) the ability of shipper to load more cars if available;

(vii) the extent to which any failures to furnish cars promptly result from factors not subject to railroad control.

The presence of any or all such factors shall not preclude a finding by the Commission that there is a continuing shortage of rolling stock; or

(B) the Secretary finds that there has not been a significant increase in the utilization of rolling stock since the date of enactment of this Act;

(2) six months after an affirmative finding under either subparagraph (A) or (B) of paragraph (1) of this subsection, the Commission or the Secretary finds that efforts to form and operate a not-for-profit non-governmental corporation, or corporations, to acquire, maintain, and provide a free running national pool of rolling stock have not succeeded or have been inadequate in size, scope, and operation to establish the feasibility of a national pool, or have failed to employ innovative concepts for equitable distribution and expeditious use of rolling stock; and

(3) the Congress by affirmative concurrent resolution, authorizes the establishment of the Corporation.

(b) REPORTS.—Two years after the date of enactment of this Act and on the anniversary date thereof each consecutive year thereafter for five years, the Commission and the Secretary shall each transmit to the President and the Congress a report on rolling stock which shall include each finding made since the previous such report, if any, pursuant to subsection (a) of this section. If the Corporation authorized by section 402 of this Act is not established in accordance with the provisions of subsection (a) of this section, such Corporation shall nonetheless be established seven years and six months after the date of enactment of this Act if—

(1) in the final reports made by the Commission and the Secretary under this subsection—

(A) the Secretary or the Commission finds that the creation of a corporation to acquire maintain, and provide general service railroad freight cars and other rolling stock; to manage a pool of such rolling stock; and to develop and employ innovative concepts for the equitable distribution and expeditious use of such stock would contribute significantly to improvement of the utilization and distribution of rolling stock; and either

(B) the Commission finds that there is still, as a result of inadequate utilization or inadequacy of supply, or both, a continuing shortage of rolling stock in the Nation; or

(C) the Secretary finds that there has not been a substantial and significant increase in the utilization of railroad rolling stock; and

(2) the Congress, by affirmative concurrent resolution, authorizes the establishment of the Corporation.

RAILROAD EQUIPMENT CORPORATION

SEC. 402. (a) AUTHORIZATION.—There is hereby authorized to be established, in accordance with the provisions of section 401 of this Act and of this section, a corporation to be known as the Railroad Equipment Corporation. The Board of Directors first appointed shall be deemed the incorporators, and the incorporation shall be held to have been effected from the date of the first meeting of such Board.

(b) PURPOSES.—The purposes of the Corporation are to acquire, maintain, and provide general service railroad freight cars and other rolling stock; to manage a pool of such rolling stock; and to employ innovative concepts for equitable distribution and expeditious use of such stock to meet the needs of the national economy and the national defense.

(c) STATUS.—(1) The Corporation shall be a government corporation of the District of Columbia subject, to the extent not inconsistent with this Act, to the District of Columbia Business Corporation Act (D.C. Code

29-901 et seq.) and administered by a Board of Directors.

(2) The Corporation shall not be subject to the provisions of the Interstate Commerce Act (49 U.S.C. 1 et seq.) or of any other law with respect to railroads, except that the Corporation shall be deemed to be a railroad as to—

(A) sections 1(10) through 1(17) of the Interstate Commerce Act (49 U.S.C. 1(10)–1(17));

(B) the Railway Labor Act, including the representation of employees of the Corporation for purposes of collective bargaining, the handling of disputes between railroads and their employees, employee retirement, annuity, and unemployment systems, and other dealings with employees;

(C) the Federal Employers Liability Act; and

(D) safety, as to which the Corporation shall be subject to the same laws and regulations as any common carrier under part I of the Interstate Commerce Act.

(d) BOARD OF DIRECTORS.—The Board of Directors of the Corporation shall consist of eleven persons who shall be appointed by the President by and with the advice and consent of the Senate, pursuant to this subsection. The initial directors shall be appointed within one hundred and twenty days after Congress, by affirmative concurrent resolution, authorizes the establishment of the Corporation. The President shall appoint the members and their successors on the following basis—

(1) three, to be selected from a list of qualified individuals recommended by the Association of American Railroads or its successor, one of whom shall be a representative respectively of eastern-, western-, and southern-territory railroads;

(2) one, to be selected from a list of qualified individuals recommended by the parent body of the American Federation of Labor and Congress of Industrial Organizations or its successor, who shall be representative of railroad labor;

(3) one, to be selected from a list of qualified individuals recommended by the National Academy of Sciences as persons with expert knowledge or experience with data processing and information systems and the application of computer technology to systems management;

(4) four, to be selected from lists of qualified individuals recommended by shippers, organizations representative of significant shipping interests including small shippers, consumer organizations, community organizations, and recognized consumer leaders, who shall be representative of consumers of transportation services and consumers of goods and products shipped by railroad;

(5) one, to be selected from a list of qualified individuals recommended by the Secretary of Defense; and

(6) one, to be selected from a list of qualified individuals recommended by the Secretary of Transportation.

As used in this subsection, a list of qualified individuals shall consist of no less than three individuals.

The President shall appoint one of the members, by and with the advice and consent of the Senate, to serve as Chairman for a term of four years. A member of the Board of Directors who is not otherwise an employee of the Federal Government may receive $150 per diem when engaged in the actual performance of his duties plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(e) TERMS OF OFFICE.—The terms of office of the members first taking office shall expire as designated by the President at the time of nomination. Four shall expire at the end of the third year, four at the end of the sixth year, and three at the end of the ninth year. Successors to members of the Board of Directors shall be appointed in the same manner as the original members and shall have a term of office expiring nine years from the date of expiration of the term for which their predecessors were appointed. Any member appointed to fill a vacancy in the Board of Directors occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(f) GENERAL.—The Directors shall direct the exercise of all the powers of the Corporation. So long as there are four members in office, the Directors are empowered to execute the functions of the Corporation. Four of the Directors shall constitute a quorum for the transaction of such functions.

(g) ANTITRUST LAWS INAPPLICABLE.—The antitrust laws of the United States are inapplicable to the extent necessary to carry out the purposes of this title as to any person who contracts with the Corporation with respect to the operation or maintenance of rolling stock or the design or implementation of a national rolling stock information system or the use of information from such system.

GENERAL POWERS OF CORPORATION

SEC. 403. To carry out the purposes of this title, the Corporation is empowered to—

(a) build, rebuild, purchase, own, lease, control, and manage rolling stock or equipment or facilities;

(b) acquire or contract for the use of physical facilities, equipment, and devices useful in developing equitable distribution and in maintaining expeditious use of rolling stock;

(c) build, rebuild, operate, maintain, and repair its rolling stock, equipment, and facilities or enter into agreements and contracts for the performance of such work and for the performance of all services and work incidental thereto and consistent with prudent management;

(d) conduct and contract for research and development that may lead to new and practical technologies, systems, and methods for the efficient and economical movement, distribution, solicitation, collection, loading and unloading, packaging, and processing of freight shipments involving railroads;

(e) sue and be used, complain and defend, in its corporate name and through its own attorneys; adopt, alter, and use a corporate seal, which shall be judicially noticed; adopt, amend, and repeal such bylaws, rules, and regulations as may be necessary for the conduct of its affairs; conduct its business, carry on operations, maintain offices, and exercise the powers granted under this Act in any State;

(f) purchase, lease, or otherwise acquire, own, hold, improve, use, or deal in and with any property (real, personal, or mixed, tangible or intangible) or interest in property, wherever situated; sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of property and assets; accept gifts or donations of any property or services in aid of any purpose of the Corporation;

(g) appoint such attorneys, employees, agents, consultants, and other personnel as it deems necessary; define the duties of personnel and determine and pay compensation for their services. Except as otherwise provided in this Act, such personnel and directors of the Corporation shall not be subject to laws relating to Federal employees with respect to appointments, promotions, adverse actions, hours of work, rates of compensation, allowances, leave, unemployment compensation, compensation for work-related injuries, and Federal benefits for retirement, life insurance, and health benefits; and

(h) enter into contracts, execute instruments, incur liabilities, and do all things necessary or incidental to the proper management of the affairs and the proper and prudent conduct of the business.

FINANCING

SEC. 404. (a) PER DIEM SURCHARGE.—Each railroad, except a switching and terminal railroad, shall pay to the Corporation a per diem surcharge of fifty cents per carday on each unit of rolling stock for each day that such a railroad incurs a car hire charge for the use of such unit of rolling stock. The Directors shall impose such per diem surcharge not later than sixty days after taking office under section 402(f) of this Act and shall terminate it when it has collected such sum as may be necessary for the purposes of this title but not less than $10,000,000 nor more than $30,000,000. Surcharges are payable on the tenth day of the second month succeeding the month in which the charge accrues. Within six months of the termination of such surcharge, the Corporation shall refund to any railroad or group of railroads under common management and control any payments made by such railroad or railroads in excess of ten per centum of the total paid by all railroads.

(b) NEGOTIABLE DEBENTURES.—The Corporation shall issue to each railroad a negotiable debenture in the amount of the surcharge paid under subsection (a) of this section. The debenture shall bear and pay interest at a rate to be determined by the Secretary of the Treasury to be the current rate for similar debentures in the open market. The par value of such debentures shall be due and payable December 31 of the thirtieth year after the date of issuance thereof or the first business day thereafter if such date is a Saturday, Sunday, or holiday. Such debentures are debts of the Corporation but are subordinate to all other such debts. The United States of America does not guarantee either the par value or the interest on such debentures.

(c) REFUND OF PER DIEM SURCHARGES.—(1) In the event of partial or complete liquidation of the Corporation, any assets remaining after payment of the Corporation's obligations and expenses will be distributed pro rata to the railroads, not to exceed in any case the amount paid as per diem surcharges under subsection (a) of this section plus accrued interest, if any. The remainder of such assets will be paid into the Treasury of the United States and credited to miscellaneous receipts.

(2) In the event of complete liquidation of any railroad subject to this Act, the Directors of the Corporation may, if and when funds are available, refund to such railroad a sum not to exceed the amount paid in as per diem surcharges under the provisions of subsection (a) of this section plus accrued interest, if any.

(d) INCURRENCE OF DEBT FOR CAPITAL PURPOSES.—The Corporation is empowered to incur debt for capital purposes. Such debt may be incurred in the form of bonds, debentures, equipment trust certificates, conditional sale agreements, or any other form of securities, agreements, or obligations. So long as all the capital stock of the Corporation is owned by the United States, the payment of principal and interest on all obligations issued by the Corporation is guaranteed by the United States. Such guarantee shall be expressed on the face of the obligation. So long as any capital stock is owned by the United States, payment of principal and interest on obligations issued by the Corporation may, in the discretion of the Directors, be guaranteed by the United States. Such guarantee shall be expressed on the face of the obligation. Guaranteed obligations shall not exceed $1,000,000,000 in principal amount outstanding at any one time. Such obligations may be redeemable at the option of the Corporation before maturity in such manner as may be stipulated therein and shall be in such forms and denominations, have such maturities, and be subject to such terms and conditions as shall be determined by the Directors, with the ap-

proval of the Secretary of the Treasury. The Corporation may also incur debt not guaranteed by the United States, in addition to that provided for under subsection (b) of this section.

(e) PURCHASE OF OBLIGATIONS BY TREASURY.—The Secretary of the Treasury may elect to purchase the obligations of the Corporation guaranteed by the United States in an amount not to exceed $1,000,000,000 in principal amount outstanding at any one time, under such terms, including rates of interest, as he and the Corporation may agree, but at a rate or yield no less than the current average yield on outstanding Treasury securities of comparable maturity, as determined by the Secretary of the Treasury.

(f) PUBLIC DEBT TRANSACTION.—For the purpose of any purchase of the obligations of the Corporation, and to enable him to carry out his responsibility relating to guarantees made pursuant to this section, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include any purchases of the obligations of the Corporation under this Act. The Secretary of the Treasury may at any time sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations of the Corporation acquired by him hereunder. All redemptions, purchases, and sales by the Secretary of the Treasury of the obligations of the Corporation shall be treated as public debt transactions of the United States.

(g) AUTHORIZATION FOR APPROPRIATIONS.—(1) In order to facilitate the formation and the implementation of the objectives of the Corporation, there is hereby authorized to be appropriated, out of money in the Treasury not otherwise appropriated, the sum of $10,000,000 to be used to acquire capital stock of the Corporation, such sum to continue to be available until expended.

(2) There are authorized to be appropriated to the Secretary of the Treasury such sums as may be necessary to pay the principal and interest on notes or obligations issued by him as a consequence of any guarantee made under this section.

(3) In the event of any default on any guaranteed obligation, and payments in accordance with a guarantee by the United States, the Attorney General shall take appropriate action to recover the amount of such payments, with interest, from the Corporation or other persons liable therefor.

(h) LAWFUL INVESTMENT AND EXEMPTION FROM REGULATIONS AND RESTRICTIONS.—Securities guaranteed under this section shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under authority or control of the United States or any officer or officers thereof shall be deemed to be exempt securities within the meaning of laws administered by the Commission. The limitations and restrictions as to a National or State bank dealing in, underwriting, or purchasing investment securities for its own account, as provided in section 5136 of the Revised Statutes, as amended (12 U.S.C. 24), and section 5(c) of the Act of June 16, 1933 (12 U.S.C. 335), shall not apply to securities guaranteed under this section.

(i) CAPITAL STOCK.—(1) The Corporation is authorized to issue and have outstanding capital stock in such amounts and of such classes as it shall determine. At no time shall the aggregate of the shares of the capital stock of the Corporation owned by a single railroad or by any person controlling one or more railroads, as defined in section 1(3)(b) of the Interstate Commerce Act (49 U.S.C. 1(3)(b)), directly or indirectly through subsidiaries or affiliated companies, nominees, or any person subject to its direction or control or by any other stockholders, or any syndicate or affiliated group of such stockholders exceed 5 per centum of such shares issued and outstanding.

(2) The requirement of section 45(b) of the District of Columbia Corporation Act (D.C. Code, sec. 29-920(b)) as to the per centum of stock which a stockholder must hold in order to have the rights of inspection and copying set forth in that subsection shall not be applicable in the case of holders of the stock of the Corporation, and they may exercise such rights without regard to the percentage of stock they hold.

(3) Capital stock of the Corporation offered and sold to the public shall be offered in compliance with all applicable laws of the United States governing the offering and sale of securities by private corporations.

(j) AUDIT AND EXPENDITURES.—(1) So long as any capital stock of the Corporation is owned by the United States, "Railroad Equipment Corporation" shall be subject to the provisions of the Government Corporation Control Act (31 U.S.C. 841 et seq.).

(2) Except as otherwise provided in paragraph (1) of this subsection, the Corporation is authorized to make such expenditures and to enter such contracts, agreements, and arrangements as it deems necessary, upon such terms and conditions and in such manner as it decides. This authorization includes the power to make a final settlement or compromise of all claims and litigation by or against the Corporation.

(3) Nothing in this subsection shall be construed to deny the Corporation the power to obtain audits of its accounts and reports concerning its financial condition and operations by a firm or firms of certified public accountants. Such audit and reports would be in addition to those required by this subsection.

(4) Section 101 of the Government Corporation Control Act (31 U.S.C. 846) is amended by (1) striking out "and" in the last clause thereof; (2) striking out "." at the end thereof and inserting in lieu thereof the following: "; and Railroad Equipment Corporation.".

CONVERSION TO NONGOVERNMENTAL CORPORATION

SEC. 405. (a) PLAN FOR PUBLIC SALE.—As soon as practicable, a panel composed of the Secretary of Transportation, the Secretary of the Treasury, the Chairman of the Securities and Exchange Commission, the Chairman of the Commission, and the Chairman of the Directors of the Corporation shall submit to the President and to the Congress a plan for the public sale of stock in the Corporation after finding that a market exists for the sale of such stock and that the purposes of this Act will be served thereby. This plan shall include, among other elements, a program which—

(1) will require refinancing, or the establishment of a reserve fund or other method, in order to protect the public interest against defaults on obligations of the Corporation guaranteed by the United States; and

(2) will assure that the sale of the stock will result in a wide dispersion in the ownership of the stock.

(b) REQUIREMENTS.—The plan for sale of stock to the public shall specify a program for systematically reducing the amount of obligations of the Corporation guaranteed by the United States and shall propose a capital structure for the Corporation designed to insure sound financial and operating performance. Unless the Congress disapproves the plan within six months following submission of the plan to it, stock shall be sold in accordance with the plan.

(c) NEW BOARD MEMBERS.—Upon the sale of stock to the public, the Board of Directors may be enlarged by the addition of members elected by owners of such stock. In no event, however, shall the Board of Directors exceed fifteen members while any capital stock in the Corporation is held by the United States. During such period, the rights and privileges of owners of such stock, including determination of the number of directors to be so elected, shall be set forth in the bylaws of the Corporation.

(d) PROCEEDS OF SALE.—The proceeds from the sale of stock to the public shall be applied to the retirement of the stock held by the United States. Upon the retirement of all the stock held by the United States, the terms of office of the members of the Board of Directors appointed under section 402(d) shall terminate as provided by the plan under subsection (a) of this section. Thereafter, all except three of the Directors shall be elected by the owners of the stock. The President shall have authority to appoint such three directors, by and with the advice and consent of the Senate—

(1) one, to be selected from a list of qualified individuals recommended by the parent body of the American Federation of Labor and Congress of Industrial Organizations;

(2) one, to be selected from a list of qualified individuals recommended by the Federal Trade Commission after consultation with organizations of consumers; and

(3) one, to be selected from a list of qualified individuals recommended by the Commission, after consultation with organiations of shippers.

As used in this subsection, a list of qualified individuals shall consist of no less than three individuals.

(e) POSITION OF UNITED STATES.—Upon the retirement of all the stock held by the United States—

(1) the Corporation shall pay an annual fee to the United States equal to the difference between the amount of interest actually paid upon outstanding guaranteed obligations and the amount which would have been paid, as determined by the Secretary of the Treasury, if such obligations had not been guaranteed by the United States, plus one-fourth per centum;

(2) the Corporation shall make every effort to refinance obligations in order to terminate the liability of the United States arising from its guarantee of obligations; and

(3) the Secretary of the Treasury may no longer purchase or guarantee the notes or other obligations of the Corporation.

(f) DEFAULT.—If the Coroporation defaults in the payment of obligations guaranteed by the United States, the United States is authorized to take control of the Corporation and a new Board of Directors shall be appointed pursuant to section 402(d) of this Act.

NATIONAL ROLLING STOCK INFORMATION SYSTEM

SEC. 406. (a) ESTABLISHMENT.—If a national rolling stock information system, as defined in section 301 of this Act, is not operating effectively when the Corporation is established, it shall establish such a system. If the Corporation undertakes to establish such a system, the Secretary shall grant it access to and authority to use all information, studies, designs, equipment, facilities, computer programs, and other things acquired or developed under section 301 of this Act. The Secretary shall give the Corporation all possible assistance to further the purposes of this section.

(b) INFORMATION ACCESS.—Data and other information derived from the national rolling stock information system shall be made available on an equal basis to the Corporation, shippers, railroads, the Commission, the Secretary, and interested members of the public, subject to rules to be issued by the Commission to preserve the confidentiality of certain types of competitive information furnished for use in connection with the system.

(c) REPORT.—The Corporation shall report to the Congress annually on the progress made in implementing such national system. Each report shall include recommendations as to any additional funding deemed necessary to make the national system more effective. The Commission shall publish a report on such system thirty days after the publication of each report by the Corporation under this subsection.

USE OF EQUIPMENT SUPPLIED BY THE CORPORATION

SEC. 407. (a) USER CHARGES.—The Corporation shall establish and maintain a schedule of charges for the use of general service railroad freight cars and other rolling stock, and equipment directy related to the utilization of rolling stock. The rates shall be such as will, in the judgment of the Directors, enable the Corporation to meet its operating and administrative expenses, including depreciation and carrying-charges for indebtedness, and to provide sufficient earnings to facilitate the conversion of the Corporation to private ownership in accordance with section 405 of this Act as soon as possible. Such charges shall in no case exceed one hundred and fifty per centum of the cost to the Corporation of acquiring, owning, maintaining, and operating the rolling stock for equipment being so used. In establishing such charges, the Corporation shall consider prevailing rates and conditions for similar equipment.

(b) USER CHARGES PRECLUDED.—The Corporation shall not assess any charges for rolling stock located on a railroad where that rolling stock is not required by such railroad for use in originating traffic: *Provided*, That—

(1) such rolling stock is not the subject of a car service order by the Corporation or the Commission; and

(2) such railroad furnishes appropriate notice to the Corporation pursuant to terms and conditions established by it regarding the use of such rolling stock.

(c) CONDITIONS ON USE.—The Corporation shall establish—

(1) reasonable rates of compensation for storage of excess rolling stock on the property of any railroad, through negotiation with such railroad;

(2) terms and conditions governing the use of its equipment, including requirements for identification of rolling stock, as are in its judgment appropriate to effectuate the purposes of this Act. Such terms and conditions may be modified and amended from time to time; and

(3) just and reasonable car service rules, regulations, and practices, and car distribution directions with respect to its rolling stock. Such rules, regulations, and practices shall be established after consulting with the Commission, railroads and car distribution agencies. They shall, together with car distribution directions issued thereunder, take precedence over any rules, regulations, or practices in conflict therewith which are issued or applied by any railroad or group of railroads. Such rules, regulations, and practices may be modified and amended from time to time.

(d) COMPLIANCE WITH CONDITIONS.—Each railroad shall comply with such car service rules, regulations, and practices as may be established, together with such car distribution directions as may be issued, pursuant to this section.

(e) INTERCHANGE OF CARS.—No railroad may refuse to transport any general service railroad freight car owned or supplied by the Corporation, whether loaded or empty, subject to any applicable safety regulations, reasonable interchange rules, reasonable line clearances, reasonable weight limitations, and user charges set under this section. No railroad shall be entitled to any compensation from the Corporation for moving empty Corporation-owned rolling stock from any point on its line of railroad to any point or another line of railroad, between any points on its line of railroad, or as a bridge carrier between points on two or more other lines of railroad: *Provided*, That such stock was moving under a car distribution directive (1) issued by the Commission or (2) issued by the Corporation for the purpose of distributing Corporation-owned cars for loading.

COMMISSION REVIEW

SEC. 408. The Corporation shall be subject to sections 1(10) through 1(17) of the Interstate Commerce Act, and the orders of the Commission thereunder to the extent applicable. Upon petition of any person affected by any charge, rule, regulation, practice, term, condition, or directive of the Corporation, or upon its own motion, the Commission shall make an investigation and shall order any charge, rule, regulation, practice, term, condition, or directive which it finds not to be in conformity with this Act, or to be inconsistent with any rule, order, or directive of the Commission pursuant to applicable provisions of sections 1(10) through 1(17) of the Interstate Commerce Act to be canceled, annulled, amended, or suspended as the Commission shall find to be appropriate.

ENFORCEMENT

SEC. 409. (a) GENERAL.—In an appropriate civil action, the Corporation may apply to any district court of the United States which has jurisdiction over the parties and in which venue is properly laid under section 1291 of title 28, United States Code, for an order or judgment to enforce compliance with any obligation owing to it under or in accordance with any provision of this title or under or in accordance with any agreement or regulation entered into or issued pursuant to this title. Nothing contained in this action shall be construed to relieve any person from any punishment, liability, or sanction which may be imposed otherwise than under this Act.

(b) EQUITABLE RELIEF.—(1) If the Corporation, any railroad, or any person fails or neglects to comply with any rule, regulation, or practice established under this title, fails to pay any charge imposed under this title, fails or refuses to comply with any car distribution direction or other order issued under this title, or fails to obey any directive by the Commission to pay charges, any district court of the United States having jurisdiction over the parties and in which venue is properly laid under section 1291 of title 28, United States Code, may grant relief. Upon a petition by the Commission or by the Corporation, such court shall have jurisdiction to grant such relief as may be necessary or appropriate to prevent or terminate such failure or refusal.

(2) If the Corportaion, any railroad, or any other person violates or threatens to violate any provision of this Act or any rule, regulation, or order issued under this Act, any district court of the United States having jurisdiction over the parites and in which venue is properly laid under section 1291 of title 28, United States Code, may grant relief. Upon a petition, or, in the case of a labor agreement, upon the petition of any employee affected thereby or a duly authorized representative of such employee, such court shall have jurisdiction to grant such equitable relief as may be necessary or appropriate to prevent or terminate such violation.

ANNUAL REPORT

SEC. 410. The Corporation shall cause to be prepared and transmit simultaneously to the President and the Congress an annual report commencing one year after its establishment. Such report shall include—

(a) a comprehensive and detailed review and summary of the operations, activities, and accomplishments of the Corporation under this Act;

(b) an account of the state of railroad freight services in the United States, including the number of rolling stock, by classes, acquired and owned by the Corporation and the number acquired and owned by the railroads; and

(c) a statement of the Corporation's receipts and expenditures for the previous year, an explanation of the method for determining the type and amount of rolling stock purchased, and the criteria used in distributing rolling stock.

The Commission and the Secretary shall from time to time, but not less than once every two years, investigate and evaluate the performance of the Corporation in light of the purposes of this Act and each shall cause to be prepared and transmit, simultaneously to the President and the Congress a report thereon.

TITLE V—GENERAL PROVISIONS

PROTECTIVE ARRANGEMENTS FOR EMPLOYEES

SEC. 501. (a) GENERAL.—In carrying out their functions under this Act and as a condition precedent to the execution of any contract, the guarantee of any obligation, and the approval or inducement of any other action under this Act, the Board, the Secretary, and the Corporation shall take adequate steps to protect the interests of affected employees. Each contract as to which any railroad or car-pooling company is either a party or a beneficiary shall include fair and equitable arrangements, as certified by the Secretary of Labor, to protect the interests of individual railroad employees who are or who may be affected in their employment by such contract. Such protective arrangements shall include the arrangements specified in section 405 of the Rail Passenger Service Act of 1970, as amended (45 U.S.C. 565); section 13 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1609); and section 6 of the High Speed Ground Transportation Act of 1965, as amended (49 U.S.C. 1636).

(b) BUILDING AND REBUILDING CONTRACTS OF CORPORATION.—The Corporation, in awarding contracts for the building or rebuilding of rolling stock under title IV of this Act, shall conform to prevailing practices in the railroad industry at the time of each such contract in dividing such work between railroads with facilities for building and rebuilding rolling stock and nonrailroads with such facilities. Such contracts, as are awarded to railroads, shall be performed through the use of the facilities and the employees of such railroads and shall not be subcontracted. In awarding such contracts, the Corporation shall be guided by the relative proportions of such building and rebuilding as was performed in railroad as opposed to nonrailroad facilities during the five-calendar-year period preceding the award of such contract. Variations from these proportions shall not exceed 5 per centum if the total amount of building and rebuilding declines from levels at the date of enactment of this Act. If the Corporation fails to maintain required relative proportions in distributing such work to railroad facilities under such contracts, the fair and equitable employee protective arrangements required by subsection (a) hereof shall become effective. Notwithstanding the foregoing, no contract shall be awarded for the building or rebuilding of rolling stock by such Corporation unless such work meets the minimum specifications established by the Corporation in accordance with the purposes of this Act.

(c) JOB TRAINING.—Railroad employees adversely affected by any action taken pursuant to this Act designed to provide for more effective use and distribution of rolling stock shall be reassigned and, if necessary, retrained to perform the new tasks covering the functions which they had performed prior to such action. The performance of such functions shall be considered to be

within the same craft or class as that in which such railroad employees were classified prior to such change and the rights of such employees to the same representation shall be preserved. A railroad employment position which is affected by any such change may be eliminated as it becomes vacant through the death or voluntary resignation or retirement of the employee holding such position: *Provided*, That the rate of attrition of such positions in any calendar year shall not exceed:

(1) four per centum of the total number of affected employees of such railroad, as determined by the Secretary of Labor, or

(2) a per centum equal to the average of the actual rate of attrition of the total number of affected employees of such railroad for the preceding three calendar years, as determined by the Secretary of Labor, whichever is greater.

(d) OTHER LAWS.—In his administration of the provisions of this Act, the Secretary of Labor shall consolidate the program authorized herein with the companion programs under the Rail Passenger Service Act of 1970, as amended (45 U.S.C. 565); the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1609); and the High Speed Ground Transportation Act of 1965, as amended (49 U.S.C. 1636). The Secretary of Labor shall uniformly develop, interpret, and apply the procedures and standards under these several laws.

(e) REPAIR AND MAINTENANCE CONTRACTS.—To the extent practicable, the Corporation shall award contracts for the repair and maintenance of its rolling stock to railroads with facilities for performing such work.

(f) CONSTRUCTION CONTRACTS.—The Board (pursuant to title II), the Secretary (pursuant to title III), and the Corporation (pursuant to title IV) shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed with the assistance of funds received under any contract or agreement entered into under this Act shall be paid wages at rates no less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The Board, the Secretary, or the Corporation shall not enter into any such contract or agreement without first obtaining adequate assurance that required labor standards will be maintained on the construction work. Health and safety standards promulgated by the Secretary of Labor pursuant to section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) shall be applicable to all construction work performed under such contracts or agreements, except any construction work performed by a railroad employee. Wage rates provided for in collective-bargaining agreements negotiated under and pursuant to the Railway Labor Act or the National Labor Relations Act shall be considered to be in compliance with the Davis-Bacon Act; the highest of such wage rates shall be the applicable standard for all laborers and mechanics not covered by any such agreement and employed by contractors and subcontractors engaged in the building and rebuilding of rolling stock pursuant to title IV of this Act.

SEPARABILITY

SEC. 502. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

The PRESIDING OFFICER. The time on the bill is limited to 1 hour, to be controlled and divided by the majority and the minority leaders or their designees, with one-half hour on any amendment, debatable motion or appeal.

Who yields time?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time not be charged against either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HARTKE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARTKE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is S. 1149.

How much time does the Senator yield himself?

Mr. HARTKE. I yield myself such time as I may need.

Mr. President, for the information of the Senate I do not think that this debate will be very long. There has been pretty much agreement in the Commerce Committee upon what we are planning to do here.

The committee, in reporting this bill, recognizes that the Interstate Commerce Commission has had to deal with freight-car shortages since its first case after the act was passed in 1887. That is, basically, it is time we end the shortage of freight cars in the United States.

It goes without saying that the railroad situation in America today is in the throes of a very deep crisis. One of the problems we have is that there is this perennial shortage of freight cars. Appeals are made by the various shippers, and the railroads, in turn, try to accommodate the requests of the shipping public. The end result is that the actual cost to the United States in lost time, lost effort, and loss of proper utilization of cars which has to be corrected.

We have had long hearings. The bill itself is basically in three parts. The first part provides for the creation of a guaranty fund, which would utilize the credit of the United States to insure continuing obligations to purchase rolling stock. The second deals with proper utilization of the freight cars; and the third requires the creation of a railroad equipment corporation, to acquire rolling stock and establish a national rolling stock pool if the problem is not otherwise solved.

Basically, in the event that proper utilization is not achieved by the railroads themselves, there is a triggering device to provide for a Federal corporation to proceed to do what the railroads, in such case, have failed to do. However, the triggering device is such that it would still require the actions of the Federal corporation to be brought back to Congress, and would provide for a last look before we proceed to what many people feel would be a first step toward nationalization of our railroad system.

It is not the intent of the committee to interfere in any way with private operation of the railroads. It is not the intent of the committee to provide for any precedent in this fiield. It is its intent to alleviate the shortage of railroad cars in the United States, and to make possible the financing of necessary railroad equipment.

Mr. President, I pay tribute to the distinguished Senator from Kansas (Mr. PEARSON), who has worked very diligently in this field, and who has seen firsthand the difficulties which have occurred as a result of the shortages.

I think we have provided a very satisfactory solution, one which is in the interest of the shippers, of railroad management, of railroad labor, and of the country generally.

Mr. PEARSON. Mr. President, will the Senator yield?

Mr. HARTKE. I yield.

Mr. PEARSON. I compliment the Senator from Indiana for bringing forth this legislation from his subcommittee, which represents 2 years' effort in the formualtion of steps to make some progress toward the solution of this perennial and now very long-term shortage in this vital part of our national transportation system.

Mr. President, I am pleased to serve as floor manager for the minority during Senate consideration of the Rolling Stock Utilization and Financing Act of 1973, commonly called the "freight car bill." This legislation is the product of several years of Commerce Committee attention to the chronic freight car shortage which has plagued our Nation's railroads, shippers and consumers of products transported by rail.

As reported by your committee, S. 1149 constitutes the most far-reaching assault on the freight car problem ever debated in this body. Lesser measures enacted in past years have simply proved inadequate to the challenge. This bill mandates and encourages a broad range of initiatives, on the part of both industry and Government, to improve utilization of the rolling stock fleet and to expand it. Having considered in depth the provisions of S. 1149, your committee has concluded that, with the good-faith cooperation of the industry, this measure will be responsive to the documented needs of the users of rail transportation in America.

Mr. President, I submit initially that while this legislation reflects a determined congressional policy and governmental effort to assist in resolving the freight car problem, it is in no sense a radical proposal. The bill does not contemplate nationalization of the problem, and it certainly does not contemplate nationalization of the industry—or any part of it. The committee bill would enhance the opportunities of good private sector rail management to improve service and become more efficient by providing loan guarantees for the purchase or lease of rolling stock, facilities, and equipment. It would provide technical and financial assistance for the development of a computerized car information system and a national car information center.

In the event that these provisions prove inadequate, the Congress will have the opportunity to consider the creation of

a quasi-public railroad equipment corporation to acquire and manage a "demonstration" pool of rolling stock. The proposed corporation would also have authority to implement the national rolling stock information center if it is not already in existence.

The bill provides adequate time for the railroads to take advantage of the loan guarantees and technical assistance before congressional action on a resolution to create the corporation. Thus, your committee has embraced the proposition that private sector management should be called upon, and given the opportunity, to meet the freight car challenge without significant Federal intervention. But the bill provides, in the public interest, a Federal response in the event that all else fails.

Mr. President, the committee has conducted extensive hearings on the pending legislation. Hearings were held in Washington, D.C., on a comparable measure in the 92d Congress, and in this Congress. Field hearings were conducted in Oregon and Dodge City, Kans. The hearing record is replete with documentation of two fundamental problems—the capacity of the Nation's rail car fleet is inadequate, and the fleet is underutilized because of inefficiencies in the distribution and handling of cars.

In 1972 the railroads transported 780 billion ton-miles of revenue traffic—the highest in history and freight car shortages were minimal due to consistently improving management. During the first 6 months of 1973, however, the Nation experienced its greatest car shortage in history—an average daily shortage of between 30,000 and 40,000 cars in some months. This shortage was due, primarily, to a substantial increase in agricultural export commitments. The best estimate is that January to June 1973 was not an anomaly, that traffic volume will increase steadily throughout this decade—with a need for an additional 617,000 cars costing the railroads and other investors some $8.8 billion to procure.

The U.S. Department of Transportation, in the course of 1971 hearings, estimated that an additional 130,000 cars are needed now—an investment of $2.3 billion to meet current demand.

Mr. President, our hearing record demonstrates that a financially weak railroad cannot allocate adequate capital for new equipment and facilities. And because of its failure to obtain needed equipment, the railroad loses traffic and becomes financially weaker. The Penn Central, for example, lost $35 million in revenue between 1964 and 1970 because of its failure to acquire sufficient grain hoppers. According to a Penn Central trustee, the railroad lost $6.48 million in potential revenues between January 1, 1973, and April 27, 1973, because of its inadequate hopper fleet.

The committee bill is responsive to this problem. The committee contemplates that financially weak railroads, and railroads in reorganization, will be the priority consumers of Federal equipment obligation guarantees for the purchase or lease of rolling stock. The guarantees will be in a revolving fund, with not more $2 billion outstanding at any one time. The guarantees will serve not only to expand the fleet, but also to assist marginal roads in meeting their obligation to implement their share of the national computerized information system.

Mr. President, the committee is cognizant of the dismal fact that the average freight car is in movement only 12 percent of its lifetime. It is moving with a load only about 7 percent of the time. The average car moves loaded an average of only 32 miles per day. These statistics, admittedly, are misleading. If a shipper orders cars and delays loading, the problem in that instance is hardly the fault of the railroad. If a port is congested with ships but has few loading docks, the railroads cannot be blamed for the resulting backlog of cars awaiting service. Branch line service cannot be economical on a daily basis in most cases. The shipper who receives empty cars on Monday, and has them collected loaded on Thursday has no compaint against the railroad—but the procedure is devastating to the percentages in computing utilization. And finally, grain elevators during harvest hope to stockpile cars in advance of the anticipated glut. Kansas farmers harvested 380 million bushels of wheat in recent weeks—an almost impossible burden on the country elevator, terminal and rail systems.

Nevertheless, Mr. President, the hearing record clearly establishes that improved efficiencies in the use of the existing fleet can dramatically relieve the chaotic conditions which the shortage has chronically brought to shippers in peak periods of demand. The railroad industry is to be commended for inaugurating, at considerable cost, the rudiments of a nationwide computerized information system. The industry has concluded that such a system not only will serve shippers, but also strengthen financially the railroads. The committee bill contains carefully drawn language which will assist in the timely implementation of the system envisioned by the industry. Inherent delays in resolving differences among dozens of independent companies with respect to the design of the system will be obviated by the Secretary's determination, after due regard has been paid to the interests of all railroads, as well as the interests of shippers.

One railroad official testified that, after installation of the information system on his lines alone, the company was able to handle comparable traffic with 6 percent fewer cars. If the same efficiencies can be obtained nationwide, the result will be the equivalent of about $2 billion in new equipment. It is in everyone's interest to proceed promptly with the finalization of the information system.

Mr. President, the recent wheat harvest in my State of Kansas once again documented the need for legislation comparable to that before the Senate today. Our farmers harvested the largest wheat crop in history. Grain was piled on the ground in various locations throughout the State because of the car shortage. Elevator operators were forced to turn away farmers who needed, in the most urgent terms, access to storage facilities. The railroads made a good effort, but, as expected, the roads which had invested less in new equipment were least able to serve their customers. Cars which had been positioned in the eastern district arrived to ease the shortage, but they could have arrived sooner and been of more timely relief. The lessons of the 1973 harvest reinforce the lessons of past years: more cars are needed by the marginal roads, particularly, and computer-assisted location and disposition of available equipment will be of material aid in marshalling our resources for peak demand periods.

Mr. President, I am pleased to recommend favorable Senate action on the pending bill.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. HARTKE. I yield to the Senator from Washington.

Mr. MAGNUSON. Mr. President, let me outline for the Senate what a long and difficult struggle this has been to meet the freight car shortage. Years ago, we used to have bills—I do not know how many I have introduced and the Senator from Kansas has introduced—that usually dealt with the shortage west of the Mississippi River. I remember one time, way back, I had a freight car bill; the Commerce Committee reported it out, and we had a vote. Every Senator west of the Mississippi River voted for it, and every Senator east of the Mississippi voted against it; and they outnumbered us at that time.

Since that time, the freight car shortage, as the distinguished Senator from Indiana has pointed out, has become almost nationwide, and I need not repeat what I have said many times on this floor, that this is a matter that has been before the regulatory agency since 1887. As a matter of fact, I like to cite this, because it shows what a difficult problem this has been:

In 1887, when the Interstate Commerce Commission was created, docket No. 1—what do you think it was? A petition from some farmers in North Dakota to relieve them of the freight car shortage to get their grain, at that time, to the port of Duluth; and the matter has been before the ICC ever since that time.

The Senator from Indiana has performed yeoman service on this measure, and the Senator from Kansas and other members of the committee as well, and we are hopeful that the passage of this measure will be a step forward. We do not know that it is a panacea, but at least it is time that Congress took hold of this matter and did something about it; and this bill, although it is complicated, we believe is even a better bill than that which passed the Senate by a vote of 81 to 0 last year.

Again I express, as the chairman of the committee, my deep appreciation to the Senator from Indiana, the Senator from Kansas, and others who have worked so hard to try to work out something that will do some kind of a job on this freight car shortage.

I might say just one thing more: Since 1887, this matter has been getting worse every year. Last year we had the worst freight car shortage of all time. I need

not tell the occupant of the chair (Mr. CLARK) and others what I mean by that. It affects everyone. All the best information we can get is that this year will be even worse unless we do something about it.

Mr. President, as I have indicated, last year the Senate passed, by a vote of 81 to 0, S. 1729, a bill to alleviate freight car shortages. This bill was not considered by the House and consequently did not become law. Today we have before us the successor to S. 1729, S. 1149, the Rolling Stock Utilization and Financing Act of 1973. This year the Nation is experiencing the worst freight car shortage in its history. It is appropriate, therefore, that the Senate today once again provide a comprehensive solution to the freight car shortage problem, a solution the country has been awaiting since the ICC considered freight car shortages as the first item on its first docket in 1887. I am hopeful that the House will also soon take action on this important bill to alleviate the freight car shortage.

The problem, which once only affected western farmers during harvest season, can no longer be dismissed as merely affecting a particular industry in a particular region during a particular season. The dilemma continues to worsen, in spite of the ICC's attempts to solve the problem through regulation. Our Nation's agricultural products rot on sidetacks because there are no boxcars to move them to markets. Housing costs skyrocket because of lumber shortages aggravated by railroad inefficiencies and the inability of cash-poor railroads to purchase modern equipment.

As the freight car shortage adversely affects all Americans, it produces severe problems for Washington State shippers and consumers. For example, the shortage of railroad freight cars and ineffective utilization of existing freight cars has repeatedly been a problem affecting the harvest of agricultural commodities in the State. The shortage of boxcars has also been a long-lasting and predominant problem for the forest products industry in the Pacific Northwest. The Washington potato industry may be forced to reduce its production in the near future due to a shortage of refrigerator cars because none have been rebuilt in the last 15 years and the average car is over 25 years old. This spring, wheat farmers in Washington and other major agricultural centers in the country lost untold millons of dollars due to the freight car shortage. Farmers must pay a penalty on uncompleted contracts, and elevator operators and farmers who are unable to pay back loans suffer very heavy losses as a result of delayed shipments and losses on contracts.

From the standpoint of the paper, lumber, plywood, and other forest products industries, the issue of shortages is a familiar one. The forest products industry is one of the largest users of freight cars; yet it is often unable to obtain equipment to meet its demands for paper, lumber, and plywood shipments.

Despite the fact that the forest products industry collectively represents, as shippers, the largest single source of revenue to the railroads in the United States, freight cars are often diverted to other shippers while forest products sit unable to move to market because of the freight car shortage.

Agriculture loses not only when it is unable to ship its products but when it is unable to get the fertilizer necessary to grow those products. This spring, Florida fertilizer producers were short 3,000 to 5,000 cars and behind in their shipments from 17 to 30 days. As a result of this, crops were late all over the country. Like farmers all over the country, Washington wheat farmers, already adversely affected by a late freeze, were forced to further delay crops because they were unable to secure adequate fertilizer supplies. This fall, a shortened growing season will result in a shortage of grain and resulting losses for farmers, higher food prices, and an increased food shortage.

The shortage not only harms shippers. It affects every American consumer. If shipments are delayed or crops are not planted or the harvest lies rotting in warehouses and in the streets, there will be shortages and there will be higher prices. As America faces an energy crisis, coal producers in West Virginia cannot get enough hopper cars to carry their coal to market. Food prices are going up, but farmers are suffering losses because they cannot move their surplus grain. The freight car shortage has been directly related to the soaring prices of feed grains for beef, cattle, and poultry and of lumber and other basic commodities. Housing prices, for example, are higher than ever before in history because builders cannot get the lumber they need.

Both the Department of Labor and the President's Cost of Living Council have recognized the freight car shortage as a very serious problem. Farm editors have termed the freight car shortage a "constant, persistent, chronic problem" in the Western States.

How extensive is the freight car shortage? On July 7, at a time when the shortage is usually quite low, the ICC reported a shortage of 29,825 cars, of which 13,836 were general-service boxcars, the type most in demand.

The need, then, for a solution to the freight car problem is obvious. The Congress and the Nation have waited long enough for the regulatory agencies and the railroads to act. S. 1149 provides a legislative solution to the freight car problem.

The nature of this serious problem is simple. Freight car shortages are the result of two separate and distinct factors:

First, poor utilization of existing rolling stock; and

Second, an inadequate supply of rolling stock. As noted in the report of the Senate Committee on Commerce on S. 1149:

> It is unanimously conceded that the general freight car fleet is poorly utilized. The average freight car is in movement only 12% of the time. It is moving with a load only 7% of the time; the rest of the time is empty movement. The average freight car moves loaded an average of only 32 miles per day.

What do these underutilization figures mean? The Department of Transportation has estimated the shortage of freight cars to be about 130,000 cars, about 9 percent of the existing railroad owned fleet. A mere 9 percent increase in car-utilization—increasing load movement to 7.63 percent of the time— would eliminate this car shortage without the need for investment in additional cars. The need, then, for increased utilization is obvious. The Congress and the Nation have waited long enough for the regulatory agencies and the railroads to implement operational efficiencies. This bill provides the needed strong incentive to increase freight car utilization.

The second problem is a shortage of general service freight cars. While the railroads have invested heavily in special service cars, the investment in general service cars, primarily box cars, has declined. Also, while the stronger railroads have sufficient funds to acquire cars for their own needs, weaker railroads have inadequate access to the capital market. High interest rates reduce the number of cars they can purchase. At the same time, these weaker railroads, because they must rely upon cars from other railroads, pay out a considerable amount in payments, thereby further reducing their ability to make any investments. Further adding to the dilemma, the weaker railroads lose several millions of dollars by not having sufficient cars available. Without outside assistance to break the cycle there seems to be no hope for movement. This bill provides that outside assistance.

Mr. President, this problem has been with us for almost a century. It has been studied by the ICC since its formation with few tangible results from the studies. The railroads have promised the Nation again and again that they would alleviate the problem. Instead, efficiency and freight car utilization have not noticeably improved and the number of freight cars has declined. Most notably, class 1 railroad ownership of general service freight cars has declined from 352,121 in 1972 to 336,542 in 1972; railroad ownership of plain gondolas has decreased in the last year from 185,622 to 158,335 and the number of service hopper cars owned by these railroads has declined in the last year from 385,779 to 335,686. This decline comes in the face of a historically unprecedented traffic increase. In the face of stagnant utilization figures and the fact that with more and more traffic, there are fewer and fewer cars to use, our shippers face a bleak future without some future assurance that the legislation proposed by this bill will get to the heart of the problem.

It has taken the Congress nearly a century to move in this area. As far as I know, no one denies that there is a problem; no one denies the need for prompt and aggressive remedial action. When passed by the Senate last session, this bill was a good bill. With the improvements incorporated into S. 1149, I think it is even a better bill. For, finally, the Congress will be saying to the Nation and to the railroad industry: It is time that we get our products to the marketplace on time at the lowest pos-

sible cost and if the industry cannot accomplish such simple goals, the Government, however reluctantly, will step in to assist the railroads in producing a better freight transportation system.

Mr. President, the bill as reported by the committee has three major elements. I ask unanimous consent that the purposes and description of the bill as contained in Senate report 93-303 be printed in the RECORD at this point.

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

PURPOSES AND DESCRIPTION

The bill as reported by the Committee has three major elements: The first provides for creation of a guarantee fund, backed by the credit of the United States, to insure obligations incurred for the acquisition of rolling stock, and equipment or facilities. The second provides for Federal efforts to improve utilization of freight cars and other rolling stock by means of—

(a) technical and financial assistance for the development of a computerized car information system and a national car information center,

(b) development and quarterly publishing of an index measuring freight-car utilization,

(c) a study by the Department of Transportation of ways to improve utilization, and

(d) action by the Department under existing law to improve utilization.

The third part provides that, in the event of continuing failure by industry and the private sector to solve the problem of shortages of railroad freight cars, there may be direct government action to establish a new institution in the industry mandated to innovate, to experiment with, and to demonstrate improved practices in freight car utilization and management.

The third part provides for a railroad equipment corporation to acquire rolling stock, to manage such rolling stock as a pool, and to develop a national rolling stock information system (if one is not in existence) if the private sector of the economy is unable, with the assistance provided by the first two parts of the bill, to satisfactorily solve the freight car shortage.

S. 1149 provides clear direction to the industry to attack the problem of inadequate freight car supply and underutilization. It provides financial assistance and time and latitude for the private sector of the economy to work out its own solutions to the problem. But it also contains positive inducements, in the form of potential direct government action if the problem is not privately solved. The end result envisioned by the legislation is improved service for the entire rail system, not merely enhancement of the private interests of individual railroads.

(1) TO INCREASE CAPACITY

In order to increase the car supply, the measure would establish an Obligation Guarantee Fund for rolling stock and also equipment or facilities, backed by Federal credit (section 201), to guarantee creditors against loss under equipment obligations with eligible railroads, car pooling companies or other applicants. The fund would be administered by an independent agency to be known as the Obligation Guarantee Board. The Board would decide whether or not to guarantee equipment obligations.

Equipment obligation guarantees would improve the credit rating of railroads, car pooling companies and other applicants that would otherwise experience difficulty in securing equipment financing. They would also lower the interest rates for financing, thereby reducing a significant cost in equipment acquisition and increasing equipment acquisition by purchasers with weak credit ratings and low profits.

The risk to the government of extending guarantees should be low. Because railroads need equipment to continue operations, the incidence of default on equipment obligations, even by bankrupt railroads, is not great. In the event of a default, the equipment can be repossessed and resold to another railroad without difficulty. Even though the risk of loss is relatively small, public funds are being extended for private benefit to solve a serious transportation need and the use of such funds must be carefully circumscribed.

Section 202(g) details findings required to be made before an equipment obligation may be guaranteed by the Obligation Guarantee Board. These findings are intended 1) to prohibit guarantee of an obligation unless the rolling stock acquired thereby provides reasonable security for the fund, 2) to improve utilization by requiring a finding, where applicable, that the common carrier operations of railroads or the operations of car-pooling companies are sufficiently efficient at the date of application for a guarantee to assure economic utilization of rolling stock acquired as a result of a guarantee, 3) to assure that rolling stock acquired as a result of a guarantee will contribute to reduction of the shortage of rolling stock and 4) to assure that the purchase or lease of rolling stock made possible by a guarantee will insure an adequate car supply. When acquired through a guaranteed obligation, rolling stock should to some extent increase the obligor's load carrying capacity.

Paragraph (h)(1) requires that there will be no net decrease in the load carrying capacity of rolling stock. Discretion is left to the Board to determine, in view of the conditions in each case, or by general rule, the amount and means of measuring such a decrease. While an obligor's capacity may not increase after initial purchase made possible by guarantees, he is expected to maintain that initial increase in capacity.

Paragraph (h)(2) is intended to prohibit the direct or indirect financing of increased dividend payments by the Board without prior approval of the Secretary based on findings, after public hearings, with opportunity for submission of comments, that such increase in dividends will not decrease the ability of the applicant to provide improved car service.

It is expected that in making a determination that an increased dividend will not decrease the ability of the obligor to provide improved car service, the Secretary will most carefully scrutinize the finances and car service operations of the obligor seeking to increase such dividends. It is left to the discretion of the Board to determine what constitutes increases in dividends; changes in the number of shares that alter the per share dividend and changes in the amount of the equity investment that alter the total paid in dividends might in certain cases, be permissible.

Paragraph (h)(3) restricts the use of assets or revenues related to or derived from railroad operations for nonrailroad enterprises without prior approval of the Secretary based on the same findings required in paragraph (h)(2). This provision is designed to keep railroads in the transportation business and to avoid the siphoning-off of revenues and assets into businesses, such as real estate investments, not related to the performance of common carrier railroad service.

For the purposes of paragraphs (h) (2) and (3), it left to the discretion of the Secretary to determine what, in the case of each particular obligor, constitutes inability to provide improved car service.

Paragraph (h)(4) is directed toward improved utilization and requires obligors granted equipment obligation guarantees to cooperate with the Secretary in programs pursuant to Title III to improve utilization.

Subsection (i) authorizes and directs the Secretary to commence an action to enjoin any activity in violation of the conditions specified in subsection (h) of this section. In addition, any person who knowingly violates or contributes to the violation of any of the conditions specified in such subsection shall be subject to a civil penalty not to exceed $10,000. By permitting the Secretary to enforce the conditions, no action need be taken, such as suspension of guarantees, which would contribute to the problem thought to be alleviated by this measure.

(2) TO INCREASE ROLLING STOCK UTILIZATION

The bill provides for the following action to improve car utilization:

(1) Establishment of a national computerized rolling stock information system including a centrally located national rolling stock information center to give timely information on location and other factors relating to rolling stock (Section 301);

(2) Development and quarterly publishing of an index of freight car utilization by the Secretary of Transportation with his analysis of changes in utilization (Section 302);

(3) Quarterly reports by the Interstate Commerce Commission and analysis of utilization (Section 302);

(4) A two year study by the Secretary of Transportation on ways to improve freight car utilization and a report by the Secretary containing legislative recommendations (Section 302); and

(5) A mandate to the Secretary of Transportation to take action under provisions of existing law (and also under Section 202(h)(4) which requires companies for which obligations have been insured to cooperate with the Secretary to improve utilization) (Section 302). Equally important measures to improve utilization are the provisions authorizing the guarantee of obligations entered into to finance the acquisition of equipment or facilities necessary to improve the utilization of rolling stock. The establishment of the Railroad Equipment Corporation, if necessary, is also an action to improve utilization since it is expected that the Corporation will be able to utilize cars more efficiently than railroads presently do. The possibility that the Corporation may be established in the absence of improved utilization by roalroads is a spur to the industry to improve utilization.

The variety of provisions to improve utilization emphasizes the importance of improved utilization as a factor in solution of the freight car problem. Without efforts to improve utilization and concomitant improve in quality and reliability of rail service, no measure can hope to provide any sort of lasting remedy for freight car shortages. Simply to pump increased investment into enlarging a freight car fleet that is as poorly used as is the existing fleet would be a waste of money. Improved utilization must be regarded as an important element of this bill and a necessary condition for any form of financial assistance.

National rolling stock information system.—The first step toward system-wide improved utilization is to bring about establishment of a nationwide computerized rolling stock information system. With an appropriate system that furnishes information about the physical characteristics of all cars in the general service fleet and timely reports of their location and status, progress should be made toward more effective movement of empty cars to the location of loads. Further, such a system should furnish information about car movement that is essential for improved coordination of the operations of the individual railroads. It should permit more accurate estimates of delivery

time and quicker tracing of cars—and more importantly, shippers' loads—that have gone astray. In addition, such a system should provide historical information for analyses showing bottlenecks and other trouble spots in the rail system and quantification of the cost of such disruptions. These analyses would make possible more accurate evaluation of alternatives to improve the service of the rail system. Historical data should also be used for national rolling stock demand and supply forecasts which would identify regional and seasonal freight car needs and facilitate action to meet such demands. Finally, such a system should be a channel of communication between the railroads on a number of matters and, as such, facilitate coordination of their operations.

Of course, mere establishment of a car information system will not improve utilization. It is only a tool that must be used if it is to have the desired effect. It is expected that the rail industry, already considering such a system, will move toward its rapid establishment and operation with the technical and financial assistance and leadership by the Secretary of Transportation that is provided in the bill. It is further expected that a national rolling stock information system must be effectively used if there is to be suffciently improved utilization to forestall establishment of the Railroad Equipment Corporation. Finally, if the industry does not establish such a system with the assistance provided in the bill, the Railroad Equipment Corporation is empowered to establish it (Sec. 406).

Section 301 does not envision an enormously complicated and expensive system. Computer and communications systems of varying capacity and function currently exist on a very substantial portion of the railroads. The immediate task is to link together these existing systems so that a national system is established. This can and should be done quickly and should result in immediate rail service improvement, for example, better tracing of lost cars and more efficient distribution of empty cars. Of course, although the initial national system may be simple and quickly accomplished, the national plan designated by the Secretary to provide this initial national system should be a foundation for a more sophisticated system and be capable of expansion over the course of time at the most technically and economically feasible rate. At this time, however, it is more important to bring an adequate initial national car information system into existence quickly than to take the time necessary to develop and construct a sophisticated system that fully exploits the highest technology available, as long as the national plan designated by the Secretary shall be capable of eventually fully exploiting the highest technology now available.

Each stage in the development of the system should be designed to insure that in the future the most sophisticated system practicable may be built upon the prior foundation established to meet the most immediate needs for better car utilization information.

Section 301(f) provides a total authorization of $10 million for the development of a national rolling stock information system. It is important that the efforts of the Secretary in this area result in the installation and use of a national information system by the railroads and not merely in the writing of another report that will never be implemented. However, it is expected the authorization will be rationed out as seed money, funds to be utilized where private funding is not available to insure the success of the system. Regulations issued by the Secretary to cause the implementation of the system should be designed to force maximum use of available private money. Since the railroads as well as the public would profit from the increased utilization of rolling stock, the industry has a public obligation to make the investment necessary to increase utilization. Since the bill would make additional funds available for this purpose through its loan guarantee provisions, direct Federal subsidization of a car information system should be largely unnecessary.

Section 301(a) authorizes the Secretary to designate a plan to establish a national rolling stock information system in close cooperation with shippers, railroads, information system experts, the Interstate Commerce Commission and other qualified individuals. Since the system must be used by the rail industry to be effective, Section 301(a) contemplates use of and interconnection with existing and future information systems installed by individual railroads, as appropriate, and, therefore, authorizes the Secretary to contract with individual railroads and with formal or informal groups of railroads to establish such a national system. In addition to contracting with railroads, the Secretary, under existing law, has sufficient authority to enter into contracts with others for design and development work on the system.

The Secretary would be authorized to designate a plan for a national system and to cause its implementation rather than simply to make recommendations to the rail industry concerning its design and development. This authority was granted so that the Secretary would exercise leadership and bring together different viewpoints in this sometimes divided industry. It is expected that the Secretary will consult regularly with railroads, shippers, the Interstate Commerce Commission and other parties during the design and implementation of the system. Such consultation will be important, not only to develop a practical and useful design, but also to insure its acceptance and use.

Section 301(a) also sets forth certain types of information that a car information system must be capable of furnishing to insure the expeditious utilization of rolling stock such as physical characteristics of rolling stock, and its origin, destination, location, availability for future loadings. The Secretary may also require other types of information to be furnished such as loaded or empty status. The types of information specifically listed are important and should not be deleted from the system's capability. They are basic building blocks of information that can be assembled in different ways to provide a complete picture of rolling stock movement. Perhaps not all of such information may be completely used in the initial stages of the system, but it is vital to the system's future expansion that it have the capability to furnish such information. If such capability is not included in the original system, it will be more costly later to remodel the system to accommodate it.

General terms are used to indicate the type of information to be included in the system. The Secretary is left discretion to specify in greater detail the nature of that information. For example, "location" may initially only refer to a car's location within an appropriate region and on a particular railroad. It may later be refined to give more precise position. As another example, "anticipated future commitments" is a prediction of time and place of future availability of the car. The Secretary may establish criteria for such prediction based on the reliability of the railroads' scheduled delivery time as well as on estimates of shippers' release of empty cars.

Index, studies and use of existing law to improve utilization.—The provisions of Title III have two purposes: to increase scientific, reliable data on utilization, and the availability of such data, and to make sure that existing law is used to its fullest extent to improve utilization. To this end the Secretary of Transportation is directed to develop and publish an index measuring the degree of utilization of freight cars and to issue quarterly reports on changes in utilization. The Interstate Commerce Commission is directed also to publish reports on utilization and to consider the Secretary's latest report. These independent, but related, reports should provide Government and industry with the views of the Secretary, who is charged with development of a national rolling stock information system, and with the views of the Commission, the regulating body. In addition, the Secretary is directed to make a two-year study of utilization and to present recommendations for legislation. While the studies and reports required of the Secretary and the Commission under this Title are distinct from the findings set forth in section 401 that would forestall establishment of the Railroad Equipment Corporation, it is, of course, anticipated that the background and information developed as a result of Title III reports and studies will be useful with regard to such findings. Finally section 302 directs the Secretary to make use of existing law to improve utilization, for example, by initiating proceedings before the Interstate Commerce Commission. Furthermore, section 202(h)(4) requires companies that have received obligation insurance to agree to cooperate with the Secretary in programs to improve utilization pursuant to Title III.

Improved cooperation and coordination of operations.—As noted above, this bill is designed to give the industry necessary financial assistance (within limitations to protect the public's interests), technical assistance, latitude for innovation and reasonable time to solve the freight car problem. It is expected that there will be increased cooperation between members of the industry and that some of their differences will be put aside in order to achieve the common goal of better performance by the entire rail system. It is expected that the industry will move quickly toward establishment and effective use of a national car information system and that individual railroads will, as necessary, upgrade and improve their individual computer systems so that accurate information can be fed into the national system in a timely manner. It is expected that the industry will experiment with techniques such as car-pooling for improved management of their freight car fleet. It is expected that the industry will develop means of measuring and responding to the national demand for cars of various types. Finally, it is expected that the industry will search out and implement methods for improving the quality and reliability of rail service.

(3) RAILROAD EQUIPMENT CORPORATION

If the railroad industry fails to solve the freight car shortage problem within 2½ years and there has not been established a private, not for profit car pooling company, even with the financial-technical assistance provided by Titles II and III, incorporation of the Railroad Equipment Corporation is authorized by section 402 if the incorporation is approved by a concurrent resolution of Congress (Sec. 401). Whether or not there is a private car pooling company in existence, if, at the end of 7½ years, the rail industry fails to solve the freight car problem, the corporation would come into existence upon a concurrent resolution by Congress. The Corporation would have the power to acquire rolling stock (its obligations would be backed by Federal guarantees up to $1 billion) and to operate such rolling stock as a pool. It would be directed to employ innovative concepts for the equitable distribution and efficient and expeditious use of such rolling stock.

The Corporation would not control a large part of the Nation's freight cars. A $1 billion investment in rolling stock would result in acquisition of between 50,000 and 75,000 freight cars, only about 4% or 5% of the

number of cars in the present railroad fleet. In essence, the Corporation would demonstrate the effectiveness of car-pooling and other ideas for improved freight car utilization. It would serve as a yardstick against which to measure the performance of the railroads' car utilization.

Being independent of the rail industry, the Corporation would bring a fresh point of view for efficient management and utilization of rolling stock. It would be removed from the separate proprietary interests that confine the actions of the individual railroads and often place them in contention with one another to the detriment of system users. Having the entire Nation as the scope of its operation, the corporation would see its tasks from the viewpoint of the entire rail system. It would be able to monitor the movement of its cars no matter what railroad they are located on. Not being limited by artificial railroad boundaries, it would be better able to match empty cars with loads. It could deal more effectively than the industry with the accumulation of its empty cars in the East by ordering their return directly to location of loads in other regions of the country. It need not be concerned with returning its cars to a "home road."

If the Corporation is established, it will be vested with the public interest and will therefore have a special obligation to meet the interests of shippers, including the small shipper, and consumers. Its board of directors will be appointed by the President and will be drawn from the full range of those affected by the freight car problem (shippers, railroads, consumers and labor) and will also have a computer systems expert (Sec. 402). In the event of conversion of the Corporation to private ownership and management, provision is made for continued public appointment of three directors to represent the public interest in the decisions and policies of the Corporation.

The Corporation is intended to be a seedbed for the development of new ideas and new techniques for the provision and distribution of rail equipment. The Corporation should make the use of rolling stock more flexible and responsive to the seasonal and economic needs of all shippers. It is expected that the Corporation will encourage innovation in the relative roles of railroads and shippers and may furnish cars directly to shippers at their request.

There may well be the initiative in the private sector needed to bring forward other innovative concepts to meet the problems for which this legislation is designed. Establishment of the Corporation is not intended to prevent or inhibit such private initiative.

Some may object to the Corporation as being one more body in the proliferation of government agencies. However, the Corporation can not come into being unless industry fails to remedy the long-standing freight car problem. This bill makes available to industry all of the assistance it can reasonably seek from the Government and time to put its house in order. If it does not, there will be no alternative to direct Government action to alleviate the problem.

The bill would also provide means for conversion of the Corporation from Government ownership and control to private ownership and control as soon as is practicable (Sec. 405). Thus, once the Corporation demonstrates the viability of its approach and its value to the Nation's rail system, it can be moved out of the Government and into the private sector by sale of its stock on the public market and repayment of the Government's investment. Experience with conversion of the Federal National Mortgage Association, Federal Land Banks, Production Credit Associations Banks for Cooperatives and others demonstrates the feasibility and value of this approach. If the Corporation is established, it is anticipated that it would be speedily converted to the private sector.

The rail industry, as is to be expected, opposes establishment of the Corporation because it would mean some loss of the industry's dominance of car service. However, creation of the Corporation means that the industry has not solved by itself a problem of vital concern for the public. The concerns of the industry should not be placed before the interests of the public.

Establishment of the Corporation should not be equated to nationalization of the railroads. The Corporation would not replace any railroad or assume the functions of a railroad. Its fleet would be very small in comparison to the size of the railroad fleet—4% to 5%. It would rely on the railroads for movement of its cars. The Corporation would be a car furnishing company, similar in many respects to existing independent car lines. To be sure, the Corporation would bring an increased measure of Government presence to the industry. But this degree of Government presence is much less than will be required in the long-run if action is not taken now to remedy the freight car problem and to bring about generally improved service by the industry. Further, means are provided to terminate Government control of the Corporation by selling its stock to the public and converting it to a private corporation.

The Railroad Equipment Corporation is the strongest inducement for industry action.—The provision of section 401 that the Corporation may come into existence upon findings that the freight car shortage problem has not been solved is vital to accomplishment of the objectives of the bill. Without this provision there will be no incentive for the rail industry to take necessary, and long-neglected, action to remedy the freight car problem. Past experience shows that the industry will not take such action voluntarily. The industry's failure is understandable, because of each railroad's proprietary vantage point. However, the industry must be given a powerful reason for taking action broader in scope than the direct business interest of the individual railroad.

The hope is that the industry will take the necessary action by itself in order to avoid imposition of a solution by the Government. If that possibility is not sufficient inducement, then there is no alternative and some form of direct Government action will be necessary.

In order to provide a strong incentive, it must be certain that the Corporation may be established unless the freight car problem is solved by industry. However, the Railroad Equipment Corporation would not be established until the railroad industry had a reasonable period of time to solve the freight car shortage problem. In recognition of the different circumstances that may then prevail, section 401, in addition to the prerequisite findings by the Interstate Commerce Commission and the Secretary of Transportation regarding the continuing shortage and underutilization of rolling stock, requires an affirmative concurrent resolution by the Congress then in session to authorize establishment of the Corporation.

Mr. MAGNUSON. Mr. President, I believe that the Commerce Committee has fashioned a very unique instrument for combatting a problem as old as railroading. I propose that the Congress put that instrument into action.

Mr. President, I am sure that the people of my home State will applaud this action, because it affects not only our wheat growers, but our lumber industry, and I might say for the RECORD, too, that the lumber industry is still the single largest shipper for ordinary freight cars there is in the United States.

Mr. HARTKE. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. MAGNUSON. Mr. President, the statement which I have just placed in the RECORD gives a long history of the bill and what I consider to be very sensible action on the part of the Commerce Committee.

Mr. HARTKE. Mr. President, the leadership of the chairman of the Commerce Committee has always produced legislation in the best interests of the Nation. I want to thank him for his kind words and to compliment him on his leadership in this and in so many other fields which have been of material benefit in the field of transportation.

Now, Mr. President, I submit a series of technical clarifying amendments to S. 1149 and ask unanimous consent that they be considered and agreed to en bloc. These amendments will help achieve the purposes of the bill and will clarify some confusion caused by the language remaining in the bill from earlier drafts which was unnoticed during the committee markup.

The PRESIDING OFFICER (Mr. CLARK). Without objection, the amendments are considered and agreed to en bloc.

The amendments considered and agreed to en bloc are as follows:

S. 1149

On page 53, line 1: strike the number "50" and insert the number "80".

On page 53, line 4, strike the number "80" and insert the number "95".

On page 53, line 6, strike the words "the applicant" and insert the words "an applicant railroad".

On page 53, line 10, following the words "applicant" insert the word "railroad".

On page 76, lines 16–18, delete the words: "employee retirement, annuity, and unemployment systems, and other dealings with employees;" and insert the words: "and other dealings with employees, and the Railroad Retirement Unemployment Insurance Act with respect to employee retirement, annuity and unemployment systems;".

On page 102, lines 17–23, delete the following: "Health and safety standards promulgated by the Secretary of Labor Pursuant to section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) shall be applicable to all construction work performed under such contracts or agreements, except any construction work performed by a railroad employee."

Mr. HARTKE. Mr. President, I have no further comments to make.

Mr. PEARSON. Mr. President, I am ready to vote.

Mr. HARTKE. Mr. President, I yield back the remainder of my time.

Mr. PEARSON. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute as amended.

The committee amendment in the nature of a substitute as amended was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I speak in support of S. 1149, the Rolling Stock Utilization and Financing Act of 1973. This legislation is needed, in my judgment, because of our country's expanding economy, because of the burden that is being placed upon its energy reserves, because of environmental con-

cerns, and, most importantly, because of the importance of strengthening and reemphasizing the vital role which the Nation's railroads play in meeting our Nation's overall transportation and security needs.

The objective of this bill is to assist the railroad industry in providing the number of general service freight cars needed to adequately serve the U.S. economy, to improve the utilization of those cars, to upgrade coordination of railroad operations, and to provide a means for meeting the demands of the future.

The bill provides for the creation of a guarantee fund to insure obligations incurred for the acquisition of rolling stock, equipment, and facilities. It provides for Federal efforts to improve the utilization of rolling stock through technical and financial assistance for the development of a computerized car information system and a national car information center; through establishment of an index measuring freight car utilization; through a Department of Transportation study of ways to improve utilization; and through action by the Department under existing law to improve utilization.

The bill also provides, in the event the private sector does not act affirmatively and adequately to obtain the number of freight cars needed and to improve utilization of the freight car fleet, that direct Government action may be taken by concurrent resolution of Congress to establish a railroad equipment corporation that would acquire and manage a pool of rolling stock and develop a national rolling stock information system.

The main thrust of this bill, Mr. President, is to encourage the railroad industry itself to act to solve its problem. Its major purpose is to supply incentive to the segmented railroad systems of our country to work together in a more effective way to give shippers the cars they need when they need them and to deliver and return those cars to other points of need with better dispatch.

The freight car shortage has been a perennial problem. It has plagued industrial, agricultural, coal mining, and other bulk product shippers for more years than anyone can remember. Written accounts of the early development of coal mining in my State of West Virginia list car shortages as one of the earliest headaches with which the coal industry had to deal. It is a headache that has continued to this day. Over the years it has not been uncommon to find that mines could not work because there were no cars in which to ship the coal. In recent months, I am informed, the car situation has continued to be spotty or bad in a number of coal mining localities.

In may 1971, Mr. Carl E. Bagge, president of the National Coal Association, in testimony before the Senate Special Subcommittee on Freight Car Shortages, said that—

> There was then an immediate need for appropriate legislation to provide rail haulage equipment to move coal from the mines to consumers. . . . We cannot overemphasize this need for additional equipment. The present fleet is wholly inadequate to move current coal production, and we therefore strongly support legislation which will help overcome the deficiency in car supply.

Mr. Bagge then cited a resolution adoped by the National Coal Association's board of directors, which contained these words:

> The Administration, and the Congress, should do whatever is necessary to restore the ability of the railroads of this country to transport to the consumers the coal which is essential to provide the great quantities of electric power which are and will be required to maintain a dynamic and independent economy.

All of our economy, of course, and not the coal industry alone, is affected by the shortage of railroad cars, which is actually growing worse as time goes on. In 1971, the Department of Transportation forecast a one-third increase in rail freight transportation between 1971 and 1980, and said that the installation of 617,000 cars of 80-ton capacity would be needed to meet the demand.

It should be noted that class I railroad ownership of cars declined overall from 1,702,016 cars in 1961 to 1,464,613 cars in 1971. This occurred while traffic was increasing by something like 35 percent. The decline in the number of cars is most noticeable in general service cars, such as hoppers, gondolas, and boxcars. The total number of serviceable open-top hopper cars owned by all class I railroads declined from 411,857 units on January 1, 1963, to 373,509 on January 1, 1971.

In 1972, U.S. railroads hauled more than 780 billion ton-miles of revenue traffic, the greatest in history, and many persons apparently were lulled by the fact that car shortages were relatively moderate. But for the first 6 months of this year the car shortages have been the worst in history—for example, an average daily shortage of 33,165 cars in the week ending May 12, 1973, according to the committee report on this bill—attributable to the fact that traffic volume this year is 19 percent above the record year of 1972.

There are many more statistics that could be cited, but these, I believe, will serve to underscore the fact that there is a real and pressing need for more cars.

But as important as is the matter of providing additional rolling stock, equally important is the matter of bringing about better utilization of rolling stock. It may come as a shock to many persons, but the average railroad car moves with a load only 7 percent of the time and only 32 miles a day. The rest of the time the average car is moving empty, is standing in a railroad yard, is on a spur to be loaded or unloaded, or is out of service for repairs. The utilization figures for American railroads are woefully bad.

Modern technology can help to remedy that situation. The more progressive roads have installed their own computerized systems to keep track of their cars. But what is needed is an industry-wide, nationwide computer system linking all railroads. Most railroad cars move from one railroad to another and even across the continent. Their owner may not know where they are. One road may use another road's cars for months without returning them, even though the owning railroad may have need of its cars.

There are Interstate Commerce Commission rules which are supposed to regulate this situation, but either they do not work as they should or they are not enforced. What should be set up is a central agency to keep up with, and direct the use of, the Nation's entire fleet of railroad cars. It makes little sense for cars which may be needed by one railroad in West Virginia to be left standing idle on another railroad's sidetrack in Ohio or Pennsylvania. Yet, that is what happens because of the industry's segmentation, fragmentation, and tradition of competition rather than cooperation.

It is to be hoped that, if this bill passes—and it should pass—its incentives will be great enough to induce railroads to work more closely with one another, and to seek the swift establishment of an effective computerized national car-pooling system which will substantially increase railroad car utilization.

The Committee on Commerce, which has reported this bill, emphasizes that if the railroads themselves do not act positively to improve the car situation, then—and only then—would the Government move, through congressional action, to set up the railroad equipment corporation which this measure provides. And even if that were to become necessary, the eventual aim would be to convert the corporation to private ownership and operation as quickly as possible. The whole objective of this bill is to provide the incentive and the means for the railroads to cure the car shortage themselves and thereby improve their service to the public, their own operations, and bolster their proprietary interest and profits at the same time.

Railroads can move more freight longer distances at less cost than can any other transportation system except water—thereby helping to conserve energy at a time of energy crisis. They can move freight with relatively little pollution—thus serving our national environmental objectives. They offer the only practical way to move in bulk the coal upon which our Nation must surely increasingly depend in the future. And in America's dynamic and expanding economy, our Nation's rail network is the one transportation system—a system already fully in being—that continues to be underutilized.

S. 1149 can help to remedy that underutilization. It can help in our energy crisis and in the efforts to preserve our environment. The overall impact of this bill, in my judgment, can be beneficial to the U.S. economy as a whole.

Mr. CLARK. Mr. President, every day, more and more people in this country seem to be talking about agriculture. They are talking about it and learning about it. That new awareness is welcome, even though it has some unpleasant beginnings—like phase III and IV, the Soviet wheat deal, the balance of payments, higher food prices, and real food shortages. Neither the consumer nor the international economist can take agriculture for granted. They cannot afford

to, and as a result, they are beginning to ask questions about agriculture and food, how it gets from the field to the table now, and how it ought to get there.

The bill before the Senate today, S. 1149, the Rolling Stock Utilization and Financing Act of 1973, holds part of the answer. The legislation recognizes the critical shortage of railroad freight cars in this country, and it outlines a plan to do something about it. The premise is not difficult to understand. Transportation and agriculture are inseparable. All the corn and wheat and feed grain in the world will be worth very little if it cannot be moved from the field to the market. Higher prices and serious shortages will be assured if there are not enough railroad cars to move food to the dining room table. And, all the potential that agriculture holds to improve this country's international economic position will be wasted if agricultural products are stranded in the Midwest.

Right now, the shortage of railroad freight cars is one of the most difficult and serious problems in Iowa. But tragically, it is really nothing new. Farmers, shippers, processors, and warehousemen have been living with it for years. As the distinguished chairman of the Senate Commerce Committee, WARREN MAGNUSON, has recalled, the boxcar shortage was the topic of the committee's agenda when he first joined it, and that was 28 years ago.

Under normal circumstances, the railroad system was usually able to just get by, but circumstances have not been very normal over the last few years. The Soviet wheat deal brought with it the need to transport a 2-year supply of grain in less than a year. As the demand for feed grains increased, so did the demand for railroad cars to transport it. But the supply of feed grain has long since surpassed the supply of railroad cars, and as higher grocery prices are demonstrating, one is not much good without the other.

Earlier this year, the Senate passed Senate Resolution No. 59 in an effort to relieve the transportation knot. The resolution urged a moratorium on the disposal of Government-held wheat and corn, a policy that was only compounding the boxcar shortage. Unfortunately, the Department of Agriculture chose to disregard it.

While the farmers of Iowa and the Nation have steadily increased their productivity, the railroads have not. Since World War II, the production of railroad box cars has decreased. There were more than half a million cars in operation in 1960, but now there are less than half that many.

This legislation is an attempt to turn that situation around. It provides for an obligation guarantee fund for rolling stock that should generate more freight cars to handle the Nation's farm production. Another provision of S. 1149 would improve the effectiveness of the rolling stock now in operation. Right now, the "system" of rail transportation is more a patchwork than a coordinated network. This legislation would help the railroad industry step into the computer age, and the impact would be felt from the farm to the grocery store to the seaport.

The need for this kind of legislation is undisputed. In Houston not long ago, 719 freight cars were unloaded onto waiting ships in 1 day. That same day, more than 2,400 freight cars were waiting in line to be unloaded. Dr. Phillip Baumel and Robert Wisner of Iowa State University have reported a similar challenge in Iowa—this summer, grain elevator operators will be trying to move grain to market, but as things stand now, total transport network will not be able to handle about 50 million bushels of Iowa's product.

Everyone has predicted that the full harvest will be bountiful, and that is encouraging news. But a record harvest rapidly loses its value if it cannot be shipped to the marketplace. With that in mind, this legislation makes commonsense. It deserves the support and the approval of the Congress.

THE FREIGHT CAR SHORTAGE

Mr. PACKWOOD. Mr. President, I rise today to support S. 1149.

The whole problem of the continuing and growing shortage of freight cars, and specifically of general-purpose boxcars, has been one of the most extensively examined of any in my memory. It has ramifications not only throughout the Nation's transportation system but also throughout the entire economy.

In point of fact, a severe car shortage in the years 1903, 1904, 1905, and 1906 led to the creation of th Oregon Railroad Commission. I really find it hard to believe that here we are, 70 years later, discussing the same problem. And we haven't yet been able to solve it, although we certainly have tried to talk or study it to death.

I admit that I am not entirely convinced that the present bill, S. 1149, will solve it either. But my frustration level has reached a point at which I am prepared to support any reasonable measure that will produce some forward motion.

I am not enamored of creating yet another quasi-governmental agency. I hate to believe that we can't solve this problem without interposing the Government between the shippers and the railroads. But the fact remains that we have listened to promises for 70 years, and I don't believe that we can afford any more vague promises of relief being just around the corner.

In the course of investigating this problem, I have talked with and heard from both shippers and railroad personnel who are affected by it in Oregon. I also understand and appreciate the problems being faced by the grain shippers and granger lines of the Middle West. The difficulties and dislocations they have suffered, largely as a result of the huge grain shipments to the Soviet Union, are monumental. And the very problems that they have faced have had severe side effects in my State.

Mr. President, I would like at this time to ask unanimous consent that an editorial from the Roseburg News-Review be printed at this point in the RECORD as it reflects some valuable thinking on the problems that this car shortage is causing shippers in that area.

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

CHARLEY COMMENTS: SOLUTION PROPOSED TO LUMBER CRISIS

(By Charles V. Stanton)

I'd like to believe that the sage (?) advice offered in this column from time to time would echo in the halls of the Congress. I would like, too, to think that heads of our federal administration would read my "Comments." Surely the country's problems could be solved immediately! But I have no such belief.

Currently our national administration is expressing concern because of high lumber prices. The Congress is debating log shipments to Japan. Increased lumber production is authorized as one way in which to bring down the cost of building homes.

Why all this debate? Why all this jawboning about the cost of housing?

If the federal government wants to know how to get more lumber on the market; how to promote lower prices through retail competiton, the answer is obvious, I believe.

The aims and desires of the "Hill" could be solved in 48 hours.

How?

Just get us some freight cars!

LUMBER STOCKPILED

Increasing lumber manufacture, in my opinion, isn't the answer. Here in the Pacific Northwest we have great surplus stores of lumber and plywood. Probably we could supply, from our stockpiles, by far enough material to give the building industry, all the lumber and plywood it needs.

Our mills are facing curtailment of production simply because they've run out of room in which to store their output until they can get railroad cars.

If Washington is so "riled up" about lumber shortages, let our august solons devise a way to transport our great surplus to market.

Instead of adding to the glut, why not give a little thought and energy to shipping lumber instead—or in concert with—agricultural products to which cars now are being assigned?

What good is increasing production when the finished product can't be delivered to market?

PROBLEM IS MUDDLED

It seems to me Washington's knowledge of the timber industry, at least here in the Pacific Northwest, is lacking in many respects.

Too, it is difficult to understand some of the proposals and actual decisions emanating from the National Capital.

Lumber, according to the President, is a vital commodity in national economy. The Administration orders an 18 per cent increase in the allowable cut. That will mean more board feet of timber will be made available from federally managed forests to the sawmills of the Northwest.

Bringing the volume from the National Forests and the timber lands managed by the BLM up to the allowable cut permitted under the sustained yield program ordered by the Congress is fine. Right now, however, we're cutting all the timber available with the existing road system.

If we're to cut more timber, and still keep within the amount we're supposed to take out, we'll need a vast increase in mileage of access roads.

But the administration's "economy" policy prohibits any extensive road building program on federal lands.

PLANTING ESSENTIAL

While ordering the Forest Service and BLM to make more stumpage available, the ad-

ministration has knocked more than $100 million off the budget the Forest Service says it must have just to carry on the existing burden. How then is the Forest Service to meet the expense of adding sufficient numbers of employes to ready timber sales for contract, prepare environmental reports, do all the essential paper work, etc.

Nor is money to be available to replant acreage to be denuded by cutting more timber than previously contemplated.

It requires from 50 to 150 years to grow a Douglas fir tree from seedling to merchantable size. The time varies according to location.

If we're to cut our timber on a sustained yield program, it is vitally necessary that we replant logged off lands as quickly as possible.

So we have the present policy of increasing the cut, yet denying money for roads to get at uncut timber, reducing the budget below the point where manpower needed for an extended program is lacking, failing to provide for reforestation.

And all that when the solution is simply getting some way for transportation of the stored surplus!

Some wisdom!

Mr. PACKWOOD. Mr. President, I believe firmly that the railroads that serve Oregon are trying hard to do a good job. Southern Pacific, for instance, which is the principal line serving Oregon, has spent approximately $300 million for capital expenditures in the last year. This figure represents nearly 25 percent of the total spent by the entire industry—and Southern Pacific, although one of the most profitably run railroads of our Nation, is far and away from being the largest. Southern Pacific has also been a leader in buying new and rebuilt cars—last year its effort was about 25 percent of the total of the railroad industry.

The problems facing Oregon shippers today—and yesterday, and tomorrow—do not stem from the inability of the rail lines serving Oregon to provide sufficient equipment for our shippers. They stem in part from the simple fact that boxcars built for Oregon and other northwestern shippers are sitting on somebody else's tracks. A great deal of noise has been made about the fact that it is far cheaper to pay the very low per diem rates charged for using another line's cars than it is to build your own cars. A number of people have tried to get these per diem rates raised to a reasonable level. They have hit nothing but a stone wall. Between the ICC and some of the eastern lines I do not hold out much hope that we can alleviate our difficulties this way.

As many have pointed out, we are dealing with a two-pronged problem. The first is the physical shortage of general purpose boxcars. We have but to look at the declining numbers of general purpose boxcars available today compared to a few years ago. For example, in 1956 there were 720,000 cars in the national fleet. Today there are about 550,000. The projection for 1979 is even worse—only 460,000 cars. Many try to claim that because of increased capacity and utilization factors this decline is more apparent than real. I hope they don't try selling that story to the lumber and plywood shippers in Portland and Roseburg and Eugene—because those men are not going to buy it.

We may have enough boxcars in the national fleet to handle normal requirements—whatever that may be—but it is obvious that we cannot cope with a crisis. Normal levels simply will not bend to accommodate the movement of large grain harvests or the increased lumber demanded by a booming housing market, let alone the kind of crunch created by massive grain shipments abroad. And let us not kid ourselves that the grain exports to the Soviet Union are a one-shot deal. More grain is bound to be shipped abroad in coming years, and we must have a transportation system that can cope with periodically increased loads.

It would not solve our difficulties just to deal with the first half of this problem by building more boxcars, however. We must simultaneously improve the utilization of the existing boxcar fleet. I think that some of the railroads have made real strides in this direction, particularly in the use of computers to provide up-to-the-minute information on the status of cars and loads. A great deal more needs to be done, however, and I believe that S. 1149 has addressed itself to this problem. I strongly urge that particular attention continue to be focused on this aspect of the current crisis.

My State ships four or five loaded boxcars eastward for every one that it receives with a load. This is not news, it has been this way for years, and it is a major cause of our troubles. But I suggest to you that Oregon lumber and wood products are vital to the homebuilding and construction industries of this Nation. They are a keystone of our economy and in consequence there must be a solution to provide Oregon shippers with a means to get their lumber to market.

There are many reasons that the prices of lumber and other wood products are so high. My legislation, S. 1033, to control the export of timber from the United States, is one critically important approach to solving this problem.

I suggest to you, however, that improving rail service to and from Oregon and other western lumber-producing States is another. I was told only a few weeks ago about a shipper in Roseburg, Oreg., who had 80 carloads of lumber ready to be shipped. He received exactly one boxcar. One boxcar, Mr. President. It is painfully apparent that it does not do eastern and middlewestern homebuilders, construction companies, or do-it-yourself consumers any good to have 80 carloads of lumber sitting in Roseburg, Oreg. waiting for a train that is not going to arrive.

It is costing the shippers, and the railroads, and you and me—any time we want to build just a few shelves in the garage—a lot of money. We must improve the utilization of the cars currently in the boxcar fleet. We must increase the number of general purpose wide-door boxcars available to carry the vitally needed supplies from the producers of the raw materials to the manufacturers and consumers of those materials. Because, if we do not, I can tell you right now that we are going to price our eastern and middlewestern markets right out of sight. If you do not believe me, go down to one of your local lumber suppliers. You will be very lucky if he has any lumber that fits your needs. If he does you will be even luckier if you can afford enough of it to build whatever it was you had in mind.

In consequence, I find myself supporting a bill that has some features about which I am less than enthusiastic. But I have listened to my constituents in Oregon who have lumber to ship—and no way to ship it. I have listened to the consumers in this area who need lumber, but find it priced out of sight and limited in selection. I have listened to representatives of the railroads who are trying their best to cope with a crisis that is beyond the capabilities of their system. Many of those in the railroad business have strong objections to some features of this bill, and I believe that some of their points are well taken. I dislike creating a rolling stock authority and interposing it into an already overregulated industry. But I am sick to death of hearing about this supposedly insoluble problem. I sympathize with that shipper in Roseburg with his 80 carloads of lumber and one boxcar—and I sympathize with the consumer in Fairfax, Va., too.

So I say, Mr. President, that it is now the responsibility of this Congress to take some action that will get the job done. The railroads have promised improvement for years, and some have made good on those promises, but most have not. National data can be cited that shows improvement in utilization and modernization—but looked at more closely it shows that the western railroads are the principal providers.

Mr. President, I can look right out the window of my office to Union Station and I can see where the boxcars built by the western lines are sitting—they are right there under our noses. This is a national problem and is not one that can be solved on a piecemeal basis. None of us wants to see this crisis reach a point at which no solution is possible without all-out Federal intervention.

I believe that the Congress has waited and waited and waited, hoping that this problem would go away. Well, it has not. And it will not. Today it is facing us squarely in the eye and each time we blink it gets worse. We are faced with a difficult problem with unpalatable solutions. I urge you to join with me in supporting this bill, S. 1149. It may not be all things for all the interests involved, but it appears to be the best hope we have to force a solution to this truly critical national problem.

It is my greatest hope that the railroads, the shippers, the consumers, and the Government can sit down together and speak with one voice to propose some other solution. One that will not create another Government agency. One that will keep the Federal Government out of the railroad business. One that will provide the adequate service that every citizen has a right to expect from a nationwide transportation system. But unless we enact this legislation, which has real teeth in it, we run the risk of spending yet another 5 or 10 or even more years talking about the problem. I fear that

if we do not act, if we waste any more precious time, our choices will have banished completely.

Mr. President, I would like to ask unanimous consent that at the close of my remarks a useful summary prepared by the American Plywood Association as a special report entitled "Where Have All the Railcars Gone?" be included in the RECORD.

In closing, I again urge my colleagues to think about this problem and its effects on our Nation. It certainly is not new and it is not very exciting—but it is basic. We must take this step to force progress toward the efficient and profitable use of one of our most valuable national assets, our railroads.

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

WHERE HAVE ALL THE RAILCARS GONE?

The current boxcar shortage is now reaching the intensity of the 1966 crisis—the worst in history. At latest report, the softwood plywood industry in the West is 1,200 cars a week short out of a total of 2,424 cars required.

The problem is particulary acute in the West, but is also being felt throughout the South. Some mills are as much as 75 percent short of their car requirements. One company could not obtain any cars this week. This state of affairs is aggravating a wood products price-supply spiral that was already in effect well before the impact of the current car shortage.

The Interstate Commerce Commission has been notified that the continuing shortage in the Pacific Northwest of wide-door boxcars and flats is seriously affecting the ability of the forest products industry to meet the high demand for wood products, and could result in mill closures if the car supply situation is not alleviated quickly.

THE CAUSE

The cause is plain: not enough railcars to go around in a booming economy. The large volume of Russian grain now moving is the most immediate reason for the shortage, but the roots of the problem go much deeper. The nation faces a persistent, year-in year-out boxcar crisis, underlined by an accelerating decline in car ownership—from 720,000 cars in 1956 to 550,000 today. The alarming projection for 1979 is only 460,000 cars.

It's true that the rail carriers have increased the carrying capacity of their equipment, and that fewer cars have been needed to haul more tonnage. If production were stable year after year, these factors might indicate an adequate car supply outlook. However, the nation's total production based on GNP continues to increase. Even while the railroads are spending about 10½ cents out of every freight revenue dollar on equipment, boxcar availability will continue to decline.

REMEDIAL EFFORTS IN VAIN

Through the efforts of the Association of American Railroads and of most individual lines, continued attempts are being made to alleviate the growing car supply problem.

Increased locomotive horsepower has contributed greater mobility and speed; a greater degree of cooperation between shippers, railroads and governmental authorities has been attained; many roads have accelerated movement of empty cars in expedited train service with the same priority as loaded cars; the Interstate Commerce Commission has issued three service orders designed to keep cars moving; and many other steps have been taken, or are contemplated, including a Senate resolution calling on the President to form a committee for "study of the problem."

But in spite of the best efforts of the A.A.R. and others, the reality of inadequate car supply is with us, and worse may be in store.

Recent Senate hearings focused on a bottleneck of 1,700 railcars and nine ships waiting at one grain port alone.

The Interstate Commerce Commission has the authority to do many things, but in the final analysis they hold more hearings and issue service orders addressed to small portions of the problem. The railroads are faced with more business than they are able to handle—more than they ever thought possible. With seven Eastern roads in a sensitive financial position, the railroad industry is in no shape to even come close to a solution.

DO WE RELY TOO MUCH ON RAIL SHIPMENT?

Once again the softwood plywood industry faces the question: Is there too much dependence on the railroads?

"Clearly, the answer is yes," said APA Transportation Manager Clifford R. Ellenwood. "We may be at the point of realizing that we've too long been accustomed to cheap transportation. A much broader utilization of motor carrier and water transportation is going to be mandatory through this decade, with the inevitability of extra loading costs for vans and generally much higher transportation costs."

Now is the time for an industry movement to have the Jones Act repealed to allow intercoastal water transportation, Ellenwood suggested. "We can make an all-out appeal to Sea-Land to reinstate their intercoastal container service. But most of all we have to recognize that when we've been using the cheapest form of transportation, and part of that transportation has been removed from our use, we can't expect to move the same volume at the same cost."

HOW SEVERE IS THE CURRENT SHORTAGE?

Analysts of the transportation industry agree that the current supply crisis will extend through the summer to perhaps as late as September. The plywood industry can take several positive measures in the short term to help minimize the effects:

1. order only the cars that are actually needed;
2. load cars as quickly as possible;
3. encourage customers to unload as quickly as possible.
4. route shipments over the most direct route.

"Mills can also help by keeping the Association fully informed about their car shortages on a week-to-week basis," said Ellenwood.

APA is also supporting a move to introduce emergency legislation directing the I.C.C. to allow trucking firms to carry plywood through the immediate issuance of temporary permits.

The Plywood Association and others have sent wires to I.C.C. requesting exclusion orders directing the immediate return to wood products producing areas of wide-door and flatcars, empty or unloaded, from all other railroads in the country.

Plywood manufacturers are urged to wire the Interstate Commerce Commission, Washington, D.C., 20423, informing the Commission of their individual needs and concerns.

EFFORTS TO SECURE LONG-TERM RELIEF

While all of these short-term measures are being applied, efforts to obtain long-term relief are continuing.

Later this month, Senator Warren G. Magnuson (D-Wash.) will introduce a bill to help reduce the boxcar shortage through creation of a Government Guarantee Loan Fund for rolling stock purchases, and other measures.

The plywood industry is also calling for repeal of the Jones Act which now prohibits the use of foreign flag vessels at cheaper rates for shipments to the East Coast. Industry committees have taken this position at recent meetings, and are communicating their views on the subject to Congressional leaders.

Through its transportation specialists, the plywood industry will encourage the construction of motor carrier vans and trucks wide enough for flat loading of plywood panels. An 8'7" wide trailer would be ideal for the industry's purposes.

PAPER INDUSTRY STATEMENT

During the past week, APA staff has met with a transportation specialist on the staff of Senator Robert Packwood (R-Ore.), and attended a joint meeting of the Forest Industries Council Transportation Committee and the American Paper Institute Transportation Committee in Washington, D.C., and a meeting of the Western Wood Products Association Traffic Committee in San Francisco. A policy statement for API covering the northeastern railroad problem is now being referred to the solid wood products industry for consideration and support.

The API policy statement calls for a plan to restructure the Eastern railroads into two or more economical, viable and competitive systems, including consolidations of facilities and elimination of uneconomic trackage. It also seeks actions and legislation to provide alternatives to strikes for the resolution of labor disputes during bankruptcy proceedings.

FUTURE PROSPECTS

To sum up, every approach is being tried that can in any way cut through the rail boxcar tangle. Some of the short-term remedial actions now under way should provide at least a measure of relief in the months ahead. On a more long-range basis, the best hope for a solution may be the energetic pursuit of alternative methods of transportation.

Mr. HUMPHREY. Mr. President, this Nation's rural transportation system currently is dangerously inadequate and it is deteriorating.

Farmers, grainhandlers, forest products manufacturers, and other rural businessmen continue to be hurt seriously by a terribly inefficient system for moving their goods to market. While rural citizens bear the immediate costs of rail abandonments, boxcar shortages, and poor farm-to-market roads, the urban consumer suffers the consequences of these deficiencies in the higher prices he or she must pay for the food, fiber, and forest products of rural America. Unless something is done about this problem soon, rural transportation can be expected to get even worse as urban demand for the products of our farms and forests expands.

For this reason, I offered an amendment to the agriculture appropriations bill, when it came before us last month, calling for an intensive study of our rural transportation system and requiring that specific recommendations for improvement be made to Congress. This amendment was approved unanimously by the Senate. I urge the Senate conferees on this bill to do all they can to see that the order for this important study is included in the final bill.

The bill before us today represents a major step in dealing with one of the most serious of our rural transportation problems—the box car and hopper car shortage. I wholeheartedly endorse this legislation and urge all of my colleagues to give it their support.

This Nation continues to suffer from a

serious shortage of box cars and hopper cars. There simply are more things to be carried to market by rail than there are cars available to move them. Even without the massive shipments of grain to the Soviet Union last year, the problem would have been very serious because of expanded world demand for American agricultural commodities and growing domestic requirements for forest products.

Every day I hear from farmers in Minnesota who cannot move their products to market because of railroad car shortages. Grain elevator operators find themselves in a very difficult position with full storage capacity and no freight cars available to ship goods to market. The forest products industry also is in a desperate position because of inadequate freight car availability.

The urgency of the "box car" shortage was highlighted at the National Governors Conference. The Governors singled out this "box car" shortage for special attention at their annual meeting in June. In their report the Governors stated:

> There continues to be a serious crisis in this Nation with respect to the movement of our grain supply. We have historically faced the annual problem of providing sufficient boxcars for the transport of this commodity. The effect of this problem is felt by every farmer, grain elevator operator, and consumer in the Nation.

I completely agree with the Governors. This problem does affect all consumers. Unless our farmers can get their products to market in a timely and orderly manner, the food supply/demand relationship will result in inflationary increases in food prices.

Last Thursday, Secretary Butz announced that there would be no Government set-aside of land in 1974 for feed grains, soybeans, wheat, and cotton, thus freeing up 19 million additional acres for production. Given the trouble farmers are having moving grain, expanding acreage is only a partial solution. If we do not have enough boxcars to move our current grain production, how will we be able to handle the expanded harvest we hope for in the years to come?

Mr. President, title II of the bill before us establishes an Obligation Guarantee Board composed of six members and a chairman appointed by the President with the advice and consent of the Senate. I would hope that at least one of the seven members of the board will be chosen from among those nominated by shippers of agricultural commodities, including forest products, or by organizations of these shippers. It seems only fair that our agriculture and forestry interests, who have been hurt most and longest by the shortage of boxcars, be assured of a voice on the Obligation Guarantee Board.

Mr. President, we must pass the "Rolling Stock Utilization and Financing Act of 1973" today. We must then do all we can to assure that its provisions are carried out as rapidly as possible.

I compliment my good friend Senator MAGNUSON and his colleagues on the Committee on Commerce for developing and reporting this important legislation.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Nevada (Mr. CANNON), the Senator from Alaska (Mr. GRAVEL), the Senator from Minnesota (Mr. HUMPHREY), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Maine (Mr. MUSKIE) are necessarily absent.

I further announce that the Senator from South Dakota (Mr. ABOUREZK) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STEVENS) is absent because of illness.

I further announce that, if present and voting, the Senator from South Dakota (Mr. ABOUREZK), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from South Dakota (Mr. MCGOVERN) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from New Hampshire (Mr. COTTON) is absent because of illness.

The Senator from Colorado (Mr. DOMINICK) and the Senator from Ohio (Mr. TAFT) are necessarily absent.

The Senator from Nebraska (Mr. HRUSKA) and the Senator from New York (Mr. JAVITS) are absent on official business.

The Senator from New Mexico (Mr. DOMINICI) is detained on official business, and, if present and voting, would vote "yea."

The result was announced—yeas 80, nays 6, as follows:

[No. 315 Leg.]

YEAS—80

Aiken	Fulbright	Nelson
Allen	Griffin	Nunn
Baker	Gurney	Packwood
Bartlett	Hansen	Pastore
Bayh	Hart	Pearson
Beall	Hartke	Pell
Bellmon	Haskell	Percy
Bennett	Hatfield	Proxmire
Bible	Hathaway	Randolph
Biden	Hollings	Ribicoff
Brock	Huddleston	Roth
Brooke	Hughes	Saxbe
Burdick	Inouye	Schweiker
Byrd, Robert C.	Jackson	Scott, Pa.
Case	Johnston	Sparkman
Chiles	Kennedy	Stafford
Church	Long	Stevens
Clark	Magnuson	Stevenson
Cook	Mansfield	Symington
Cranston	Mathias	Talmadge
Curtis	McClellan	Thurmond
Dole	McGee	Tower
Eagleton	McIntyre	Tunney
Eastland	Metcalf	Weicker
Ervin	Mondale	Williams
Fannin	Montoya	Young
Fong	Moss	

NAYS—6

Buckley	Goldwater	Scott, Va.
Byrd, Harry F., Jr.	Helms	
	McClure	

NOT VOTING—14

Abourezk	Dominick	McGovern
Bentsen	Gravel	Muskie
Cannon	Hruska	Stennis
Cotton	Humphrey	Taft
Domenici	Javits	

So the bill (S. 1149) was passed, as follows:

S. 1149

An act to promote commerce and to meet the need of consumers of goods and products by increasing availability of railroad rolling stock and equipment through improved utilization techniques and financial guarantees for new acquisitions, and for other purposes.

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

TITLE I—FORMAL PROVISIONS

SHORT TITLE AND TABLE OF CONTENTS

SEC. 101. (a) This Act may be cited as the "Rolling Stock Utilization and Financing Act of 1973".

(b) Table of contents.

TITLE I—FORMAL PROVISIONS
Sec. 101. Short title and table of contents.
Sec. 102. Findings and purposes.
Sec. 103. Definitions.
TITLE II—RAILROAD EQUIPMENT FINANCING
Sec. 201. Establishment of Board and Fund.
Sec. 202. Authorization to guarantee equipment obligations.
Sec. 203. Issuance of notes or obligations.
Sec. 204. Audit of transactions.
Sec. 205. Default.
TITLE III—INCREASED ROLLING STOCK UTILIZATION
Sec. 301. National rolling stock information system.
Sec. 302. Utilization measurement and oversight.
TITLE IV—RAILROAD EQUIPMENT CORPORATION
Sec. 401. Prerequisites to establishment.
Sec. 402. Railroad Equipment Corporation.
Sec. 403. General powers of Corporation.
Sec. 404. Financing.
Sec. 405. Conversion to nongovernmental Corporation.
Sec. 406. National rolling stock information system.
Sec. 407. Use of equipment supplied by the Corporation.
Sec. 408. Commission review.
Sec. 409. Enforcement.
Sec. 410. Annual report.
TITLE V—GENERAL PROVISIONS
Sec. 501. Protective arrangements for employees.
Sec. 502. Separability.

FINDINGS AND PURPOSES

Sec. 502. Separability.

and declares that—

(1) There is at present a shortage of general service railroad freight cars available to producers of goods and manufacturers of products.

(2) This shortage results both from an inadequate number of such cars and from their underutilization.

(3) This shortage of available general service railroad freight cars has caused—

(A) losses to producers of goods and manufacturers of products which have resulted in higher prices to consumers of goods and products;

(B) losses to railroads of revenue, thereby threatening their financial condition.

(b) PURPOSES.—The Congress hereby declares that the purposes of this Act are—

(1) to improve the utilization and distribution of rolling stock to meet the needs of commerce, users, shippers, the national defense, and the consuming public;

(2) to assist railroads in acquiring addi-

tional rolling stock and equipment or facilities to provide expeditious service to meet the increasing demands of the Nation's economy; and

(3) to assist in achieving full employment by assuring adequate equipment necessary to transport the products of American industry.

DEFINITIONS

SEC. 103. As used in this Act—

(1) "Board" means the Obligation Guarantee Board established under title II of this Act.

(2) "Car-pooling company" means a company that furnishes rolling stock to three or more railroads on a shared ownership or cooperative or condominium-type basis.

(3) "Commission" means the Interstate Commerce Commission.

(4) "Corporation" means the Railroad Equipment Corporation authorized under title IV of this Act.

(5) "Directors" means the Board of Directors of the Corporation.

(6) "Equipment or facilities" includes data processing and other computer technology; machines and systems for loading and unloading rolling stock; yards and terminals for originating, modifying, or terminating the movement of rolling stock; and other equipment or facilities, including ferries and related shoreside facilities designed primarily for the transportation of rolling stock by water, necessary to improve the utilization of rolling stock.

(7) "Equipment obligation" means a bond, note, conditional sale agreement, equipment trust certificate, lease obligation, security agreement, or other obligation issued or granted to finance or refinance rolling stock or equipment or facilities.

(8) "Fund" means the Obligation Guarantee Fund.

(9) "Holder" means, unless otherwise provided, the holder of an equipment obligation. If a bank or trust company is acting as agent or trustee for the holder of the equipment obligation, such bank or trust company shall be regarded as the holder.

(10) "Includes" should be read as if the phrase "but is not limited to" were also set forth.

(11) "Lease" means a contractual arrangement under which the legal owner of rolling stock or equipment or facilities furnishes such rolling stock or equipment or facilities to a railroad or a car pooling company and such railroad or car pooling company receives the benefits, through reduced rentals, of any tax benefits available.

(12) "Lease obligation" means all of the lessee's payment obligations under a lease including rentals, termination payments, and tax indemnification payments.

(13) "Obligor" means the debtor under an equipment obligation. The term includes the original obligor and any successor or assignee of such obligor who is approved by the Board.

(14) "Railroad" means a common carrier by railroad, as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3)), and includes where the Board makes an appropriate finding, a railroad controlled by another railroad within the meaning of paragraph (b) of such section. The term does not include the Corporation.

(15) "Rolling stock" includes any type of new or rebuilt standard gauge locomotive, caboose, or general service railroad freight car the use of which is not limited to any specialized purpose by particular equipment design, or other features. General service railroad freight car includes a boxcar, gondola, open-top or covered hopper car, and flatcar. The Board may designate other types of cars as rolling stock upon a written finding, with reasons therefor, that such designation is consistent with the purposes of this Act.

(16) "Secretary" means the Secretary of Transportation.

(17) "State" means any State or the District of Columbia.

TITLE II—RAILROAD EQUIPMENT FINANCING

ESTABLISHMENT OF BOARD AND FUND

SEC. 201. (a) BOARD.—There shall be established in the Department of Transportation an independent agency to be known as the Obligation Guarantee Board. The Board shall be composed of six members and a chairman. Two of the members shall be the Secretary of Transportation and the Secretary of the Treasury, or their duly authorized representatives, who shall serve ex officio with the same powers as other members of the Board. The President shall, within ninety days of the enactment of this Act, appoint the other members and the chairman of the Board, by and with the advice and consent of the Senate, on the following basis—

(1) three, to be selected from lists of qualified individuals recommended by shippers and organizations representative of significant shipping interests including small business users of railroad transportation services;

(2) one, to be selected from lists of qualified individuals recommended by consumer organizations, community organizations, and recognized consumer leaders;

(3) one, to be selected from lists of qualified individuals recommended by the national organization of the State commissions, referred to in sections 202(b) and 205(f) of the Interstate Commerce Act (49 U.S.C. 202 (b), 205(f)), who shall be a member of a State agency authorized by the law of any State to set rates for transportation by railroad.

As used in this subsection, a list of qualified individuals shall consist of not less than three individuals.

(b) FUND.—An Obligation Guarantee Fund is established. The fund shall be administered by the Board as a revolving fund to carry out the provisions of sections 202 through 205 of this Act. Moneys in the fund shall be deposited in the Treasury of the United States to the credit of such fund or invested in bonds or other obligations of the United States approved by the Secretary of the Treasury.

(c) COMPENSATION.—A member of the Board who is not otherwise an employee of the Federal Government may receive $150 per diem when engaged in the actual performance of duties vested in the Board plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(d) TERMS OF OFFICE.—The terms of office of the members first taking office (other than those of the two members who shall serve ex officio) shall expire as designated by the President at the time of nomination, three at the end of the third year, and two at the end of the sixth year. The member appointed by the President, by and with the advice and consent of the Senate, to be chairman of the Board shall serve as chairman until his term of office as a member expires and a successor is duly appointed. Successors to members of the Board shall be appointed in the same manner as the original members and shall have a term of office expiring six years from the date of expiration of the term for which their predecessors were appointed. Any member appointed to fill a vacancy on the Board occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

AUTHORIZATION TO GUARANTEE EQUIPMENT OBLIGATIONS

SEC. 202. (a) GENERAL.—The Board is authorized, in accordance with the provisions of this section, to guarantee and to make commitments to guarantee the payment of interest on and the principal balance of an equipment obligation prior to, on, or after the date of execution or the date of disbursement of such obligation: *Provided*, That no equipment obligation in the form of a lease obligation shall be guaranteed unless and until the Board finds, after notice and an opportunity for comment by interested persons and publication in the Federal Register of this finding and the reasons therefor that no other reasonable means of equipment financing or refinancing is reasonably available to the applicant and that approval of the guarantee application will serve the public interest. Each guarantee of an equipment obligation shall be made in accordance with the provisions of this Act and such rules as the Board may prescribe to reasonably protect the interests of the United States. Each application for the guarantee of an equipment obligation shall be made in writing to the Board in such form and with such content as the Board prescribes. An application shall be granted if the Board determines that the proposed, negotiated, or executed equipment obligation is eligible for a guarantee under this Act. Each guarantee and commitment to guarantee shall be extended in such form, under such terms and conditions, and pursuant to such regulations as the Board deems appropriate, consistent with the purposes of this Act. Each guarantee and commitment to guarantee shall inure to the benefit of the holder of the equipment obligation to which such guarantee or commitment applies. In the case of a lease obligation, the guarantee shall run to and be for the benefit of any holder thereof. In no event shall any such holder receive or be entitled to retain payment from said guarantee in a total amount which, together with any other recovery, including a security interest in the rolling stock or equipment or facilities, exceeds the actual loss of such holder.

(b) MAXIMUM PERMISSIBLE GUARANTEE.—Except as otherwise provided, the Board shall not guarantee payment of the principal of an equipment obligation in an amount in excess of 80 per centum of the value of the rolling stock or equipment or facilities which are being financed or refinanced thereby. The Board may guarantee an amount not in excess of 95 per centum of such value upon a finding made in writing by the Board and published with detailed reasons therefor in the Federal Register that an applicant railroad would not otherwise be able in its present financial condition to acquire such equipment or facilities or rolling stock on reasonable terms and conditions and that such acquisition by the applicant railroad is necessary to achieve the purposes of this Act. In the case of a lease obligation, the Board may guarantee payment of the entire principal together with the amount necessary to guarantee to the lessor, upon default of such obligation, the cost of tax recapture under sections 47 and 1245 of the Internal Revenue Code of 1954 (26 U.S.C. 47, 1245), upon a finding made in writing by the Board and published with detailed reasons therefor in the Federal Register that the applicant is a railroad which has filed a petition for reorganization under section 77 of the Bankruptcy Act (11 U.S.C. 205); that such petition has been approved; and that the judge in such proceeding certifies to the Board that the railroad is making all reasonable efforts to achieve reorganization and that such guarantee is reasonable and necessary. In all cases, the Board shall make a determination of the value of the rolling stock or equipment or facilities which are being financed or refinanced thereby, and such determination of value shall be conclusive and not subject to review in any court.

(c) MODIFICATIONS.—The Board is authorized to approve any modification of any provision of a guarantee or a commitment to guarantee such obligation, including the rate of interest, time of payment of interest or principal, security, or any other terms and conditions, upon a finding in writing by the Board that such modification of equi-

table and not prejudicial to the interests of the United States under this Act. Such approval shall not be granted without prior consent by the holder of such obligation.

(d) MAXIMUM OBLIGATIONAL AUTHORITY.—The aggregate unpaid principal amounts of equipment obligations and interest thereon which may be guaranteed by the Board under this title shall not exceed $2,000,000,000 at any one time; and at least 70 per centum of the aggregate shall guarantee equipment obligations financing or refinancing rolling stock.

(e) RATE OF INTEREST.—Interest (exclusive of premium charges for guarantee and service fees) shall be payable on each equipment obligation, other than a lease obligation guaranteed by the Board. The rate of interest shall not exceed the per centum per annum rate on the unpaid principal of such obligation determined by the Board to be reasonable upon consideration of the range of interest rates currently prevailing in the private market for similar obligations. In the case of lease obligations guaranteed by the Board, such lease obligation shall contain a rental rate which reflects an effective interest rate not to exceed a per centum per annum rate of the unpaid principal of such obligation determined by the Board to be reasonable upon consideration of the range of effective interest rates prevailing in the private market for similar obligations.

(f) NOTICE.—Upon receipt of an application for an equipment obligation guarantee, the Board shall cause a notice of such application to be published in the Federal Register and shall invite and afford interested persons an opportunity to submit comments on such application at a proceeding to commence within twenty-one days of the date of the publication of such application. General notice of such proceedings shall be published in the Federal Register. Such notice shall include—

(1) a statement of the time, place, and nature of the proceedings; and

(2) a description of the subjects and issues involved.

(g) REQUIREMENTS FOR GUARANTEES.—No equipment obligation shall be guaranteed under this Act unless the Board makes a finding in writing that—

(1) the equipment obligation (other than a lease obligation) is secured by rolling stock or equipment or facilities which are being financed or refinanced thereby;

(2) payment of the equipment obligation is required by its terms within fifteen years of the date of its execution;

(3) the leasing, financing, or refinancing of the rolling stock or of equipment or facilities directly related to improving the utilization of rolling stock is justified by the present and probable future demand for transportation services to be rendered by the applicant;

(4) the operations of the applicant are sufficiently efficient as of the date of application as to give reasonable assurance that any rolling stock in the control of such applicant or which may come within the control of such applicant will be economically and efficiently utilized;

(5) the purchase or lease of the rolling stock or equipment or facilities will serve to meet demonstrable needs for rail transportation services and to provide shippers with adequate rolling stock for their transportation needs;

(6) the probable value of such rolling stock or equipment or facilities is sufficient to provide the United States reasonable security and protection in case of default and repossession by the holder of the equipment obligation or in case of possession or purchase by the Board; and

(7) the incurrence of such obligation will result in a net increase in the total load-carrying capacity of such obligor's rolling stock.

(h) CONDITIONS OF GUARANTEES.—No guarantee or commitment to guarantee an equipment obligation shall be extended under this Act unless the obligor first agrees in writing that so long as any interest or principal on such obligation is due and payable—

(1) there will be no net decrease in the load-carrying capacity of such obligor's rolling stock;

(2) there will be no increase in discretionary dividend payments over the average amount paid during the five years preceding the enactment of this Act without prior approval of the Secretary in writing, based on findings, published, with reasons therefor, in the Federal Register, made after public hearings with opportunity for submission of comments by all interested parties, that such increase in dividends will not decrease the ability of the obligor to provide improved car service;

(3) the obligor will not use assets or revenues related to or derived from railroad operations in nonrailroad enterprises without prior approval of the Secretary in writing based on findings, published, with reasons therefor, in the Federal Register, made after public hearings with opportunity for submission of comments by all interested parties, that such use of assets or revenues will not decrease the ability of the obligor to provide improved car service;

(4) the obligor shall take all reasonable and practical steps possible, in accordance with such guidelines as may be established by the Secretary and the Commission, to improve the equitable distribution and efficient and expeditious use of all rolling stock and equipment, including cooperating with the Secretary in programs under title III of this Act.

(i) BREACH OF CONDITIONS.—The Secretary is authorized and directed to commence an action in the district courts of the United States to enjoin any activity found by the Secretary to be in violation of the conditions specified in subsection (h) of this section. In addition, any person who knowingly violates or contributes to the violation of any of the conditions specified in such subsection shall be subject to a civil penalty, to be levied by the Secretary, of not to exceed $10,000.

(j) LEASE OBLIGATION.—Before guaranteeing any lease obligation under this section the Board shall find that—

(1) the terms of the lease or leases provide that in event of default by the lessee and demand for payment by the Board that the Board shall have the right in its discretion—

(A) to demand possession of the leased property from the lessee or to purchase the leased property for fair market value but in no event for an amount greater than the sum of lease rentals and other financial obligations for the remaining term of the lease; or

(B) to permit the lessor to repossess the leased property from the lessee for the purpose of leasing in good faith at not less than fair market value to other lessees provided that any amounts collected from such lessees in excess of the amount to which the lessor would have been entitled under the original lease, plus costs, shall be paid over to the United States and deposited in the fund and that in the event any amounts collected from such lessees are less than the amount to which the lessor would have been entitled under the original lease, plus costs, then such difference shall be paid to the lessor from the fund; and

(2) the terms of the lease shall provide that, in event of default, any amounts paid to the holder of the lease obligation in settlement, including amounts received from the Board pursuant to the guarantee, are income and proceeds from the equipment subject to said lease and subject to claims of any holder of an equipment obligation in an amount equal to the holder of the lease obligation's outstanding obligation to said holder under any equipment obligation.

(k) INVESTIGATION CHARGE.—The Board shall charge and collect from the obligor such amounts as it may deem reasonable for the investigation of applications for a guarantee, for the appraisal of properties offered as security for a guarantee, or for the issuance of commitments. Such charges shall not aggregate more than one-half of 1 per centum of the original principal amount of the obligation to be guaranteed.

(l) PREMIUM CHARGE.—The Board shall set a premium charge of not more than 1 per centum per annum for an equipment obligation guaranteed under this Act. The premium charge shall be computed on the basis of the principal amount of the equipment obligation which is outstanding. The premium charge shall be paid when the obligation is first guaranteed by the Board, and thereafter annually, on the anniversary date of such guarantee.

(m) ADMINISTRATIVE COSTS.—All moneys received by the Board under this title, shall be deposited in the fund. An amount which shall not exceed five per centum of the total annual premium charges collected under subsection (l) of this section may be used by the Board to pay administrative costs and expenses incurred by it pursuant to this title.

ISSUANCE OF NOTES OR OBLIGATIONS

SEC. 203. (a) AUTHORITY.—The Board is authorized to isssue notes or other obligations to the Secretary of the Treasury in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Board, with the approval of such Secretary, may prescribe. Such obligations may be issued whenever the moneys in the fund are not sufficient to pay any amount which the Board is required to pay under an agreement under section 202 of this Act. Such obligations shall bear interest at a rate to be determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States on comparable maturities during the month preceding the issuance of such obligations. The Secretary of the Treasury is authorized and directed to purchase any such obligations and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended. The purposes for which securities may be issued under such Act are extended to include any purchase of notes or other obligations issued under this subsection. At any time, the Secretary of the Treasury may sell any such obligations; and all sales, purchases, and redemptions of such obligations by the Secretary of the Treasury shall be treated as public debt transactions of the United States. Funds borrowed under this subsection shall be deposited in the fund and redemptions of any such obligations shall be made by the Board from the fund.

(b) DISPOSITION OF PROPERTY.—Notwithstanding any other provision of law, the Board is authorized to perform any acts which it considers necessary, in its discretion, to complete, recondition, reconstruct, renovate, repair, maintain, manage, operate, charter, lease, rent, sell, or otherwise dispose of any property or other interests acquired by the Board under an agreement pursuant to section 202 of this Act.

(c) EVIDENCE.—No contract or commitment to guarantee an equipment obligation entered into by the Board pursuant to this Act shall be terminated, canceled, or otherwise revoked, except in accordance with lawful terms and conditions prescribed by the Board. Such a contract or commitment shall be conclusive evidence that the underlying obligation is in compliance with the provisions of this Act and that such obligation has been approved and is legal as to princi-

pal, interest, and other terms. Such a contract or commitment shall be valid and incontestable in the hands of a holder as of the date when the Board entered into such contract or commitment, except as to fraud, duress, mutual mistake of fact, or material misrepresentation by or involving such holder.

AUDIT OF TRANSACTIONS

SEC. 204. (a) GENERAL.—The financial transactions of the Board shall be audited by the Comptroller General of the United States, in accordance with such rules and regulations as he may prescribe. Representatives of the Comptroller General shall have access to all books, accounts, records, reports, files, and other papers, things, or property pertaining to such transactions by the Board and necessary to facilitate an audit. Such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such property of the Board shall remain in the possession and custody of the Board.

(b) ACCESS TO INFORMATION.—The representatives of the Comptroller General shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by any obligor for which the Board has guaranteed an equipment obligation to the extent they pertain to such obligor's financial transactions and are deemed by the Comptroller General to be necessary to facilitate any audit of the financial transactions of the Board. Such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such property of such obligor shall remain in the possession and custody of the obligor.

(c) REPORT.—The Comptroller General shall make a report of each such audit to the Congress. Such report shall contain all comments and information which the Comptroller General deems necessary to inform Congress of the financial operations and condition of the fund and any recommendations which he deems advisable. Such report shall indicate specifically and describe in detail any program, expenditure, or other financial transaction or undertaking observed in the course of such audit which the Comptroller General deems to have been carried on or made without lawful authority. A copy of such report shall be furnished to the President, the Secretary, the Commission, and the Board at the time it is submitted to the Congress.

DEFAULT

SEC. 205. (a) GENERAL.—If there is a default in any payment by the obligor of principal or interest due under an equipment obligation guaranteed under this title, which has continued for thirty days, the holder of such obligation or his agents have the right to demand payment by the Board of the unpaid interest on and the unpaid principal of such obligation. Such payment may be demanded after or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than ninety days from the date of such default. Within such period as may be specified in the guarantee or related agreements, but not later than thirty days from the date of such demand, the Board shall promptly pay to the obligee or his agent the unpaid interest on and the unpaid principal of such obligation. However, the Board shall not be required to make any such payment if, prior to the expiration of such period, the Board finds that there was no default by the obligor in the payment of interest or principal or that such default has been remedied.

(b) RIGHTS OF BOARD.—If the Board makes a payment under subsection (a) of this section, the Board shall have all the rights in any security which it held with respect to its guarantee of such obligations as are conferred upon the Board under any security agreement with the obligor. Notwithstanding any other provision of law, the Board is authorized, in its discretion, to complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, rent, sell, or otherwise dispose of any property acquired by its pursuant to such security agreement with the obligor. The terms of any such sale or other disposition shall be as approved by the Board.

(c) PAYMENT.—Any amount required to be paid by the Board pursuant to subsection (a) of this section shall be paid in cash.

(d) ACTION AGAINST OBLIGOR.—If there is a default under any contract or commitment to guarantee an equipment obligation, the Board shall take such action against the obligor or any other parties liable thereunder as is, in its discretion, necessary to protect the interests of the United States. Such a suit may be brought in the name of the United States or in the name of the holder. Such holder shall make available to the United States all records and evidence necessary to prosecute any such suit. The Board shall have the right, in its discretion, to accept a convenience of title to and possession of property from the obligor or other parties liable to the Board and may purchase the property for an amount not greater than the unpaid interest on and unpaid principal of such obligation. If the Board receives, through the sale of property, an amount greater than the amount paid to the obligee under subsection (a) or (b) of this section together with the expenses of collection, the Board shall pay such excess to the obligor.

TITLE III—INCREASED ROLLING STOCK UTILIZATION

NATIONAL ROLLING STOCK INFORMATION SYSTEM

SEC. 301. (a) PLAN.—(1) The Secretary shall, not more than six months after the date of enactment of this Act, designate a plan or alternative plans to establish a national rolling stock information system which shall be designed to facilitate equitable distribution and expenditious utilization of rolling stock operated within the continential United States and/or owned directly or indirectly by railroads and car-pooling companies. Such a system shall be capable of furnishing such information as the Secretary determines to be necessary for the expeditious utilization of rolling stock, including information related to the—

(A) length of time each piece of rolling stock is moving and loaded, moving and unloaded, idled and loaded, and idled and unloaded;

(B) owner, type, size, and capacity, year of manufacture, identifying number, and special features of each piece of rolling stock;

(C) origin and destination of cargo;

(D) railroad in control of rolling stock movement, expected time of interchange, and degree of utilization of each piece of rolling stock by the controlling railroad; and

(E) current status and location of each piece of rolling stock, time such status and location is expected to change, and anticipated future commitments of such rolling stock.

(2) The Secretary shall develop such plan or plans after consultation and discussion with the Secretary of Defense, the Director of the National Aeronautics and Space Administration, the executive officers of major private manufacturers and suppliers of information location and retrieval systems, shippers, railroads, the Commission, and any other Government agency, private organization, or private citizen that presents a useful submission regarding such a system. The Secretary is authorized to pay reasonable expenses, including honoraria, for individuals invited by him to present their submissions in person. The Secretary shall cause such plan or plans to be published in the Federal Register and shall invite interested persons to comment thereon at a public hearing pursuant to section 553 of title 5, United States Code, to be held not less than ninety days after the date of such publication. After such hearing, and not more than one year after the date of enactment of this Act, the Secretary shall publish the final plan for a national rolling stock information system. This final plan shall include technical specifications and other details for the equipment required under such plan. Such plan shall include means for coordinating or integrating such system with any existing information systems to the extent the Secretary finds such coordination will contribute in an expeditious, cost effective, and technically feasible manner to the implementation of an effective national system. The Secretary from time to time may cause such plan to be modified or amended, pursuant to section 553 of title 5, United States Code.

(b) IMPLEMENTATION.—Following the publication of the final plan required under subsection (a) of this section, the Secretary shall take all action necessary, including the issuance of rules, regulations, and guidelines, to cause such plan to be implemented within a reasosable time. The Secretary is authorized to contract with and provide technical assistance to individual railroads or groups of railroads working together, including the sharing of costs and the funding in part of demonstration projects, to assist in the establishment of the national rolling stock information system.

(c) ANTITRUST LAWS INAPPLICABLE.—The antitrust laws of the United States are inapplicable to the extent necessary to carry out the purposes of this section as to any person who contracts with the Secretary or acts in conformity with the final plan under subsection (a) of this section.

(d) CENTER.—The Secretary may establish and maintain or assist in establishing and maintaining a centrally located national rolling stock information center. The Secretary of Defense may assist the Secretary to establish such center. Such center may operate as a depository and dissemination center for all such information as may be provided by the national rolling stock information system. The Secretary may make information gathered in such center available to any person subject to such rules as the Commission might prescribe to insure the confidentiality of certain kinds of competitive information supplied for use in connection with the system.

(e) REPORT.—The Secretary shall report semiannually directly to the Congress, without modification of such report by any other Federal agency, with respect to the progress made in implementing the national system provided for in subsection (a) of this section. Such reports shall include recommendations for such additional funding as may be necessary to make the national system fully effective.

(f) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated to the Secretary out of money in the Treasury not otherwise appropriated, the sum of $10,000,000 for purposes of this section.

UTILIZATION MEASUREMENT AND OVERSIGHT

SEC. 302. (a) ROLLING STOCK UTILIZATION INDEX.—Not less than ninety days after the enactment date of this Act, the Secretary shall develop and promulgate an index to measure the degree of utilization of rolling stock. The Secretary shall cause to be compiled data required by such index. At least once each quarter per annum, the Secretary shall publish such index, together with a report setting forth any changes in such utilization and his evaluation of the reasons therefor.

(b) COMMISSION REPORT.—The Commission shall publish a report on utilization of

rolling stock thirty days after the publication of each report by the Secretary under subsection (a) of this section. The Commission in its report shall consider and comment upon the latest such report by the Secretary.

(c) ENFORCEMENT.—The Secretary shall, with the assistance of the Attorney General, make full use of existing law to bring about improvements in the utilization of rolling stock. The Secretary shall have such standing as is necessary to bring or intervene in proceedings before Federal regulatory agencies and courts. Attorneys appointed by the Secretary may appear for and represent him in any such case or hearing.

(d) UTILIZATION STUDY.—The Secretary shall prepare a study on the utilization of freight cars and means to improve such utilization including consideration of per diem and other car hire charges, demurrage, car service rules and orders of the Commission and of the railroads, the practice of assigning cars to specific traffic or shippers, payments for use of privately owned cars, and publicly and privately owned carpools. The Secretary shall submit legislative recommendations based upon such study within two years after the date of enactment of this Act.

TITLE IV—RAILROAD EQUIPMENT CORPORATION

PREREQUISITES TO ESTABLISHMENT

SEC. 401. (a) GENERAL.—The Corporation authorized by section 402 of this Act shall be established only if—

(1) two years or more after the date of enactment of this Act—

(A) the Commission finds, in accordance with section 553 of title 5 of the United States Code, that there is still, as a result of inadequate utilization or inadequacy of supply or both, a continuing shortage of rolling stock in the Nation. In determining whether there is such a shortage, the Commission may consider, without incorporating in such a finding, the following factors—

(i) whether any category of rolling stock is not available to meet a demand equivalent to the average peak demand for such category of rolling stock in the four years prior to the time of such finding;

(ii) any government program, regulation, or action affecting demand for or supply of freight cars;

(iii) the extent, duration, and impact of seasonal peaks in demand for rolling stock;

(iv) the local, regional or national scope of any reported problems of demand or supply related to rolling stock;

(v) the impact of severe weather conditions which disrupt marketing, distribution, or railroad operating factors;

(vi) the ability of shippers to load more cars if available;

(vii) the extent to which any failures to furnish cars promptly result from factors not subject to railroad control.

The presence of any or all such factors shall not preclude a finding by the Commission that there is a continuing shortage of rolling stock; or

(B) the Secretary finds that there has not been a significant increase in the utilization of rolling stock since the date of enactment of this Act;

(2) six months after an affirmative finding under either subparagraph (A) or (B) of paragraph (1) of this subsection, the Commission or the Secretary finds that efforts to form and operate a not-for-profit nongovernmental corporation, or corporations, to acquire, maintain, and provide a free running national pool of rolling stock have not succeeded or have been inadequate in size, scope, and operation to establish the feasibility of a national pool, or have failed to employ innovative concepts for equitable distribution and expeditious use of rolling stock; and

(3) the Congress, by affirmative concurrent resolution, authorizes the establishment of the Corporation.

(b) REPORTS.—Two years after the date of enactment of this Act and on the anniversary date thereof each consecutive year thereafter for five years, the Commission and the Secretary shall each transmit to the President and the Congress a report on rolling stock which shall include each finding made since the previous such report, if any, pursuant to subsection (a) of this section. If the Corporation authorized by section 402 of this Act is not established in accordance with the provisions of subsection (a) of this section, such Corporation shall nonetheless be established seven years and six months after the date of enactment of this Act if—

(1) in the final reports made by the Commission and the Secretary under this subsection—

(A) the Secretary or the Commission finds that the creation of a corporation to acquire, maintain, and provide general service railroad freight cars and other rolling stock; to manage a pool of such rolling stock; and to develop and employ innovative concepts for the equitable distribution and expeditious use of such stock would contribute significantly to improvement of the utilization and distribution of rolling stock; and either

(B) the Commission finds that there is still, as a result of inadequate utilization or inadequacy of supply, or both, a continuing shortage of rolling stock in the Nation; or

(C) the Secretary finds that there has not been a substantial and significant increase in the utilization of railroad rolling stock; and

(2) the Congress, by affirmative concurrent resolution, authorizes the establishment of the Corporation.

RAILROAD EQUIPMENT CORPORATION

SEC. 402. (a) AUTHORIZATION.—There is hereby authorized to be established, in accordance with the provisions of section 401 of this Act and of this section, a corporation to be known as the Railroad Equipment Corporation. The Board of Directors first appointed shall be deemed the incorporators, and the incorporation shall be held to have been effected from the date of the first meeting of such Board.

(b) PURPOSES.—The purposes of the Corporation are to acquire, maintain, and provide general service railroad freight cars and other rolling stock; to manage a pool of such rolling stock; and to employ innovative concepts for equitable distribution and expeditious use of such stock to meet the needs of the national economy and the national defense.

(c) STATUS.—(1) The Corporation shall be a government corporation of the District of Columbia subject, to the extent not inconsistent with this Act, to the District of Columbia Business Corporation Act (D.C. Code 29–901 et seq.) and administered by a Board of Directors.

(2) The Corporation shall not be subject to the provisions of the Interstate Commerce Act (49 U.S.C. 1 et seq.) or of any other law with respect to railroads, except that the Corporation shall be deemed to be a railroad as to—

(A) sections 1(10) through 1(17) of the Interstate Commerce Act (49 U.S.C. 1(10)–1(17));

(B) the Railway Labor Act, including the representation of employees of the Corporation for purposes of collective bargaining, the handling of disputes between railroads and their employees, and other dealings with employees, and the Railroad Retirement Act and the Railroad Unemployment Insurance Act with respect to employee retirement, annuity and unemployment systems;

(C) the Federal Employers Liability Act; and

(D) safety, as to which the Corporation shall be subject to the same laws and regulations as any common carrier under part I of the Interstate Commerce Act.

(d) BOARD OF DIRECTORS.—The Board of Directors of the Corporation shall consist of eleven persons who shall be appointed by the President, by and with the advice and consent of the Senate, pursuant to this subsection. The initial directors shall be appointed within one hundred and twenty days after Congress, by affirmative concurrent resolution, authorizes the establishment of the Corporation. The President shall appoint the members and their successors on the following basis—

(1) three, to be selected from a list of qualified individuals recommended by the Association of American Railroads or its successor, one of whom shall be a representative respectively of eastern-, western-, and southern-territory railroads;

(2) one, to be selected from a list of qualified individuals recommended by the parent body of the American Federation of Labor and Congress of Industrial Organizations or its successor, who shall be representative of railroad labor;

(3) one, to be selected from a list of qualified individuals recommended by the National Academy of Sciences as persons with expert knowledge or experience with data processing and information systems and the application of computer technology to systems management;

(4) four, to be selected from lists of qualified individuals recommended by shippers, organizations representative of significant shipping interests including small shippers, consumer organizations, community organizations, and recognized consumer leaders, who shall be representative of consumers of transportation services and consumers of goods and products shipped by railroad;

(5) one, to be selected from a list of qualified individuals recommended by the Secretary of Defense; and

(6) one, to be selected from a list of qualified individuals recommended by the Secretary of Transportation.

As used in this subsection, a list of qualified individuals shall consist of not less than three individuals.

The President shall appoint one of the members, by and with the advice and consent of the Senate to serve as Chairman for a term of four years. A member of the Board of Directors who is not otherwise an employee of the Federal Government may receive $150 per diem when engaged in the actual performance of his duties plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(e) TERMS OF OFFICE.—The terms of office of the members first taking office shall expire as designated by the President at the time of nomination. Four shall expire at the end of the third year, four at the end of the sixth year, and three at the end of the ninth year. Successors to members of the Board of Directors shall be appointed in the same manner as the original members and shall have a term of office expiring nine years from the date of expiration of the term for which their predecessors were appointed. Any member appointed to fill a vacancy in the Board of Directors occuring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(f) GENERAL.—The Directors shall direct the exercise of all the powers of the Corporation. So long as there are four members in office, the Directors are empowered to execute the functions of the Corporation. Four of the Directors shall constitute a quorum for the transaction of such functions.

(g) ANTITRUST LAWS INAPPLICABLE.—The antitrust laws of the United States are in-

applicable to the extent necessary to carry out the purposes of this title to any person who contracts with the Corporation with respect to the operation or maintenance of rolling stock or the design or implementation of a national rolling stock information system or the use of information from such system.

GENERAL POWERS OF CORPORATION

SEC. 403. To carry out the purposes of this title, the Corporation is empowered to—

(a) build, rebuild, purchase, own, lease, control, and manage rolling stock or equipment or facilities;

(b) acquire or contract for the use of physical facilities, equipment, and devices useful in developing equitable distribution and in maintaining expeditious use of rolling stock;

(c) build, rebuild, operate, maintain, and repair its rolling stock, equipment, and facilities or enter into agreements and contracts for the performance of such work and for the performance of all services and work incidental thereto and consistent with prudent management;

(d) conduct and contract for research and development that may lead to new and practical technologies, systems, and methods for the efficient and economical movement, distribution, solicitation, collection, loading and unloading, packaging, and processing of freight shipments involving railroads;

(e) sue and be sued, complain and defend, in its corporate name and through its own attorneys; adopt, alter, and use a corporate seal, which shall be judicially noticed; adopt, amend, and repeal such bylaws, rules, and regulations as may be necessary for the conduct of its affairs; conduct its business, carry on operations, maintain offices, and exercise the powers granted under this Act in any State;

(f) purchase, lease, or otherwise acquire, own, hold, improve, use, or deal in and with any property (real, personal, or mixed, tangible or intangible) or interest in property, wherever situated; sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of property and assets; accept gifts or donations of any property or services in aid of any purpose of the Corporation;

(g) appoint such attorneys, employees, agents, consultants, and other personnel as it deems necessary; define the duties of personnel and determine and pay compensation for their services. Except as otherwise provided in this Act, such personnel and directors of the Corporation shall not be subject to laws relating to Federal employees with respect to appointments, promotions, adverse actions, hours of work, rates of compensation, allowances, leave, unemployment compensation, compensation for work-related injuries, and Federal benefits for retirement, life insurance, and health benefits; and

(h) enter into contracts, execute instruments, incur liabilities, and do all things necessary or incidental to the proper management of the affairs and the proper and prudent conduct of the business.

FINANCING

SEC. 404. (a) PER DIEM SURCHARGE.—Each railroad, except a switching and terminal railroad, shall pay to the Corporation a per diem surcharge of fifty cents per car-day on each unit of rolling stock for each day that such a railroad incurs a car hire charge for the use of such unit of rolling stock. The Directors shall impose such per diem surcharge not later than sixty days after taking office under section 403(f) of this Act and shall terminate it when it has collected such sum as may be necessary for the purposes of this title but not less than $10,000,000 nor more than $30,000,000. Surcharges are payable on the tenth day of the second month succeeding the month in which the charge accrues. Within six months of the termination of such surcharge, the Corporation shall refund to any railroad or group of railroads under common management and control any payments made by such railroad or railroads in excess of ten per centum of the total paid by all railroads.

(b) NEGOTIABLE DEBENTURES.—The Corporation shall issue to each railroad a negotiable debenture in the amount of the surcharge paid under subsection (a) of this section. The debenture shall bear and pay interest at a rate to be determined by the Secretary of the Treasury to be the current rate for similar debentures in the open market. The par value of such debentures shall be due and payable December 31 of the thirtieth year after the date of issuance thereof or the first business day thereafter if such date is a Saturday, Sunday, or holiday. Such debentures are debts of the Corporation but are subordinate to all other such debts. The United States of America does not guarantee either the par value or the interest on such debentures.

(c) REFUND OF PER DIEM SURCHARGES.—(1) In the event of partial or complete liquidation of the Corporation, any assets remaining after payment of the Corporation's obligations and expenses will be distributed pro rata to the railroads, not to exceed in any case the amount paid as per diem surcharges under subsection (a) of this section plus accrued interest, if any. The remainder of such assets will be paid into the Treasury of the United States and credited to miscellaneous receipts.

(2) In the event of complete liquidation of any railroad subject to this Act, the Directors of the Corporation may, if and when funds are available, refund to such railroad a sum not to exceed the amount paid in as per diem surcharges under the provisions of subsection (a) of this section plus accrued interest, if any.

(d) INCURRENCE OF DEBT FOR CAPITAL PURPOSES.—The Corporation is empowered to incur debt for capital purposes. Such debt may be incurred in the form of bonds, debentures, equipment trust certificates, conditional sale agreements, or any other form of securities, agreements, or obligations. So long as all the capital stock of the Corporation is owned by the United States, the payment of principal and interest on all obligations issued by the Corporation is guaranteed by the United States. Such guarantee shall be expressed on the face of the obligation. So long as any capital stock is owned by the United States, payment of principal and interest on obligations issued by the Corporation may, in the discretion of the Directors, be guaranteed by the United States. Such guarantee shall be expressed on the face of the obligation. Guaranteed obligations shall not exceed $1,000,000,000 in principal amount outstanding at any one time. Such obligations may be redeemable at the option of the Corporation before maturity in such manner as may be stipulated therein and shall be in such forms and denominations, have such maturities, and be subject to such terms and conditions as shall be determined by the Directors, with the approval of the Secretary of the Treasury. The Corporation may also incur debt not guaranteed by the United States, in addition to that provided for under subsection (b) of this setcion.

(e) PURCHASE OF OBLIGATIONS BY TREASURY.—The Secretary of the Treasury may elect to purchase the obligations of the Corporation guaranteed by the United States in an amount not to exceed $1,000,000,000 in principal amount outstanding at any one time, under such terms, including rates of interest, as he and the Corporation may agree, but at a rate or yield no less than the current average yield on outstanding Treasury securities of comparable maturity, as determined by the Secretary of the Treasury.

(f) PUBLIC DEBT TRANSACTION.—For the purpose of any purchase of the obligations of the Corporation, and to enable him to carry out his responsibility relating to guarantees made pursuant to this section, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include any purchases of the obligations of the Corporation under this Act. The Secretary of the Treasury may at any time sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations of the Corporation acquired by him hereunder. All redemptions, purchases, and sale by the Secretary of the Treasury of the obligations of the Corporation shall be treated as public debt transactions of the United States.

(g) AUTHORIZATION FOR APPROPRIATIONS.—(1) In order to facilitate the formation and the implementation of the objectives of the Corporation, there is hereby authorized to be appropriated, out of money in the Treasury not otherwise appropriated, the sum of $10,000,000 to be used to acquire capital stock of the Corporation, such sum to continue to be available until expended.

(2) There are authorized to be appropriated to the Secretary of the Treasury such sums as may be necessary to pay the principal and interest on notes or obligations issued by him as a consequence of any guarantee made under this section.

(3) In the event of any default on any guaranteed obligation, and payment in accordance with a guarantee by the United States, the Attorney General shall take appropriate action to recover the amount of such payments, with interest, from the Corporation or other persons liable therefor.

(h) LAWFUL INVESTMENT AND EXEMPTION FROM REGULATIONS AND RESTRICTIONS.—Securities guaranteed under this section shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under authority or control of the United States or of any office or officers thereof, and shall be deemed to be exempt securities within the meaning of laws administered by the Commission. The limitations and restrictions as to a National or State bank dealing in, underwriting, or purchasing investment securities for its own account, as provided in section 5136 of the Revised Statutes, as amended (12 U.S.C. 24), and section 5(c) of the Act of June 16, 1933 (12 U.S.C. 335), shall not apply to securities guaranteed under this section.

(i) CAPITAL STOCK.—(1) The Corporation is authorized to issue and have outstanding capital stock in such amounts and of such classes as it shall determine. At no time shall the aggregate of the shares of the capital stock of the Corporation owned by a single railroad or by any person controlling one or more railroads, as defined in section 1(3)(b) of the Interstate Commerce Act (49 U.S.C. 1(3)(b)), directly or indirectly through subsidiaries or affiliated companies, nominees, or any person subject to its direction or control or by any other stockholders, or any syndicate or affiliated group of such stockholders exceed 5 per centum of such shares issued and outstanding.

(2) The requirement of section 45(b) of the District of Columbia Corporation Act (D.C. Code, sec. 29-920(b)) as to the per centum of stock which a stockholder must hold in order to have the rights of inspection and copying set forth in that subsection shall not be applicable in the case of holders of the stock of the Corporation, and they may exercise such rights without regard to the percentage of stock they hold.

(3) Capital stock of the Corporation offered and sold to the public shall be offered in

compliance with all applicable laws of the United States governing the offering and sale of securities by private corporations.

(j) AUDIT AND EXPENDITURES.—(1) So long as any capital stock of the Corporation is owned by the United States, "Railroad Equipment Corporation" shall be subject to the provisions of the Government Corporation Control Act (31 U.S.C. 841 et seq.).

(2) Except as otherwise provided in paragraph (1) of this subsection, the Corporation is authorized to make such expenditures and to enter such contracts, agreements, and arrangements as it deems necessary, upon such terms and conditions and in such manner as it decides. This authorization includes the power to make a final settlement or compromise of all claims and litigation by or against the Corporation.

(3) Nothing in this subsection shall be construed to deny the Corporation the power to obtain audits of its accounts and reports concerning its financial condition and operations by a firm or firms of certified public accountants. Such audit and reports would be in addition to those required by this subsection.

(4) Section 101 of the Government Corporation Control Act (31 U.S.C. 846) is amended by (1) striking out "and" in the last clause thereof; (2) striking out "." at the end thereof and inserting in lieu thereof the following: "; and Railroad Equipment Corporation.".

CONVERSION TO NONGOVERNMENTAL CORPORATION

SEC. 405. (a) PLAN FOR PUBLIC SALE.—As soon as practicable, a panel composed of the Secretary of Transportation, the Secretary of the Treasury, the Chairman of the Securities and Exchange Commission, the Chairman of the Commission, and the Chairman of the Directors of the Corporation shall submit to the President and to the Congress a plan for the public sale of stock in the Corporation after finding that a market exists for the sale of such stock and that the purposes of this Act will be served thereby. This plan shall include, among other elements, a program which—

(1) will require refinancing, or the establishment of a reserve fund or other method, in order to protect the public interest against defaults on obligations of the Corporation guaranteed by the United States; and

(2) will assure that the sale of the stock will result in a wide dispersion in the ownership of the stock.

(b) REQUIREMENTS.—The plan for sale of stock to the public shall specify a program for systematically reducing the amount of obligations of the Corporation guaranteed by the United States and shall propose a capital structure for the Corporation designed to insure sound financial and operating performance. Unless the Congress disapproves the plan within six months following submission of the plan to it, stock shall be sold in accordance with the plan.

(c) NEW BOARD MEMBERS.—Upon the sale of stock to the public, the Board of Directors may be enlarged by the addition of members elected by owners of such stock. In no event, however, shall the Board of Directors exceed fifteen members while any capital stock in the Corporation is held by the United States. During such period, the rights and privileges of owners of such stock, including determination of the number of directors to be so elected, shall be set forth in the bylaws of the Corporation.

(d) PROCEEDS OF SALE.—The proceeds from the sale of stock to the public shall be applied to the retirement of the stock held by the United States. Upon the retirement of all the stock held by the United States, the terms of office of the members of the Board of Directors appointed under section 402(d) shall terminate as provided by the plan under subsection (a) of this section. Thereafter, all except three of the Directors shall be elected by the owners of the stock. The President shall have authority to appoint such three directors, by and with the advice and consent of the Senate—

(1) one, to be selected from a list of qualified individuals recommended by the parent body of the American Federation of Labor and Congress of Industrial Organizations;

(2) one, to be selected from a list of qualified individuals recommended by the Federal Trade Commission, after consultation with organizations of consumers; and

(3) one, to be selected from a list of qualified individuals recommended by the Commission, after consultation with organizations of shippers.

As used in this subsection, a list of qualified individuals shall consist of no less than three individuals.

(e) POSITION OF THE UNITED STATES.—Upon the retirement of all stock held by the United States—

(1) the Corporation shall pay an annual fee to the United States equal to the difference between the amount of interest actually paid upon outstanding guaranteed obligations and the amount which would have been paid, as determined by the Secretary of the Treasury, if such obligations had not been guaranteed by the United States, plus one-fourth per centum;

(2) the Corporation shall make every effort to refinance obligations in order to terminate the liability of the United States arising from its guarantee of obligations; and

(3) the Secretary of the Treasury may no longer purchase or guarantee the notes or other obligations of the Corporation.

(f) DEFAULT.—If the Corporation defaults in the payment of obligations guaranteed by the United States, the United States is authorized to take control of the Corporation and a new Board of Directors shall be appointed pursuant to section 402(d) of this Act.

NATIONAL ROLLING STOCK INFORMATION SYSTEM

SEC. 406. (a) ESTABLISHMENT.—If a national rolling stock information system, as defined in section 301 of this Act, is not operating effectively when the Corporation is established, it shall establish such a system. If the Corporation undertakes to establish such a system, the Secretary shall grant it access to and authority to use all information, studies, designs, equipment, facilities, computer programs, and other things acquired or developed under section 301 of this Act. The Secretary shall give the Corporation all possible assistance to further the purposes of this section.

(b) INFORMATION ACCESS.—Data and other information derived from the national rolling stock information system shall be made available on an equal basis to the Corporation, shippers, railroads, the Commission, the Secretary, and interested members of the public, subject to rules to be issued by the Commission to preserve the confidentiality of certain types of competitive information furnished for use in connection with the system.

(c) REPORT.—The Corporation shall report to the Congress annually on the progress made in implementing such national system. Each report shall include recommendations as to any additional funding deemed necessary to make the national system more effective. The Commission shall publish a report on such system thirty days after the publication of each report by the Corporation under this subsection.

USE OF EQUIPMENT SUPPLIED BY THE CORPORATION

SEC. 407. (a) USER CHARGES.—The Corporation shall establish and maintain a schedule of charges for the use of general service railroad freight cars and other rolling stock, and equipment directly related to the utilization of rolling stock. The rates shall be such as will, in the judgment of the Directors, enable the Corporation to meet its operating and administrative expenses, including depreciation and carrying-charges for indebtedness, and to provide sufficient earnings to facilitate the conversion of the Corporation to private ownership in accordance with section 405 of this Act as soon as possible. Such charges shall in no case exceed one hundred and fifty per centum of the cost to the Corporation of acquiring, owning, maintaining, and operating the rolling stock or equipment being so used. In establishing such charges, the Corporation shall consider prevailing rates and conditions for similar equipment.

(b) USER CHARGES PRECLUDED.—The Corporation shall not assess any charges for rolling stock located on a railroad where that rolling stock is not required by such railroad for use in originating traffic: *Provided*, That—

(1) such rolling stock is not the subject of a car service order by the Corporation or the Commission; and

(2) such railroad furnishes appropriate notice to the Corporation pursuant to terms and conditions established by it regarding the use of such rolling stock.

(c) CONDITIONS ON USE.—The Corporation shall establish—

(1) reasonable rates of compensation for storage of excess rolling stock on the property of any railroad, through negotiation with such railroad;

(2) terms and conditions governing the use of its equipment, including requirements for identification of rolling stock, as are in its judgment appropriate to effectuate the purposes of this Act. Such terms and conditions may be modified and amended from time to time; and

(3) just and reasonable car service rules, regulations, and practices, and car distribution directions with respect to its rolling stock. Such rules, regulations, and practices shall be established after consulting with the Commission, railroads and car distribution agencies. They shall, together with car distribution directions issued thereunder, take precedence over any rules, regulations, or practices in conflict therewith which are issued or applied by any railroad or group of railroads. Such rules, regulations, and practices may be modified and amended from time to time.

(d) COMPLIANCE WITH CONDITIONS.—Each railroad shall comply with such car service rules, regulations, and practices as may be established, together with such car distribution directions as may be issued, pursuant to this section.

(e) INTERCHANGE OF CARS.—No railroad may refuse to transport any general service railroad freight car owned or supplied by the Corporation, whether loaded or empty, subject to any applicable safety regulations, reasonable interchange rules, reasonable line clearances, reasonable weight limitations, and user charges set under this section. No railroad shall be entitled to any compensation from the Corporation for moving empty Corporation-owned rolling stock from any point on its line of railroad to any point on another line of railroad, between any points on its line of railroad, or as a bridge carrier between points on two or more other lines of railroad: Provided, That such stock was moving under a car distribution directive (1) issued by the Commission or (2) issued by the Corporation for the purpose of distributing Corporation-owned cars for loading.

COMMISSION REVIEW

SEC. 408. The Corporation shall be subject to sections 1(10) through 1(17) of the Interstate Commerce Act, and the orders of the Commission thereunder to the extent applicable. Upon petition of any person affected by any charge, rule, regulation,

practice, term, condition, or directive of the Corporation, or upon its own motion, the Commission shall make an investigation and shall order any charge, rule, regulation, practice, term, condition, or directive which it finds not to be in conformity with this Act, or to be inconsistent with any rule, order, or directive of the Commission pursuant to applicable provisions of sections 1(10) through 1(17) of the Interstate Commerce Act to be canceled, annulled, amended, or suspended as the Commission shall find to be appropriate.

ENFORCEMENT

SEC. 409. (a) GENERAL.—In an appropriate civil action, the Corporation may apply to any district court of the United States which has jurisdiction over the parties and in which venue is properly laid under section 1291 of title 28, United States Code, for an order or judgment to enforce compliance with any obligation owing to it under or in accordance with any provision of this title or under or in accordance with any agreement or regulation entered into or issued pursuant to this title. Nothing contained in this section shall be construed to relieve any person from any punishment, liability, or sanction which may be imposed otherwise than under this Act.

(b) EQUITABLE RELIEF.—(1) If the Corporation, any railroad, or any person fails or neglects to comply with any rule, regulation, or practice established under this title, fails to pay any charge imposed under this title, fails or refuses to comply with any car distribution direction or other order issued under this title, or fails to obey any directive by the Commission to pay charges, any district court of the United States having jurisdiction over the parties and in which venue is properly laid under section 1291 of title 28, United States Code, may grant relief. Upon a petition by the Commission or by the Corporation, such court shall have jurisdiction to grant such relief as may be necessary or appropriate to prevent or terminate such failure or refusal.

(2) If the Corporation, any railroad, or any other person violates or threatens to violate any provision of this Act or any rule, regulation, or order issued under this Act, any district court of the United States having jurisdiction over the parties and in which venue is properly laid under section 1291 of title 28, United States Code, may grant relief. Upon a petition, or, in the case of a labor agreement, upon the petition of any employee affected thereby or a duly authorized representative of such employee, such court shall have jurisdiction to grant such equitable relief as may be necessary or appropriate to prevent or terminate such violation.

ANNUAL REPORT

SEC. 410. The Corporation shall cause to be prepared and transmit simultaneously to the President and the Congress an annual report commencing one year after its establishment. Such report shall include—

(a) a comprehensive and detailed review and summary of the operations, activities, and accomplishments of the Corporation under this Act;

(b) an account of the state of railroad freight service in the United States, including the number of rolling stock, by classes, acquired and owned by the Corporation and the number acquired and owned by the railroads; and

(c) a statement of the Corporation's receipts and expenditures for the previous year, an explanation of the method for determining the type and amount of rolling stock purchased, and the criteria used in distributing rolling stock.

The Commission and the Secretary shall from time to time, but not less than once every two years, investigate and evaluate the performance of the Corporation in light of the purposes of this Act and each shall cause to be prepared and transmit, simultaneously to the President and the Congress a report thereon.

TITLE V—GENERAL PROVISIONS

PROTECTIVE ARRANGEMENTS FOR EMPLOYEES

SEC. 501. (a) GENERAL.—In carrying out their functions under this Act and as a condition precedent to the execution of any contract, the guarantee of any obligation, and the approval or inducement of any other action under this Act, the Board, the Secretary, and the Corporation shall take adequate steps to protect the interests of affected employees. Each contract as to which any railroad or car-pooling company is either a party or a beneficiary shall include fair and equitable arrangements, as certified by the Secretary of Labor, to protect the interests of individual railroad employees who are or who may be affected in their employment by such contract. Such protective arrangements shall include the arrangements specified in section 405 of the Rail Passenger Service Act of 1970, as amended (45 U.S.C. 565); section 13 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1609); and section 6 of the High Speed Ground Transportation Act of 1965, as amended (49 U.S.C. 1636).

(b) BUILDING AND REBUILDING CONTRACTS OF CORPORATION.—The Corporation, in awarding contracts for the building or rebuilding of rolling stock under title IV of this Act, shall conform to prevailing practices in the railroad industry at the time of each such contract in dividing such work between railroads with facilities for building and rebuilding rolling stock and nonrailroads with such facilities. Such contracts, as are awarded to railroads, shall be performed through the use of the facilities and the employees of such railroads and shall not be subcontracted. In awarding such contracts, the Corporation shall be guided by the relative proportions of such building and rebuilding as was performed in railroad as opposed to nonrailroad facilities during the five-calendar-year period preceding the award of such contract Variations from these proportions shall not exceed 5 per centum if the total amount of building and rebuilding declines from levels at the date of enactment of this Act. If the Corporation fails to maintain required relative proportions in distributing such work to railroad facilities under such contracts, the fair and equitable employee protective arrangements required by subsection (a) hereof shall become effective. Notwithstanding the foregoing, no contract shall be awarded for the building or rebuilding of rolling stock by such Corporation unless such work meets the minimum specifications established by the Corporation in accordance with the purposes of this Act.

(c) JOB TRAINING.—Railroad employees adversely affected by any action taken pursuant to this Act designed to provide for more effective use and distribution of rolling stock shall be reassigned and, if necessary, retrained to perform the new tasks covering the functions which they had performed prior to such action. The performance of such functions shall be considered to be within the same craft or class as that in which such railroad employees were classified prior to such change and the rights of such employees to the same representation shall be preserved. A railroad employment position which is affected by any such change may be eliminated as it becomes vacant through the death or voluntary resignation or retirement of the employee holding such position: *Provided*, That the rate of attrition of such positions in any calendar year shall not exceed:

(1) four per centum of the total number of affected employees of such railroad, as determined by the Secretary of Labor, or

(2) a per centum equal to the average of the actual rate of attrition of the total number of affected employees of such railroad for the preceding three calendar years, as determined by the Secretary of Labor.

(d) OTHER LAWS.—In his administration of the provisions of this Act, the Secretary of Labor shall consolidate the program authorized herein with the companion programs under the Rail Passenger Services Act of 1970, as amended (45 U.S.C. 565); the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1609); and the High Speed Ground Transportation Act of 1965, as amended (49 U.S.C. 1636). The Secretary of Labor shall uniformly develop, interpret, and apply the procedures and standards under these several laws.

(e) REPAIR AND MAINTENANCE CONTRACTS.—To the extent practicable, the Corporation shall award contracts for the repair and maintenance of its rolling stock to railroads with facilities for performing such work.

(f) CONSTRUCTION CONTRACTS.—The Board (pursuant to title II), the Secretary (pursuant to title III), and the Corporation (pursuant to title IV) shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed with the assistance of funds received under any contract or agreement entered into under this Act shall be paid wages at rates no less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The Board, the Secretary or the Corporation shall not enter into any such contract or agreement without first obtaining adequate assurance that required labor standards will be maintained on the construction work. Wage rates provided for in collective-bargaining agreements negotiated under and pursuant to the Railway Labor Act or the National Labor Relations Act shall be considered to be in compliance with the Davis-Bacon Act; the highest of such wage rates shall be the applicable standard for all laborers and mechanics not covered by any such agreement and employed by contractors and subcontractors engaged in the building and rebuilding of rolling stock pursuant to title IV of this Act.

SEPARABILITY

SEC. 502. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

The title was amended, so as to read: "A bill to promote commerce and to meet the need of consumers of goods and products by increasing availability of railroad rolling stock and equipment through improved utilization techniques and financial guarantees for new acquisitions, and for other purposes."

Mr. HARTKE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MAGNUSON. Mr. President, after all these years, it gives me great pleasure to move to table that motion.

The motion to table was agreed to.

Mr. HARRY F. BYRD, JR. subsequently said: Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HARRY F. BYRD, JR. What time was the rolling stock legislation laid before the Senate and made the pending business?

The PRESIDING OFFICER. The Journal Clerk will check.

At 12:50 p.m.

Mr. HARRY F. BYRD, JR. At 12:50 p.m.?

The PRESIDING OFFICER. The Senator is correct.

Mr. HARRY F. BYRD, JR. What time did the vote occur?

The PRESIDING OFFICER. At 1:02 p.m. the vote began.

Mr. HARRY F. BYRD, JR. I thank the Chair.

TRUTH IN LENDING ACT AMENDMENTS OF 1973

The PRESIDING OFFICER (Mr. BIDEN). Under the previous order, the Senate will proceed to the consideration of S. 2101, which will be stated by title.

The legislative clerk read as follows:

A bill (S. 2101) to amend the Truth in Lending Act to protect consumers against inaccurate and unfair billing practices and for other purposes.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time not be charged against either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, on behalf of the distinguished majority leader I yield time that was under the control of the majority leader to the distinguished manager of the bill (Mr. SPARKMAN).

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SPARKMAN. Mr. President, I ask unanimous consent that the following staff members be granted privilege of the floor: Ken McLean, Steve Paradise, Mike Burns, Pat Abshire, Reginald Barnes, and Emily Card.

The PRESIDING OFFICER. Without objection, it is so ordered.

The time for debate is limited to 2 hours, with the time equally divided and controlled by the majority leader and minority leader.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time under the control of the distinguished minority leader be yielded to the Senator from Tennessee (Mr. BROCK).

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPARKMAN. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SPARKMAN. Mr. President, this bill, S. 2101, contains three titles. Title I is termed the "Fair Credit Billing Act." This title is designed to help consumers resolve credit billing disputes in a fair and timely manner and to prohibit certain other practices arising out of the use of credit cards or revolving charge accounts. Under this title creditors are required among other things to acknowledge customer billing inquiries within 30 days and resolve those inquiries within 90 days. Creditors cannot send dunning letters, threaten the consumer with adverse credit report, or take other action to collect a disputed amount or report such amount as delinquent until the creditor has complied with the requirements for resolving billing inquiries.

Creditors who fail to comply with these requirements forfeit the amount in dispute up to $50 whether or not the bill is an error.

In addition to establishing a system for resolving billing disputes, the bill seeks to prohibit other unfair billing practices with respect to revolving or open-end credit accounts. The substantive provisions of the bill on this subject are as follows:

First. Creditors cannot impose a finance charge on a revolving credit account unless the customer's statement is mailed at least 14 days prior to the date by which payment must be received. An exception is provided if a creditor fails to meet the 14-day requirement as a result of an act of God or other circumstance beyond the creditor's control.

Second. Creditors cannot impose a finance charge on revolving credit accounts if the customer's payment is received before the due date.

Third. Creditors must promptly credit a customer's revolving charge account for any excess payment or refund the amount of the excess if requested.

Fourth. Merchants honoring credit cards issued by banks or other third parties must promptly notify the card issuer of any return of mechandise or similar adjustment.

The bill also seeks to prohibit certain anticompetitive practices between credit card issuers and retail merchants who participate in the credit card plan. Under this provision of the bill credit card issuers cannot prohibit merchants who honor the card from offering a discount to cash customers. Also credit card issuers cannot require merchants to maintain deposits or purchase other services as a condition for participating in the credit card plan.

The bill is designed also to strengthen the legal rights of customers who use credit cards issued by banks or other third parties. Under these provisions of the bill banks or other financial institutions which issue credit cards cannot offset credit card bill against a customer's checking or savings account unless a court order has been obtained. Also a customer who purchases defective merchandise with a credit card issued by a bank or other third party can withhold payment and assert the same legal claims and defenses against the card issuer that he has against the merchant who sold the merchandise, provided the transaction exceeded $50 and occurred in the same State where the customer lives or within 100 miles of his residence.

Title II of the bill contains a number of largely technical amendments designed to improve the operation of the Truth-in-Lending Act. Most of these amendments were recommended by the Federal Reserve Board and the National Commission on Consumer Finance.

The most significant provision under this title limits the creditor's maximum liability in a class action suit brought under the Truth-in-Lending Act to $100,000 or 1 percent of the creditor's net worth whichever is lesser. This does not apply to the amount of actual damages—if any—which can be recovered in a class action suit.

Title III is termed the Equal Credit Opportunity Act and prohibits any creditor from discriminating against any person on account of sex or marital status in granting or denying credit. This prohibition against discrimination applies to all credit transactions whether for consumer, business, or other purpose and includes cash loans, installment sales, mortgage loans, and the opening or closing of a revolving charge account. The prohibition also covers the imposition of more restrictive terms and conditions on a prospective credit transaction as well as the approval or denial of credit.

Mr. President, I believe this is a good, comprehensive bill. It contains elements of S. 914 which was introduced by Senator PROXMIRE and S. 1630 introduced by Senator BROCK and me. It was carefully considered by the Committee on Banking, Housing and Urban Affairs, and I urge its adoption by the Senate.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. BROCK. Mr. President, I yield myself such time as I may consume.

Mr. President, we have spent a great deal of time on this legislation last year, year before, and again this year. A number of bills have been introduced. The Senator from Wisconsin (Mr. PROXMIRE) has been extremely active in the area, as have the distinguished chairman of our committee, the Senator from New Jersey (Mr. WILLIAMS), I, and other Senators.

I think, in essence, this bill represents and reflects a rather remarkable spirit of compromise in an effort to resolve what is a problem for the American consumer, and that relates to fair credit billing activities.

The record is replete with statements of consumers who have been billed by robot and by computer, day in and day out, month in and month out, and have been threatened with a loss of access to records and threatened with a loss of credit ratings, without any really adequate protection under the law. We must deal with that particular problem in a way that reflects the versatility and flexibility of our free market system, but within that versatility that protects the interest of the consuming public.

The Truth in Lending Act amendments now before the Senate represent an important step toward protecting consumers against inaccurate and unfair billing practices. The amendments improve the administration of the Truth in Lending Act and prohibit discrimination in consumer credit transactions on account of sex or marital status. That happens to be a field in which I have an

enormous interest, because last year, in our hearings with the National Commission on Consumer Finance, we heard a number of witnesses testify to the circumstances of discrimination against women, either because of their sex or because of their marital status.

The bill is an effort to deal in specific terms with that problem and to prevent its recurrence. I think it reflects a remarkable accomplishment on the part of the committee, and I hope that Congress will see fit to pass the bill without objection.

Both the full Committee on Banking, Housing, and Urban Affairs and the Subcommittee on Consumer Credit spent a considerable length of time deliberating on the bill, and the full committee has now reported a reasonable measure which is deserving of the support of the Senate without major modification.

Basically, S. 2101 represents a combination of three bills. On February 20, 1973, Senator PROXMIRE introduced S. 914 to prohibit unfair credit billing practices and amend the disclosure provisions of truth in lending. The Senator from Alabama (Mr. SPARKMAN) and I introduced S. 1630 as an alternative which added the recommendations of the National Commission on Consumer Finance for amendments to the Truth in Lending Act and a section on credit card fraud to the Fair Credit Billing Act amendments. In addition, separate bills had been introduced by the Senator from New Jersey (Mr. WILLIAMS) and myself to prohibit discrimination by creditors on account of sex or marital status.

The Subcommittee on Consumer Credit held hearings on S. 914 and S. 1630 and recommended a revised bill to the full committee incorporating provisions from both of these bills. The full committee later met and, after amending the revised bill recommended by the subcommittee, added a new title III to incorporate the substance of our bills on sex discrimination.

The basic provisions of the bill would:

Provide for prompt and fair resolution of billing disputes.

Prohibit anticompetitive practices between card issuers and retail merchants who participate in credit card plans.

Strengthen the legal rights of customers who use credit cards issued by banks or other third parties.

Improve the administration of the Truth in Lending Act.

Place limits on a creditor's maximum liability in class action suits brought in truth in lending.

Prohibit a creditor from discriminating against any person on account of sex or marital status. I urge its enactment without crippling amendments.

PROVISIONS DELETED BY THE COMMITTEE

Mr. President, I should like to address myself for a few moments to the provisions deleted from the bill by the committee.

The committee turned down two proposals which would have regulated the method of computing finance charges on open end consumer credit plans.

The first proposal limited any creditor who operates an open end consumer credit plan under the terms of which the obligor has the option of avoiding the finance charge by paying his outstanding balance to the use of the adjusted balance method of computing finance charges. The second proposal, which was contained in the subcommittee's recommendations being considered by the committee, permitted the use of both the adjusted and average daily balance methods of computing finance charges. Neither proposal permitted the use of the previous balance method of computing finance charges.

Both of these proposals making illegal the use of the previous balance method of computing finance charges were turned down by the committee.

The previous balance method is a method of computation under which the outstanding balance in the obligor's account at the beginning of the billing cycle is used exclusively as the balance to which the periodic rate or rates are applied. It is the simplest method of computing finance charges and the one used by many small retail firms offering open end credit. The majority of the committee were concerned over the impact that outlawing the previous method would have on the small business firms which used this method. In addition, as the majority saw it, this was a piecemeal approach to Federal rate regulation.

The amount of finance charge is dependent upon both the periodic rate set under State usury laws and the balance method of computation. The committee felt that it would not be appropriate at this time for the Federal Government to intervene into this area of rate regulation which has been the exclusive prerogative of the States. The method of applying rates should be determined by the States as it is now in conjunction with all of the other factors considered when establishing usury or rate statutes.

Another provision deleted by the committee from the subcommittee's recommendations would have prohibited creditors from imposing a minimum finance on any account unless such charge is imposed uniformly on all accounts to recover billing costs.

Testimony before the subcommittee indicated that the minimum finance charges are important to the small retailer who must recover the cost of providing the service of billing customers each month. There are fixed costs which are not covered by 1½ percent on balances of $10 or $15. The minimum finance charges, as a result of truth in lending, generally do not exceed 50 cents. The retail witnesses felt that customers would not react favorably to the requirement in the provision that finance charges be imposed in the month of purchase as this would deprive them of the free period now available under most open end consumer credit plans.

The majority were concerned that the elimination of the minimum finance charge would force small retailers to abandon their open end credit plans and go over to bank credit cards. Availability of credit to low- and moderate-income consumers could be curtailed. In addition, as some members of the committee saw it, the Federal Truth in Lending Act simply is not the place for this form of rate regulation. It should be left up to the States to decide where the minimum finance charge makes economic sense, as they are now doing.

At the present time, finance charges are regulated by State law. States differ in their pattern of regulation. In one instance, a State may allow a lower rate of finance charge to be imposed but may allow a minimum charge. Another State may allow a higher rate of finance charge and prohibit a minimum charge. Many States have, in fact, either restricted or prohibited such charges. If, however, the Federal Government were to make a minimum charge illegal, it would supersede State law and apply to all States and would not take into consideration the differences which now exist in the States in their regulation of finance charges.

I have received from small retailers in Tennessee numerous telephone calls and telegrams indicating that a Federal law prohibiting the previous balance method of computing finance charges and the minimum finance charge would cause them great hardships. The small businessmen who have contacted me tell me that such an approach on the Federal level would put them at a great disadvantage in competing with the large retail firms and could force them to use bank credit cards. I feel that it would be most unfair to small businessmen for us to legislate in this area at this time.

I urge the passage of the bill without crippling amendments.

In the interest of the legislative process, I reserve the remainder of my time.

Mr. PROXMIRE. Mr. President, will the Senator from Alabama yield me a brief amount of time on the bill?

Mr. SPARKMAN. Yes, I yield 5 minutes to the Senator from Wisconsin.

Mr. BROCK. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. PROXMIRE. I am happy to yield.

Mr. BROCK. Mr. President, I ask unanimous consent that the following staff members be permitted the privilege of the floor: Tony Cluff, Tony Wood, and Tom Brooks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, I wish to congratulate the chairman of the committee (Mr. SPARKMAN) and the Senator from Tennessee (Mr. BROCK) for their hard work on the bill. Both of them have spent a great deal of time on the bill and have strengthened it in many respects.

This is a controversial kind of a law to try to enact. It does affect both consumers and businessmen. It is a bill on which it is hard to secure agreement. It causes very strong feelings on the part of businessmen as well as consumer organizations.

On this kind of legislation, it is most important to have people with the concern and the intelligence shown by the Senator from Alabama (Mr. SPARKMAN) and the Senator from Pennsylvania (Mr. BROCK) working on it.

They have put in a tremendous amount of time and effort on this bill and have a bill which does have good provisions in it. However, in all candor, I can only

support the bill reported by the committee, but only with considerable reluctance and with the hope that it can be strengthened on the floor. The bill contains a number of good provisions which will improve our credit system. For example, the bill requires creditors to resolve customer billing inquiries in a fair and timely manner; it restricts the so-called holder in due course doctrine on credit card transactions; it prohibits other unfair billing practices; and it outlaws discrimination in credit on the basis of sex or marital status. These are all worthwhile reforms and they have my wholehearted support.

However, the bill reported by the Senate Banking Committee is also deficient in three areas. It does not contain a provision regulating the manner in which creditors compute finance charges on their revolving charge account plans. Such a measure was included in my original bill, S. 914, but was deleted by the committee. Second, the bill as reported does not contain a prohibition against minimum finance charges. Such a prohibition was also contained in my original bill, S. 914, but was similarly deleted by the committee. Third, the bill as reported drastically weakens the civil penalties under truth in lending contrary to the specific recommendations of the Federal Reserve Board.

I am going to offer amendments to remedy 2 of these 3 deficiencies. I understand that the Senator from Utah (Mr. Moss) will offer an amendment to remedy the civil penalties provision. If these amendments are successful, I believe we will have a strong and effective bill, and one which will obtain the enthusiastic support of consumer groups. This support by consumer groups is necessary if we expect the bill to clear the House of Representatives. On the other hand, if these strengthening amendments are defeated, I believe we will have only a marginal consumer protection bill and one which will not be vigorously pushed in the House. Under these circumstances, it is likely the bill will die in the House as did similarly weakened legislation on the same subject last year.

Mr. President, the bill before us has three titles. Title I prohibits unfair credit billing practices; title II improves the administration of the Truth in Lending Act; and title III prohibits discrimination in consumer credit transactions on account of sex or marital status.

TITLE I—FAIR CREDIT BILLING

Title I of the legislation is termed the Fair Credit Billing Act, and is based on legislation I introduced in the 91st, 92d, and 93d Congress. It is designed to help consumers resolve billing disputes in a fair and timely manner and to prohibit certain other practices arising out of the use of credit cards or revolving charge accounts. As reported by the committee, the proposed Fair Credit Billing Act has the following key objectives:

RESOLUTION OF BILLING ERRORS

The legislation seeks to establish a system for insuring that billing disputes or inquiries are resolved in a fair and timely manner. This objective is achieved through the following substantive provisions:

First. Creditors are required to acknowledge customer billing inquiries within 30 days and to resolve those inquiries within 90 days. An inquiry is resolved by either correcting the customer's bill or explaning why the original bill is correct.

Second. Creditors cannot send dunning letters, threaten the consumer with an adverse credit report, or take other action to collect a disputed amount or report such amount as delinquent until the creditor has complied with the requirements for resolving billing inquiries.

Third. If a customer continues to dispute a bill after receiving the creditor's explanation, the creditor may not report the disputed amount as delinquent to a credit reporting agency unless the creditor so notifies the customer and tells the credit reporting agency the amount is in dispute.

Fourth. Creditors must report any subsequent resolution of a disputed amount to any credit reporting agency which was first notified of the dispute.

Fifth. Creditors who fail to comply with the foregoing requirements forfeit the amount in dispute up to $50 whether or not the bill was in error.

Sixth. Creditors must indicate on their monthly bills an address for handling billing disputes and disclose twice yearly the customer's right to have these disputes resolved as provided in the bill.

REGULATION OF OTHER BILLING PRACTICES

In addition to establishing a system for resolving billing disputes, the legislation seeks to prohibit other unfair billing practices with respect to revolving or open-end credit accounts. The substantive provisions are as follows:

First. Creditors cannot impose a finance charge on a revolving credit account unless the customer's statement is mailed at least 14 days prior to the date by which payment must be received. An exception is provided if a creditor fails to meet the 14-day requirement as a result of an act of God or other circumstances beyond the creditor's control.

Second. Creditors cannot impose a finance charge on revolving credit accounts if the customer's payment is received before the due date.

Third. Creditors must promptly credit a customer's revolving charge account for any excess payment or refund the amount of the excess if requested.

Fourth. Merchants honoring credit cards issued by banks or other third parties must promptly notify the card issuer of any return of merchandise or similar adjustment.

ANTICOMPETITIVE PRACTICES

The legislation also seeks to prohibit certain anticompetitive practices between credit card issuers and retail merchants who participate in the credit card plan. The substantive provisions are as follows:

First. Credit card issuers cannot prohibit merchants who honor the card from offering a discount to cash customers.

Second. Credit card issuers cannot require merchants to maintain deposits or purchase other services as a condition for participating in the credit card plan.

RIGHTS OF CREDIT CARD CUSTOMERS

The legislation also seeks to strengthen the legal rights of customers who use credit cards issued by banks or other third parties. The substantive provisions are as follows:

First. Banks or other financial institutions which issue credit cards cannot offset an unpaid credit card bill against a customer's checking or savings account unless a court order has been obtained.

Second. A customer who purchases defective merchandise with a credit card issued by a bank or other third party can withhold payment and assert the same legal claims and defenses against the merchant which sold the merchandise, provided the transaction exceeded $50 and occurred in the same State where the customer lives or within 100 miles of his residence.

TITLE II—AMENDMENTS TO THE TRUTH IN LENDING ACT

Mr. President, title II also contains a series of largely technical amendments designed to improve the administration of the Truth in Lending Act. Most of these amendments were recommended by the Federal Reserve Board or the National Commission on Consumer Finance and are described in the section-by-section summary included with this report.

The most significant provision under title II limits a creditor's maximum liability in a class action suit brought under truth in lending to $100,000 or 1 percent of the creditor's net worth, whichever is the lesser. I believe these limits are inadequate and should be increased.

TITLE III—EQUAL CREDIT OPPORTUNITY

Title III is termed the Equal Credit Opportunity Act and prohibits any creditor from discriminating against any person on account of sex or marital status in granting or denying credit.

This title is based on legislation originally introduced by Senator WILLIAMS and Senator BROCK and was added to the fair credit billing legislation in the form of an amendment sponsored by Senator WILLIAMS, Senator BROCK, and myself. Credit discrimination based on sex or marital status was clearly documented in the report of the National Commission on Consumer Finance as well as other studies. Based on these findings, I believe a statutory prohibition against discrimination based on sex or marital status is long overdue. This type of senseless and arbitrary discrimination must be eliminated from our credit system. The prohibition in the bill against discrimination applies to all credit transactions, whether for consumer, business, or other purposes, and includes cash loans, installment sales, mortgage loans, and the opening or closing of a revolving charge account. The prohibition against discrimination also covers the imposition of more restrictive terms and conditions on a prospective credit transaction as well as the approval or denial of credit.

NEED FOR FAIR CREDIT BILLING

The need for fair credit billing legislation is brought on by the rapid increase

in revolving or open-end credit plans which bill consumers on a monthy basis for the purchases during the preceding month. Many creditors operating open-end credit plans have computerized their billing and collection systems to the point where an individual consumer with a particular problem is finding it increasingly difficult to obtain a relevant response to his inquiries.

Also, because of the rising cost of credit, many retailers have converted from the traditional 30-day charge account to a revolving charge account where the consumer is charged for credit if he does not pay in full within the traditional 30-day period. In other cases, credit cards issued by banks or other third parties have altered the legal nature of the more traditional two-party credit transaction involving only a merchant and a consumer. All of these developments in the credit industry have brought benefits to the consuming public. But there have also been problems which the fair credit billing legislation is designed to remedy.

THE CREDIT CARD REVOLUTION

Credit cards have been one of the fastest growing forms of consumer credit. While credit cards were once an exclusive instrument of the rich, they are now used by every segment of society. A recent study by the Institute for Social Research of the University of Michigan shows that 35 million families, or roughly one-half of all families, use at least one credit card. More surprising, the study also revealed that 20 percent of families with incomes under $5,000 use at least one credit card. More than 17 million families use three or more cards and about 6 million families use nine or more cards.

The study also showed that 25 million families use cards issued by retail merchants; 24 million families use gasoline company credit cards; 12 million families use bank credit cards; and 9 million families use travel and entertainment cards. Those families who use credit cards make credit card purchases of $26 billion a year, or about $750 per family. Federal Reserve Board figures indicate that by the end of 1972, American consumers owed $40 billion on their open-end credit accounts of all types or roughly $400 per family. For the average family credit cards, charge accounts, and monthly bill paying have become a way of life.

RESOLVING BILLING ERRORS

Numerous complaints have been received by Members of Congress from consumers using credit cards who have had difficulty in resolving errors appearing on their monthly credit statements. The Federal Trade Commission has received nearly 2,000 complaints in this area. Similar complaints have been received by consumer protection agencies throughout the country. A survey taken by the Minneapolis Tribune shows that one out of every three consumers have been involved in at least one billing error problem.

Most consumer complaints about billing errors involve a common pattern. In a typical case, the consumer might discover a billing error on one of his monthly charge accounts or credit card statements. Or he might need further information about a particular item appearing on his statement. He writes to the creditor but receives no satisfactory response. In the meantime, he receives a series of computer-written dunning letters. These letters may threaten the consumer with a bad credit rating or other legal action unless the amount in dispute is paid.

After literally months or years of carrying on correspondence with a computer, many consumers give up in frustration and pay the disputed amount even though they feel they do not owe such amounts. Some eventually resolve the dispute through sheer persistence, although it may take many months or even years of patient letter writing. Some are able to get their billing problems corrected by writing to the president of the company or to their Congressman or Senator. A few hire attorneys to press their claim. One consumer witness testifying last year told of spending $150 in legal fees to get a $22 billing error corrected.

The bill requires that upon being notified of a billing error, the creditor must acknowledge the notification in 30 days and take positive action to resolve the error within two complete billing periods, but in no event later than 90 days. An error is resolved either by making appropriate corrections in the consumer's account or by explaining why the original amount billed was correct. In the latter case, the creditor is required to investigate the error and provide the consumer with copies of the transaction in question if requested. The requirement for an investigation is intended to preclude a creditor from making an automatic form letter response without actually looking into each billing inquiry.

While the creditor is investigating a billing inquiry, he is prohibited from reporting to a credit bureau that the amount in dispute is delinquent. He also is barred from taking action to collect the amount in dispute including threatening the consumer with an adverse credit report. Many consumers are now intimidated into paying an unjust bill because of these questionable collection tactics.

If a consumer still disputes the accuracy of a bill after it has been explained to him in accordance with the law, the creditor can begin his normal collection activity; however, if he reports the amount as delinquent to a credit bureau, he must indicate the amount that is in dispute and must notify the consumer that the amount was reported as delinquent and must give the consumer the name and address of the credit bureau involved.

Any creditor who fails to meet these requirements forfeits the amount in dispute up to a maximum of $50 whether or not the amount billed actually was in error.

Creditors are also required to inform consumers of their rights under the Fair Credit Billing Act at least twice a year and disclose an address for receiving billing inquiries on or with their monthly billing statements.

All of these provisions are designed to establish a fair and equitable system for the resolution of billing disputes. They are fair to the consumer and workable to the credit industry. They have been carefully reviewed last year and this year by the committee and were adopted unanimously. Most of the requirements are already being met by responsible creditors and there is no reason why all creditors cannot or should not meet those same standards.

RESTRICTION OF HOLDER IN DUE COURSE

Mr. President, the bill reported by committee also contains a modified restriction of the so-called holder in due course doctrine on credit card transactions. A similar provision was deleted by the committee last year by a one-vote margin. This year, the provision was adopted in committee without a single objection. I am glad to see that we have finally reached a consensus on the need for restricting the holder in due course doctrine on credit card transactions. The provision reported is not as strong as I would have liked. Nonetheless, I believe we have made a reasonable beginning.

Perhaps the best way to understand how the holder in due course doctrine operates on credit card transactions is to take a typical example. Suppose a consumer buys a $500 TV set from a retailer by using his bank credit card. When he gets the set home he discovers the set does not work and the retailer does not respond to his complaint. The normal reaction is to withhold payment until the retailer repairs or replaces the defective set. It is then that the consumer learns about an obscure provision in his credit card agreement with the bank. The consumer must continue making payments to the bank for the defective TV set regardless of any legitimate claim or defense he may have against the merchant. If he had bought the set through the merchant's own credit plan, he could have withheld payment from the merchant and if the merchant sued to collect, the consumer could raise as a defense the fact that the TV set was defective. These legal rights evaporate on three-party credit card transactions involving a merchant, a consumer and a card issuer—generally a bank.

In order to remedy this problem, the bill prevents waiver of defense clauses from being inserted in any credit card agreement. As reported, the bill subjects third party credit card issuers as well as other credit card issuers to all claims—other than tort claims—and defenses arising out of a credit card transaction provided: First, a good faith attempt has been made by the cardholder to obtain satisfaction from the merchant; second, the amount of the transaction exceeded $50; and third, the transaction occurred within the cardholder's State of residence or within 100 miles of his residence, whichever is greater.

When these conditions are met, a consumer can withhold payment for shoddy merchandise purchased with a bank credit card or other card and assert his legal claims or defenses against the card issuer in any subsequent legal action. These rights, of course, are not subject to waiver by the consumer as is the case with other rights under truth in lending.

I am personally doubtful of the need for the $50 restriction and the geographic restriction, and I am hopeful that in time they can be dropped. Once we gain experience under this provision, I believe it will become evident that there is no great need to preserve the holder in due-course doctrine on small transactions or on out-of-State transactions beyond 100 miles from the consumer's residence. Nonetheless, a majority of committee members seemed to be persuaded that some restrictions were needed and we therefore had to reach a compromise in order to achieve any progress.

Mr. President, the bill contains a number of other provisions to prohibit unfair billing practices and to improve the administration of truth in lending. These provisions are spelled out in the committee report and I will not take the time of the Senate to describe them here. In summary, I believe the legislation is good as far as it goes, but it needs to be substantially strengthened if we are to protect consumers from some of the most serious billing abuses.

Mr. President I thank the distinguished manager of the bill and I yield back the remainder of my time on the bill.

The PRESIDING OFFICER. Who yields time?

The bill is open to amendment.

Mr. PROXMIRE. Mr. President, I call up amendment No. 363.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

On page 15, line 25, insert the following new section to Chapter 4:

§ —. Computation of finance charge

No creditor who operates an open-end consumer credit plan under the terms of which the obligor can avoid incurring a finance charge by paying his outstanding balance or portion thereof by a specified date shall impose a finance charge against any balance in the obligor's account unless the creditor has: (i) previously sent the obligor a billing statement indicating the amount of such outstanding balance at the end of the last billing cycle and the subsequent date by which payment must be received to avoid the imposition of a finance charge; and (ii) deducted from such outstanding balance any subsequent payments received or credits made in the obligor's account by such date.

Mr. PROXMIRE. Mr. President, I understand that under the unanimous-consent agreement I have a half hour on this amendment.

The PRESIDING OFFICER. There is a half hour on each side, a total of 1 hour on each amendment.

Mr. PROXMIRE. Mr. President, I do not expect to take much time, and I hope to have a rollcall vote when the debate is concluded.

I yield myself 10 minutes on the amendment.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 10 minutes.

Mr. PROXMIRE. Mr. President, my amendment is designed to regulate the manner in which creditors compute their finance charges on revolving charge accounts. This amendment in no way limits the legal rate of interest which creditors can charge on these accounts. Most States permit a maximum charge of 1½ percent a month or 18 percent a year on the unpaid balance. My amendment would not change those rate ceilings. It simply requires all creditors to use the same method for determining the unpaid balance against which a rate of finance charge is applied.

Many if not most consumers think that all revolving credit plans are the same because they all charge 1½ percent on the unpaid balance. Nothing could be further from the truth. The hooker lies in the term "unpaid balance." No State or Federal law defines the unpaid balance upon which a finance charge is based. Each creditor is free to use his own definition.

Mr. President, the reason why my amendment is so important, is that the truth-in-lending law represented the beginning of a change designed to give consumers information and require disclosures so that they would know where they could shop for the lowest cost credit.

The truth-in-lending law has been criticized by many because it is not effective. They say that people still do not use it. Consumers are confused. They cannot tell whether one kind of credit which offers credit at 18 percent is higher or lower than another which seems to offer credit at an annual rate of 15 percent or 10 percent a year, because the billing systems are different.

As long as we have that difference in billing systems, it will be impossible for most consumers to shop intelligently for credit. He may think he is getting a better deal if he goes for the lower rate. That will not necessarily be true. He may be paying a higher interest rate if he takes the lower rate because the billing system might be different.

My amendment would provide that every creditor would use the same kind of billing system. Then the consumer would be free to determine which rate is the lower.

I think it is very important that the consumer be given this opportunity, because it is clear that he is not being given that opportunity at the present time.

Every study has indicated that the overwhelming majority of people are not able to determine or will not take the time to determine which kind of a billing system will give them the lower rate.

Because of this loophole in our credit laws, creditors have developed a welter of billing systems whose only purpose is to increase finance charge revenue and whose only effect is to confuse and baffle the customer. For this reason the truth-in-lending law did not work in this area.

There are at least five different billing systems currently in use and unless legislation is passed, the number is likely to increase. Each system uses the standard rate of 1½ percent a month or 18 percent a year; however, the actual amount of finance charge can vary by as much as 5 to 1 or more, depending upon the computation method used by the creditor. How can we have truth in lending when finance charges can vary by 500 percent or more even though everyone discloses the same rate?

The Truth in Lending Act tried to deal with the problem by requiring each creditor to disclose his billing system. However, the disclosure approach simply has not worked. Consumers do not really understand the different systems in use. A recent poll showed that despite truth in lending, 80 percent of consumers did not know how their finance charges were figured on their revolving charge account.

One system used by many retailers, large and small, is the previous balance system. Under this system, if a consumer has an opening balance of $100 and pays $90, the creditor bases his finance charge on the previous balance of $100 instead of the remaining balance of $10. In effect, the creditor charges interest on money which has already been paid.

The previous balance system has been severely criticized by the FTC, by the Federal Reserve Board, by State courts, by consumer groups, and even by some creditors. Six States have abolished the system, although creditors are free to use other systems which may cost the consumer even more money.

There are also a number of average daily balance systems in use. Under these systems, the creditor bases his finance charge on the customer's average daily balance over a 30-day period. However, these systems contain the same retroactive features of the previous balance system. If a consumer does not pay his opening balance in full by the end of the 30-day period, the creditor goes back in time and charges a finance charge against balances in the account prior to the due date.

Moreover, one variety of the average daily balance system developed by Montgomery Wards charges consumers for current purchases before they are even billed. Under the Wards system, many consumers wind up paying higher finance charges than they would have under the previous balance system. Wards uses their average daily balance system in the six States where the previous balance system has been banned. Thus consumer protection legislation in these States has resulted in an even greater consumer ripoff.

The fairest and most equitable method for assessing finance charges is the adjusted balance method. It is the method required by my amendment. Under the adjusted balance method, the creditor first bills the customer for his balance due and then deducts any payments or credits received on time before applying a finance charge. For example, if the consumer had an opening balance of $100 and paid $90, the creditor would assess a finance charge only against the remaining balance of $10.

The mandatory use of the adjusted balance system is strongly supported by the Consumer Federation of America which represents hundreds of consumer groups all across the Nation. It is already used by a number of creditors including banks, oil companies, and retailers. The adjusted balance system is simple and can be used by any creditor, large or small. It does not require computers or other complex machinery. If a creditor can multiply $100 by 1½ percent he surely can subtract the customer's payments from this amount and multiply the smaller balance by 1½ percent.

Mr. President, the thrust of my amendment is simple. It requires creditors to use one uniform billing system on revolving charge accounts. In this way, consumers can compare the cost of one plan with another by comparing the rate. Consumers can understand a finance rate. They cannot understand the differences between billing methods. I am amazed that the Congress has permitted the credit industry to confuse and mislead their customers for so long.

Mr. President, letting creditors determine their own computation method on revolving charge accounts is like letting butchers determine their own weights and measures. Imagine the public outcry if each butcher could use his own standard weights and measures. All butchers could charge the same price for hamburger—$1.29 a pound. And yet the actual amount of hamburger could vary tremendously depending upon the standard weight used by each butcher. We obviously would not permit this intolerable situation to continue for very long. Public pressure would force the Government to step in and impose one standard system of weights and measures on all butchers.

We have the same exact situation on revolving charge accounts. Each creditor charges the same rate, but the actual amount of finance charge depends upon the billing system used by the creditor. The only reason the public hasn't screamed is that most people do not really understand the different billing methods. It is therefore up to us as legislators to protect the public from this abuse.

Mr. President, I believe the adoption of a single billing system will strengthen the Truth in Lending Act by enabling consumers to compare the relative cost of different credit plans. But I also believe that in the long run, my amendment will help the credit industry. I realize there is tremendous opposition to my amendment by creditors. But I believe this opposition is shortsighted and is based primarily on the natural inclination to oppose change.

My amendment will help the industry by making it more competitive. It will increase consumer confidence in the industry by taking the confusion out of revolving credit plans. It will eliminate many customer complaints about the previous balance system and other retroactive systems. The FTC has already received over 2,000 complaint letters on the previous balance system. Finally, my amendment will treat all creditors equally and insure that no creditor can gain an unfair competitive advantage by cutting prices and recovering costs through a tricky billing system.

Mr. President, I believe the arguments raised against my amendment by the credit industry are shortsighted and ill founded. For example, it has been argued that the Federal Government should not stifle innovation and free enterprise by requiring only one billing method. This argument ignores the fact that we have imposed standardization in many other fields when necessary to avoid confusion including the adoption of standard weights and measures. The only purpose behind the proliferation in billing methods is to raise the creditor's yield. The consumer receives no benefit from different billing systems—only higher finance charges.

Another argument made by creditors is that some of the higher cost billing methods including the previous balance system are used by smaller retailers who need the extra revenue to stay in business or remain competitive. However, expert testimony before the committee revealed that a retailer's total revenues would decline by about two-tenths of 1 percent as a result of changing from the previous balance to the adjusted balance system. This does not seem to be sufficient to cause anyone to go out of business or become less competitive particularly since large retailers as well as small retailers would be affected equally. As I say, six States have already abolished the previous balance system and there is no evidence that small retailers have gone out of business or have been adversely affected in those States.

Still another argument made by creditors is that they need flexibility in billing systems to make up for an inadequate rate ceiling. It is alleged that the rate ceiling in many States is too low to permit a retailer to break even on his credit operation and that a mandatory requirement to use the adjusted balance system would make a bad situation worse. This argument actually makes the strongest possible case for Federal regulation of billing methods. It is a tacit admission that creditors have used different billing systems as a device to get around State interest rate ceilings. If these ceilings are too low on revolving credit, creditors, instead of adopting a policy of violating the spirit of the law, should appeal directly to the State legislatures for relief. By changing his billing method, a creditor can achieve a de facto increase in the effective interest rate without legislative approval or consumer knowledge. Whatever may be the proper rate ceiling, a creditor should not be allowed to indirectly increase that ceiling by changing his billing method. This type of subterfuge has no place in our credit system.

Mr. President, I believe the time is long overdue for Congress to act in this area. It is high time we took the confusion out of credit. I urge the Senate to adopt my amendment, and I reserve the remainder of my time.

Mr. SPARKMAN. Mr. President, I ask unanimous consent that during the consideration of this measure, Mr. Jerry Allen and Mr. John Miller be accorded the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

Mr. BROCK. Mr. President, I yield myself 10 minutes.

Mr. President, I marvel at the eloquence of the Senator from Wisconsin, who is a very able and skilled debater, and presents his arguments with a great deal of cogency and effect, for which I compliment him, though I am not sure I always agree with what he says. This is one case where I do not.

The Senator states the proposition that this is not going to cost the retailers any money. Well, I would respond by saying it is not going to benefit the consumers very much; so what is all the hassle about?

According to the testimony we had before the committee, the only study that was done with definitive value before the Commission last year was done by Professor Ray McAllister of North Texas State University. He testified on some of the results of a research project in which he has been engaged for the past 18 months with regard to the types of billing methods by creditors, finance companies, and banks in computing finance charges.

Let me review the facts. The previous balance method, on the average, costs 15 cents a month more than the adjusted balance method. For at least one-half the customers, the previous balance method costs 6 cents a month more, or up to that difference.

The question is, if the dollar saving is minimal to the customer and, as the Senator says, if the actual increase in income to the creditor is minimal, according to the businessman, what is the problem?

The problem is very simple. This amendment, No. 1, does put the Federal Government into the business of regulating interest rates.

Very clearly and very simply, all the States—or virtually all—have gone to the 1½ percent a month service charge. So if we now eliminate any from competition with regard to the computation of rates, we are placing the Federal Government in the position of setting the exact rate structure in the 50 States.

Mr. President, let me talk to you about the more important problem that I have with the amendment, which deals with credit in its largest sense, that is, in its availability to the less-advantaged people of this country.

For years, there was no such thing as credit to moderate- or low-income families. It was a facility made available only to the very rich. However, as the marketing concepts broadened and became more adaptable and more flexible, the business came to realize the economic benefits that could be gained by involving all the people of this country in the marketplace. So they created an open-end credit plan which would allow almost any family access to the marketplace. They established certain procedures whereby it generally became the accepted practice, that is, we would not have to pay any interest if we paid the account within 30 days of making the charge.

How is that going to be changed with the Proxmire amendment?

What we have today are large and small retailers involved in this credit availability process whereby they are making goods and services available to those who do not have the cash otherwise.

What happens?

The small retailer is less qualified than the large one, because no one feels that the large ones will suffer very much under any circumstances. What happens? By Federal action, the so-called J. C. Penney plan, if applied to the small department store, the 5-and-10-cent store, what have you, in Oshkosh, Chattanooga, Memphis, or Mountain City, will make it almost impossible for any small businessman to continue to oper-

ate his own credit plan. He does not have a computer. He does not have access to one. What will he do? He will go to the bank and say, "Look, I cannot afford to take this plan's criteria. I cannot afford to provide credit to my middle- and low-income customers under the law." All he can do is go to the bank and say, "Let us work out a provision whereby I can use a bank credit card or a bank credit system."

What does that cost the customer? The low-income and the middle-income customer who patronizes the independent department store in Oshkosh, right off the bat, will have to pay 5 percent off the top in terms of the merchandise price.

Is 5 percent of the total purchase going to be worth the saving of 6 cents a month in the billing charge?

I suggest to you, Mr. President, that we will not have saved him one dime but will have cost him a great deal of money because we will have forced the customer into a much more expensive method of carrying on his purchase of goods and services.

Mr. President, what have you done to the merchant who says, "Well, I am sort of in the middle. I have a middle-sized business. It is not big enough to use computers. I am operating on my own credit plan." What will he do in response to this amendment? He will have to cut out the 30-day credit plan of his because that is the only way he can compete.

What have we done to the customer? We will have cost him the 30-day no-interest payment that he is getting today, the 30-days' worth of free time.

How much have we done for the customer if we pass this amendment, which simply says that all we want to do is to provide one method of a rate computation in the United States, that it is simple and easy to understand, and we are making the marketplace an easier place for the consumer to get along in, so that he knows what is happening to him.

But the effect of the amendment will be something very different.

What have we done for the consumer if we cut off the 30-day free period? What we have done for the consumer if we put him on a finance system which will cost him 7 percent more money in terms of total purchases, because the whole year is apportioned with that institution into a much more expensive method of credit computation and credit calculation?

What have we done for the poor family of limited means which cannot qualify for a bank credit card but which does have access to the little meat market, the corner grocery store, the small drugstore, because they know the man who owns the store and the family that runs it, who say to the consumer, "I will give you credit and a free period of 30 days in which to pay if you will buy your merchandise from me."

What happens to that family when they lose all access to credit because we are trying to simplify a credit code for them?

What have we done? The fact is, we will have done no favor for the consumer. We may have simplified, but in the process of simplification we will have cost the consumer money. We will have limited access of the lower middle income family to credit.

I cannot accept or support the amendment whatever its good intent—and I do not argue that at all—that has the effect of reducing credit availability and increasing its cost. That is why I am opposed to the amendment. It should be rejected.

Mr. SPARKMAN. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER (Mr. McCLURE). The Senator from Alabama is recognized for 5 minutes.

Mr. SPARKMAN. Let me ask the Senator from Tennessee, who is saying what have we done for the consumer, under the conditions he describes, what have we done for that little retail merchant?

Mr. BROCK. We have put him in an impossible situation. He could not live with this amendment.

Mr. SPARKMAN. Has it not been amply represented that this system the Senator from Wisconsin seeks to impose is what is generally known as the J. C. Penney system?

Mr. BROCK. That is right. It would be a mandate for all retailers.

Mr. SPARKMAN. Are there not about five different systems which are usable?

Mr. BROCK. That is right.

Mr. SPARKMAN. The plan of the Senator from Wisconsin would require all of them to operate under a single system, would it not?

Mr. BROCK. That is right.

Mr. SPARKMAN. Is it not true that that operation, I was about to say requires, but certain virtually requires the use of computers in order to keep up with the data?

Mr. BROCK. It requires computers if one is big enough to shift to computers, or to require that they abandon their own credit system.

Mr. SPARKMAN. That is what I was going to bring out. In other words, the average retail stores, as I know it in my hometown and probably as the Senator knows it in east Tennessee, is not equipped to use computers; is that not correct?

Mr. BROCK. They really cannot——

Mr. PROXMIRE. Mr. President, will the Senator from Alabama yield to me at that point?

Mr. SPARKMAN. I yield.

Mr. PROXMIRE. I do not understand why the two Senators keep arguing that this has anything to do with the requiring of computers by small business. This is the average adjusted balance method. It is a simple method for many small businesses who are using it now. It does not require any computers.

Mr. SPARKMAN. Let me say this. I know that the retail stores down in Alabama have told me this simply will not work because they are not able to use computers.

Mr. PROXMIRE. The Senator is talking about the adjusted balance system? I am sure that there are many hundreds of retailers in Alabama who are using it, as they are in Wisconsin and Tennessee. This is something that any small businessman can use. The principle behind the amendment is simple, it puts up a standard method such as we use with weights and measures.

Or should we let the retailer use any system they want to use, to the complete confusion of the consumer, so that they have no idea of what the rate is? The previous balance is one thing. The adjusted balance is something else. The daily balance is something entirely different. All we are doing in this amendment is to require one kind of scale, one kind of measuring system.

Mr. SPARKMAN. Traditionally, making rates such as that has been left with the individual States and not with the Federal Government. Furthermore, this is the selection of one plan out of some five and it would eliminate all the others. I think the amendment is not good. We thrashed that out in committee. We had this very question in committee. The majority of the committee voted for the plan represented in the bill, which I think is a good plan.

Mr. PROXMIRE. Mr. President, I understand that the Senator from Maine would like to speak briefly on this matter, and he will return to the Chamber shortly. I yield myself 2 minutes of my time, simply to summarize my argument in favor of the amendment.

First, Mr. President, this amendment would increase competition, meaningful competition. The competition would not be on the basis of who can offer a plan which appears to offer the best deal to the consumer but does not. It would be on the basis of the same kind of billing system so that computation would be very clear and simple and understandable for a consumer.

Furthermore, as the Senator from Tennessee admitted, in his typical honesty, this would result in a lower cost for the consumer. It would save him money. The Senator from Tennessee says the amount is not great, but it would save the consumer money. For a consumer who uses credit a great deal and has a small amount of income, the savings could be significant. It could be several dollars over the period of a year. Many low-income people have to budget their dollars very carefully.

I think the fundamental argument for this is whether or not we have a fully meaningful truth-in-lending statute. If we do not provide standardization in billing systems, credit systems would continue to be just as confusing as if you walk into a grocery store to buy hamburger, and instead of charging on the pound basis, the merchant charges on some other system; or, instead of having a scale which would have the pound equal to 16 ounces, he has a scale which had a pound equaling 15 ounces. It is as simple as that.

Mr. President, I yield the floor, and I reserve the remainder of my time.

Mr. SPARKMAN. Mr. President, I ask unanimous consent that a staff member, T. J. Oden, and Miss Elinor Bachrach, who is a staff assistant to Senator HATHAWAY, be permitted the privilege of the floor during the consideration of this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. BROCK. Mr. President, I should like to respond briefly to the question regarding the small businessman and retailers.

The Senator from Wisconsin has said any small businessman can use his prescribed system without any increased cost or without any major shift from current practices other than the method of computation itself.

I cannot accept that as a fact, because I do not know of any testimony received in that regard. As a matter of fact, we had hundreds and hundreds of letters from small businessmen, not just from Tennessee but from every State, and without exception—at least, in my own correspondence—they have pleaded that this amendment not be adopted because it would virtually double their cost of staying in the credit business, if they could stay in business at all.

Mr. PROXMIRE. Mr. President, will the Senator yield on that point?

Mr. BROCK. I yield.

Mr. PROXMIRE. Does the Senator know of any testimony at all—we had substantial testimony in which there was opposition to this amendment, as the Senator knows—from any source that the adjusted balance system would cost more? Can the Senator tell me on what page in the hearings this occurs and what witness testified to that point?

Mr. BROCK. I have a letter in my office—I am not sure whether it is part of the record, but it may be—in which a businessman in Memphis states, if I recall correctly, that he has four employees doing calculations in his credit department, and the number would have to be increased to eight. In other words, it would double his cost of doing business.

Mr. PROXMIRE. May I say to the Senator that that testimony was not presented in the hearing, and it was not subject to cross-examination. The people who opposed this amendment were very articulate and intelligent and well organized. They knew exactly what they were doing and spent a great deal of money getting the best possible case against the amendment, and this argument was not made at all in the hearing. I submit that if that argument had been made and was subject to cross-examination, we could have torn it to pieces, because there is no indication that more people would be required. If a businessman used the adjusted balance system, his yield might be reduced, and in that way he might have less revenue.

Mr. BROCK. I am perfectly willing to carry the argument on that fact alone, if the Senator wishes. If he wants to talk about small business, their margin of profit is absolutely minimal. They do not have any giant reserve and contingency fund they can fall back on when something comes out of Washington that changes their operation. What do they do? If they do not make a profit, they do not stay in business, so obviously they are going to try to adapt. How do they adapt under the Senator's amendment? The first thing they can do is to raise prices to the consumer. That goes to the cash customer as well as the credit customer. Who is the cash customer? The very lowest income family.

The second reaction, if he cannot go that route, is to say, "I cannot afford a credit plan at all, so I am going to turn the whole problem over to the bank"; and the bank has a credit card plan. That costs the consumer 5 percent more on his purchase. There is a 5-percent inflation factor built in. It eliminates the opportunity for the poor family to get credit, because they do not have the opportunity for credit from the bank.

So the Senator is going to increase competition, and he is going to do it by limiting flexibility. He is going to save the consumer money at a cost of higher prices and perhaps less credit availability. The Senator is going to help the small businessman by forcing him to abandon his credit plan, by going to a bank, and by increasing his cost. The small businessman has to cover the increased cost somehow.

Mr. PROXMIRE. Right off the bat, when I began speaking, I said that the reduction in income by the method I have proposed would be two one-hundredths of 1 percent of total revenue. It is true that there is no gain without pain. You cannot have gain for the consumer without some kind of cost to the seller. But it is the same kind of conservance as if we mandated uniform scales so that nobody could have a 15-ounce pound, that the pound would be 16 ounces for all. Obviously if we did not permit a 15-ounce, 12-ounce pound, it would mean that everybody—small butchers and others—who was selling on the basis of a 15-ounce pound would be out a little.

My argument is that until we get this system on a uniform basis so that every creditor who goes in to borrow money knows what the situation is and where the deal is best and where the rate is the least, truth in lending will have no real significance.

Those who oppose truth in lending and did so successfully for 7 years before we could get it out and passed and into law will continue to prevail, unfortunately, because the effectiveness will be limited. With 80 percent of the people not understanding the truth-in-lending law and not being able to use it effectively, with perhaps 99 percent of the people not being able to take the time to determine, on the basis of the billing system, where the better deal is, truth in lending simply is not providing the kind of information to the customer that it should.

This amendment would permit it to do so.

Mr. BROCK. Mr. President, you cannot have gain without pain, most of the time, I suppose. But you certainly have to calculate the cost of the potential, and in this case I think it is prohibitive.

Mr. PROXMIRE. I yield 5 minutes to the Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. HATHAWAY. I thank the Senator for yielding.

Mr. President, I should like to speak in support of the amendment offered by my distinguished colleague, the Senator from Wisconsin.

The amendment to require use of the adjusted balance method of computing finance charges is essentially an amendment to require fair and equal treatment of all credit customers, and of all retailers who extend credit.

As the Senator from Wisconsin has explained, the current system, allowing the use of a variety of methods for computing finance charges, results in widely differing amounts being charged to the customer, depending on which method is employed. Although theoretically the finance charge in each case is 1.5 percent per month, the cost to the customer varies markedly according to the method used.

I firmly believe that this violates the intent of the Truth in Lending Act, which requires full disclosure of all credit practices to the consumer. Furthermore, permitting use of these different systems, some of which have a much higher yield than others, effectively allows creditors to charge interest rates in excess of those stipulated under State usury laws.

All of these methods, except for the adjusted balance method, involve retroactive finance charges, which are also unfair to the consumer. Every system allows the consumer a 30-day grace period for paying his bill. If he pays in full by the end of that period, then no finance charge is levied against him. Essentially he has been given 30 days of free credit.

However, if the customer makes just a partial payment during that time, then under all methods except adjusted balance, he has to pay a finance charge on the balance outstanding in his account during the 30-day grace period. Some methods charge him for the full amount, some for the average daily balance—taking into account the period in which he paid in part and, therefore, owed less, some even include current purchases during that time, on which the grace period has not even begun.

What this amounts to in every case is that the customer is charged for credit which was given free to the other customers who paid in full. This is obviously unfair treatment, resulting in higher costs for the person who pays for his purchases in installments. When you consider that the person most likely to make use of credit purchase plans is the low-income customer, who may not be able to pay in full during the first 30 days, then it becomes even more apparent that retroactive finance charges are unfair to the customer who is subjected to them.

The adjusted balance method is preferable because it gives equal treatment to all customers. The customer is charged a finance charge only on the outstanding balance in his account at the end of the grace period, minus any current purchases he may have made during that period. Thus he gets free credit during the grace period, whether he pays in full or in part. If all retail merchants are required to use the adjusted balance method, then all consumers will know where they stand as regards finance charges levied on them by all stores at which they shop.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. HATHAWAY. I yield.

Mr. PROXMIRE. I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. HATHAWAY. Mr. President, finally I would make the point that I think that requiring use of the adjusted balance method is fairer for the retailer as well. In many States, use of the previous balance method has been outlawed, and it is generally agreed that this is an inequitable method, resulting in high costs to the consumer. On the other hand, the average daily balance method used by some of the larger store chains, although fairer in allowing credit for partial payments, requires use of a computer, which is too expensive for all but the larger retailers. The adjusted balance method is easy to use and accessible to all merchants, however large their operation.

In conclusion, I urge adoption of this amendment, on the grounds that the adjusted balance method gives fair and equal treatment to all consumers and to all retailers.

Mr. BROCK. Mr. President, I am ready to yield back my time but first I wish to make one point.

There are so many families in this country with very limited means; they work hard and they make $3,000, $4,000, $5,000 a year; and they are just barely making it. They need access to credit because they do not have large amounts of cash. But they budget themselves very carefully and they meet the payment period. They cannot afford to make the cash payments. They need the credit account, and they need to be able to pay it off.

If this amendment has the effect of eliminating the 30-day grace period there is a great injustice to those people who are trying to maintain their budget daily, weekly, and monthly. It is a hard task but they are doing a good job. I think our legislation should be trying to improve the overall picture and I do not think this amendment achieves that objective.

Mr. PROXMIRE. Mr. President, the Senator from Tennessee argues that the amendment will hurt the person with a small income. If that is the argument against it, then think of it in terms of commonsense. The industry is very much opposed to this amendment; consumer groups are overwhelmingly in favor of the amendment. They support it. There is no question about that.

I yield to the Senator from Maine.

Mr. HATHAWAY. I thank the Senator from Wisconsin for yielding. Perhaps he made this point while I was away from the Chamber briefly, but it seems to me that the argument of the Senator from Tennessee is highly speculative and erroneous when it is stated that if this amendment is agreed to they would not have the 30-day grace period. I think it will be continued. The retailers want consumers who cannot pay cash. Even though, as the Senator from Tennessee points out, it may cost some of them additional money, I am sure they are going to maintain this practice to keep those customers.

Mr. PROXMIRE. I am ready to yield back my time.

Mr. BROCK. I yield back my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Nevada (Mr. CANNON), the Senator from Alaska (Mr. GRAVEL), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Minnesota (Mr. HUMPHREY) are necessarily absent.

I further announce that the Senator from South Dakota (Mr. ABOUREZK) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from South Dakota (Mr. ABOUREZK) and the Senator from Minnesota (Mr. HUMPHREY) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from New Hampshire (Mr. COTTON) is absent because of illness.

The Senator from Colorado (Mr. DOMINICK) and the Senator from Ohio (Mr. TAFT) are necessarily absent.

The Senator from Maryland (Mr. MATHIAS) is necessarily absent to attend the funeral of a friend.

If present and voting, the Senator from Ohio (Mr. TAFT) would vote "nay."

The result was announced—yeas 33, nays 56, as follows:

[No. 316 Leg.]

YEAS—33

Aiken	Jackson	Nelson
Biden	Javits	Nunn
Burdick	Kennedy	Pastore
Case	Magnuson	Pell
Church	Mansfield	Proxmire
Clark	McClure	Ribicoff
Fulbright	McGee	Saxbe
Hart	McIntyre	Schweiker
Haskell	Mondale	Stafford
Hathaway	Moss	Tunney
Hughes	Muskie	Williams

NAYS—56

Allen	Bible	Chiles
Baker	Brock	Cook
Bartlett	Brooke	Cranston
Bayh	Buckley	Curtis
Beall	Byrd, Harry F., Jr.	Dole
Bellmon	Byrd, Robert C.	Domenici
Bennett	Eastland	Eagleton
	Ervin	Fannin
	Fong	Goldwater
	Griffin	Gurney
	Hansen	Hartke
	Hatfield	Helms
	Hollings	Hruska
	Huddleston	Inouye
	Johnston	Long
	McClellan	Metcalf
	Montoya	Packwood
	Pearson	Percy
	Randolph	Roth
	Scott, Pa.	Scott, Va.
	Sparkman	Stevens
	Stevenson	Symington
	Talmadge	Thurmond
	Tower	Weicker
	Young	

NOT VOTING—11

Abourezk	Dominick	McGovern
Bentsen	Gravel	Stennis
Cannon	Humphrey	Taft
Cotton	Mathias	

So Mr. PROXMIRE's amendment (No. 363) was rejected.

Mr. SPARKMAN. Mr. President, I move that the Senate reconsider the vote by which the amendment was rejected.

Mr. TOWER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 362

Mr. PROXMIRE. Mr. President, I call up my amendment No. 362.

The PRESIDING OFFICER. The amendment will be stated.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with and that the amendment be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 15, line 25, insert the following new section to chapter 4:

§ Prohibition of minimum finance charges

(a) No creditor who operates an open-end consumer credit plan may impose a minimum finance charge on any consumer account unless such charge is—

(1) in the nature of a fixed finance charge for the purpose of recovering billing expenses and is imposed uniformly on all accounts without regard to the amount of credit outstanding or the amount of repayment; or

(2) imposed uniformly on all accounts in which the minimum periodic payment required by the terms of the plan has not been received during the two preceding billing periods.

(b) The exceptions to subsection (a) do not authorize the imposition of such charges where they are not otherwise authorized by State law. A creditor who imposes such charges may not state or imply that such charges are required or authorized by Federal law.

Mr. PROXMIRE. Mr. President, I shall speak briefly; I do not expect to use all my time by any means.

I should like to say, in connection with the last amendment, that last year the same amendment was lost on a tie vote, 38 to 38. This year the amendment was rejected by a vote of 56 to 33. The big reason for that difference is that this amendment was lobbied very effectively. I congratulate Montgomery Ward for such an effective lobbying job. They led the lobby charge. They won. We had no equivalent lobbying power to throw against them.

We had a good discussion of the

amendment. The Senator from Tennessee (Mr. BROCK) and the Senator from Alabama (Mr. SPARKMAN) did a fine job on the other side. I am sure they were very eloquent. But virtually no Senators were on the floor to hear the debate. It is very obvious that one cannot get this kind of switch by not knowing what is going on. So what was it that won this smashing victory? What went on was very solid, effective lobbying work by industry, especially by that fine organization headquartered in Chicago—Montgomery Ward.

Mr. President, the amendment I have called up now prohibits minimum finance charges on revolving charge accounts.

Minimum finance charges are a device whereby creditors can charge low-income consumers a higher rate of interest. Moreover, if the charge is 50 cents or less, the creditor does not have to disclose the annual rate of interest under Truth-in-Lending. Because of 'his disclosure gap, many creditors impose a 50-cent minimum finance charge on their revolving charge accounts.

Creditors who use minimum finance charges impose them whenever the minimum charge of 50 cents exceeds the charge which would result by applying the standard 1½ percent rate to the unpaid balance.

Mr. President, this is clearly and obviously a low-income amendment. The purpose of the amendment is to prevent the kind of skyrocketing interest charges which would result, for example, when one buys an item for $3, $4, $5, or even $10. The minimum finance charge may be applied. There is no requirement under the Truth in Lending Act that this minimum charge be reported. If the consumer pays a few days after that, the consumer pays a rate of interest which could be 100 percent or 200 percent, or more.

For example, if the unpaid balance is $10, a finance charge based on the standard 1½ percent rate would come to 15 cents. The creditor would thus apply the minimum finance charge of 50 cents. A charge of 50 cents against a $10 balance is equivalent to a monthly rate of 5 percent or an annual percentage rate of 60 percent—far in excess of the legal rate ceiling. However these high rates do not have to be disclosed under Truth in Lending.

Minimum finance charges operate primarily as a tax on low-income consumers. They are applied only to those consumers who maintain small balances and who cannot afford to pay their balances in full within the traditional 30-day period. These tend to be low-income consumers.

One of the arguments used to justify minimum finance charges is that they compensate the creditor for his bookkeeping expense involved in preparing and sending out monthly statements. This argument might be valid if a flat minimum charge were imposed on all monthly accounts regardless of size or manner of payment. It costs just as much to mail out a monthly statement to a rich customer living in the suburbs as to a welfare mother living in a ghetto. However the rich consumer tends to his bill in full thereby avoiding any finance charge. The low-income consumer cannot afford to pay in full. Therefore, the minimum finance charge is a selective tax levied against the poor.

Mr. President, I ask unanimous consent that the name of the Senator from Maine (Mr. HATHAWAY) be listed as a cosponsor on this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Another argument advanced to justify minimum charges is that they are needed as an incentive to induce the payment of small balances by recalcitrant consumers. According to this argument, a consumer might ignore repeated bills for small amounts such as $5 even if the amount is increased by a 1½-percent finance charge each month. A 1½-percent finance charge on a $5 balance amounts to only 7 cents, which is not much of a penalty on those who tend to be neglectful of their bills.

My amendment has been carefully drafted to permit minimum finance charges in justifiable circumstances. Minimum finance charges would be permitted first if they were in the nature of a service charge imposed on all monthly accounts regardless of size or manner of payment; and second, where the customer has not made any payment into his account for 2 successive months. The first exception would permit creditors to impose a flat monthly charge on all their accounts as a method for recovering billing expenses provided such charges were otherwise authorized by State law. The second exception would permit creditors to use the minimum charge essentially as a collection tool. These two exceptions meet some of the specific criticisms raised by the credit industry last year when a similar provision was deleted from S. 652.

Despite these concessions, members of the committee were besieged with communications from the credit industry pleading for a retention of minimum finance charges. For example, committee members received a letter from Montgomery Ward, one of the Nation's largest retailers, arguing that a prohibition on minimum finance charges will put small retailers out of business. One must commend this public spirited and seemingly disinterested concern for the welfare of small business. However, it should also be pointed out that Wards is a principal user of minimum finance charges and imposes them in every State where it is legally possible to do so.

Expert testimony before the committee revealed that the revenues from minimum finance charges are less than three one-hundredths of 1 percent of total revenue. Thus it is ludicrous to talk about anyone going out of business. The credit industry has not produced one shred of evidence to prove that retailers have been adversely affected in the nine States where minimum finance charges are not permitted.

Mr. President, we have had a full opportunity for retailers to give us that evidence if it existed. They have the experience of nine States which, as I say, have outlawed the minimum finance charge. They should be able to give us the specific evidence, since they have operated under this experience, but they have been able to adduce none. In view of their concern and the amount of time, effort, and money they have spent lobbying against this amendment, I am convinced that if there were any evidence to show this would be costly to retailers, the evidence would have been adduced and presented to the committee when the hearings were held.

Mr. President, the amendment I am offering is identical to a provision contained in my original bill, S. 914. This amendment was approved by the Subcommittee on Consumer Credit. However, it was deleted in full committee by the close vote of 9 to 7. The committee bill will thus permit the continuation of minimum finance charges in 41 States to the detriment of low-income consumers. My amendment would prohibit this consumer abuse in all States. I urge the Senate to adopt my amendment.

I might say that I am grateful to the chairman of the committee, who voted for my amendment both in the subcommittee and in the full committee, and I appreciate that support very much.

Mr. President, I reserve the remainder of my time.

Mr. BROCK. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. Does not the Senator from Alabama control the time in opposition?

Mr. SPARKMAN. Mr. President, I yield the time I would otherwise have to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. BROCK. Mr. President, back when I was growing up, once in a while you would hear a story about a parent who wanted his child not to do something, and he would say "You do that, and the boogyman is going to get you."

We have modernized the art. We have now raised the boogyman to the legislative halls of the Senate, in attempting to identify who is for and who is against the bill.

I do not know who supported the last amendment and I do not know who supports this one, with respect to big people and little people, but if the Senator from Wisconsin is concerned about the support of Montgomery Ward, I hope he will accept the fact that there are an awful lot of small people who feel perhaps a lot more strongly than that particular giant organization on the matter.

With regard to the minimum finance charge question, this 50 cents that is levied on accounts, I think the same sort of logic applies as did on the last amendment. I am not going to go into an extended debate on this matter; I think we have explored the issue, as the Senator from Wisconsin has said, rather thoroughly. But I would like to point out one or two facts.

First, there will not be any giant lobbies organized on behalf of or against this particular amendment, because the giants do not worry so much about minimum finance charges. The few that have them will not lose anything if they are eliminated. Most of them do not have them anyway. There is no massive lobby operating on behalf of small business in this country, and there are not many lobbyists acting on behalf of the consumer who happens to be of low or moderate income, who might lose his credit because this amendment was carried, if it is.

That is the real question. That is the real point. Again, it is not the intent of the amendment that I debate. I do not argue with the Senator's statement. I do not argue with his logic, his case, his motivations, or his intentions. I simply state to the Members of this body that if the amendment carriers, it is my honest conviction that an awful lot of low-income people in this country are going to get hurt.

They are going to get hurt, because they are going to lose access to the credit system. Again, we do not do a service to the consumer by saying, "I am going to save you 50 cents this month, but in the process I am going to make it impossible for you to get any credit at any price, because I am going to make it so uncomfortable for the merchant to serve a low-income class of customers that he is going to have to raise his standards and effectively preclude you—you, the family with $3,000 or $4,000 or $5,000 a year income—I am going to have to preclude you from the marketplace in this free market economy of ours."

The minimum charge is not the point. He is a customer who has a $28 outstanding balance. The interest on that bill, at 1½ percent a month, would be 42 cents. That 8 cents is the cost of the letter, that is added to this bill to guarantee he has access to the marketplace. I wonder if he considers that an exorbitant charge. I wonder if he thinks perhaps it would be better when he has no credit at all.

It is not the big people who are practicing the minimum charge. It is not the big companies which are making a profit out of it. It is not the big customers who have to worry about it. It is the very people that the Senator from Wisconsin points out, the small businessmen and the small customers, the fellow who has a very limited family income.

I state to the Senate just as clearly as I can that while I support the Senator's intention of trying to ameliorate this condition, I cannot in good conscience accept an amendment which has in effect the opposite direction from its stated purpose, that effect being to raise the cost of merchandise, to raise the cost of credit, or worse, to eliminate any access of credit at all to the low-income family.

I know the tendency of Congress is to think of itself as an all-wise body, the source of all wisdom. I know the tendency of people here is to say that all we have to do to solve a problem is to pass a law. Too often, we do just that. We pass a law that looks gorgeous on paper, it makes an awful lot of sense on paper, and it looks great, but we do not realize the impact of such a law on the people it is designed to help.

In this case, I think the Senate will recall the vote last year. The vote of the committee, in the considered judgment of the majority of the committee, was that this amendment, despite its good intent, would have a bad effect, an effect damaging to the interests of the low- and middle-income people of this country.

I, therefore, hope that the amendment will be rejected.

Mr. TOWER. Mr. President, will the Senator from Tennessee yield?

Mr. BROCK. I yield.

Mr. TOWER. Is this not the kind of amendment that tends adversely to impact on the small business establishment rather than the larger one?

Mr. BROCK. Yes. The big companies do not care. They could not care less. They do not make any money out of it, nor do they even practice it. It is the small businessman who maintains the minimum charge for one reason only, and that is what it costs him to do business, what it costs him to provide a limited amount of credit to a customer that is not the big, rich, continuing buyer.

It costs at least 50 cents to process the account. It costs more than that, as a matter of fact, because we have reduced it already to 50 cents. I would imagine that the average cost to handle a credit account would run to about $2.50. Now we will say to him, "You cannot put a new charge on him for service to a poor family," so what is he going to say? He is going to say, "I cannot afford to serve that family." That means that the low-income family will not have access to the marketplace or to the credit system and I do not think we have a right to do that.

Mr. PROXMIRE. Mr. President, the Senator from Maine would like to speak, but let me simply say it does not make any sense to argue that this will hurt the low-income family. Once again, we have the record of who testified for and who testified against. I have a letter from Montgomery Ward, which I will place in the RECORD later, opposing the amendment. They use the system of a minimum finance charge in every single State where they are able to do it. The Senator from Tennessee was unable to show—and I do not think that anyone else has been able to show—that in the nine States where the minimum finance charge is prohibited the low-income person is hurt in any way at all.

Mr. President, we should recognize that there is no way we can help the little man by requiring that when he makes a small purchase and makes a payment in a limited time, that he has to pay an unconscionably high interest rate. If this is the way we want to help him, I would hate to see a 60-percent, or a 100-percent, or a 120-percent interest rate.

I would hope that on the basis of commonsense, Senators will support the amendment.

I ask unanimous consent that the letter be printed at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. I now yield to the Senator from Maine such time as he may require.

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

JUNE 26, 1973.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PROXMIRE: I wish to share with you my great concern over two provisions of S. 914 as amended recently in proceedings of the Sub-Committee on Consumer Credit of the Senate Banking, Housing and Urban Affairs Committee. . . . *Effect of Ban on Minimum Finance Charge.*

The requirement to assess a minimum finance charge on all accounts or not at all will be equally destructive especially to the smaller retailer: (1) it will force him to abandon his traditional 30 day charge account plan for many of his customers; (2) if he is forced by competition to give up the minimum finance charge, he will lose a low cost collection tool for small balances, and (3) he will lose a partial recovery of billing costs.

The same results predicted for him under the Adjusted Balance Method will force him out of business or force him to give away his customers to the third party credit card issuers. I, for one, hope that will not happen.

Senator, we enlist your support of retailing's position with respect to the damaging provisions of Sections 167 (on balance methods) and 168 (on minimum charges) and ask that you vote to delete these onerous provisions of S. 914.

Respectfully yours,

ASHLEY D. DESHAZOR,
Vice President and Corporate Credit Manager, Montgomery Ward.

Mr. HATHAWAY. Mr. President, I want to make the additional point—as I said before on the other amendment, and it seems the argument is even stronger here—against the very speculative argument of the Senator from Tennessee that it would cut off all credit for the low-income person if we eliminate the minimum finance charge, and that this would mean just a few pennies per month for each customer, including the low- and moderate-income person.

Certainly, the merchant will not give up the business he gets from that customer just because of the 25-cent or 30-cent loss he may incur for not being able to charge the 50-cent minimum. It seems to me to be speculative to say that this will cut out credit to the low-income person.

I do not believe we appreciate how much this would mean to the low-income person. It would mean a great deal. He is in the position where he may have a great many dependents, not very much money, and he is depending on every penny he has to spend, so that every penny he can save, he really is trying to save. We should be rewarding his efforts in trying to save those pennies, and make them go as far as they can for him, by not discriminating against him in finance charges. Thus I urge that we

eliminate this unjust minimum finance charge.

Mr. PROXMIRE. Mr. President, I have one more point to make to the argument made that this will hurt the small retailer. As I pointed out, this is a matter of three one-hundredths of 1 percent, or three ten-thousands of his income. That is all the loss that would be incurred. That is all he would lose by this amendment. It is insignificant, insofar as the retailer is concerned. But so far as the consumer is concerned, that is, the low-income consumer, this could be $6 a year, and that would make a difference to him. It might make the difference of whether he could buy a Christmas present for his child with that.

That is what is involved in this amendment. It is a small amount which means a great deal to people in the low-income brackets.

I hope that we can get a majority of Senators in favor of this amendment.

Mr. BROCK. Mr. President, I am simply saying that some things done for the best of purposes sometimes have the worst results. I do not think we can deny the logic of the testimony we heard from the very small business people of this country who say that they simply cannot make credit available on the scale that they do if we make it prohibitive in terms of cost.

Surely, they can raise their prices. That will have an inflationary impact. Some will do it. But for those that do not, if we make the change in standards so that poor families do not have that credit access, I just cannot understand how anyone can think we will have done a service to those families. We may have saved them 50 cents, but we will have cost them a great deal more than that, and that will be access to credit under the free market system. That is the effect of this amendment.

I yield back the remainder of my time.

Mr. PROXMIRE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. McCLURE). All time on this amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Wisconsin (Mr. PROXMIRE).

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Nevada (Mr. CANNON), the Senator from Alaska (Mr. GRAVEL), the Senator from South Dakota (Mr. McGOVERN), and the Senator from Minnesota (Mr. HUMPHREY) are necessarily absent.

I further announce that the Senator from South Dakota (Mr. ABOUREZK) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from South Dakota (Mr. ABOUREZK) and the Senator from Minnesota (Mr. HUMPHREY) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from New Hampshire (Mr. COTTON) is absent because of illness.

The Senator from Colorado (Mr. DOMINICK) and the Senator from Ohio (Mr. TAFT) are necessarily absent.

If present and voting, the Senator from Ohio (Mr. TAFT) would vote "nay."

The result was announced—yeas 39, nays 51, as follows:

[No. 317 Leg.]

YEAS—39

Bible	Inouye	Muskie
Burdick	Jackson	Nelson
Case	Johnston	Nunn
Chiles	Kennedy	Pastore
Church	Long	Pell
Clark	Magnuson	Proxmire
Eagleton	Mansfield	Ribicoff
Fulbright	McGee	Schweiker
Hart	McIntyre	Sparkman
Haskell	Metcalf	Stevenson
Hathaway	Mondale	Symington
Huddleston	Montoya	Tunney
Hughes	Moss	Young

NAYS—51

Aiken	Dole	McClure
Allen	Domenici	Packwood
Baker	Eastland	Pearson
Bartlett	Ervin	Percy
Bayh	Fannin	Randolph
Beall	Fong	Roth
Bellmon	Goldwater	Saxbe
Bennett	Griffin	Scott, Pa.
Biden	Gurney	Scott, Va.
Brock	Hansen	Stafford
Brooke	Hartke	Stevens
Buckley	Hatfield	Talmadge
Byrd, Harry F., Jr.	Helms	Thurmond
	Hollings	Tower
Byrd, Robert C.	Hruska	Weicker
Cook	Javits	Williams
Cranston	Mathias	
Curtis	McClellan	

NOT VOTING—10

Abourezk	Dominick	Stennis
Bentsen	Gravel	Taft
Cannon	Humphrey	
Cotton	McGovern	

So Mr. PROXMIRE's amendment (No. 362) was rejected.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. HRUSKA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 8658) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending June 30, 1974, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. NATCHER, Mr. STOKES, Mr. TIERNAN, Mr. CHAPPELL, Mr. BURLISON of Missouri, Mr. McKAY, Mr. ROUSH, Mr. MAHON, Mr. McEWEN, Mr. MYERS, Mr. VEYSEY, Mr. COUGHLIN, and Mr. CEDERBERG were appointed managers on the part of the House at the conference.

TRUTH IN LENDING ACT AMENDMENTS OF 1973

The Senate continued with the consideration of the bill (S. 2101) to amend the Truth in Lending Act to protect consumers against inaccurate and unfair billing practices, and for other purposes.

Mr. TOWER. Mr. President, I call up an amendment that is at the desk and ask that it be read in its entirety.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read as follows:

On page 19, strike lines 13 through 19 and insert in lieu thereof the following:

"(f) No provision of this section or section 112 imposing any liability shall apply to any act done or omitted in good faith (1) in conformity with the Act, or with any rule, regulation, or interpretation thereof by the Board, or (2) in conformity with any reasonable interpretation of a significant ambiguity in, or significant conflict between, said Act, rules, regulations, or interpretations, notwithstanding that after such act or omission has occurred, such Act, rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason. Any act done or omitted in conformity with the standards and conditions set forth in the preceding sentence shall not subject the creditor to liability under State law where State requirements conflict with those of Federal law."

Mr. TOWER. Mr. President, I yield myself such time as I may require.

Mr. President, I have considered the possibility of pressing the present amendment to this bill today which would deal with the problem of good faith compliance with the Truth in Lending Act and its requirements, when those requirements are ambiguous or even conflicting. The existing good faith compliance section of the bill, section 206, deals only with protecting good faith compliance with regulations which may later be declared invalid by a court. While this is fine as far as it goes, it does not meet the problem of ambiguous or conflicting requirements which subject creditors to costly difference-of-opinion litigation, even though they have made good faith efforts to comply.

My proposed amendment attempts to deal with this problem in terms of language exempting from liability acts or omissions done "in conformity with any reasonable interpretation of a significant ambiguity in, or significant conflict between, said act, rules, regulations, or interpretations" which covers the Federal area, and an additional clause of similar import to cover conflicts between State and Federal requirements. The Federal Reserve Board, however, has objected to the use of terms like "reasonable interpretation" and "significant ambiguity or conflict," because they fear that creditors could use this language to provide coverage for purposeful avoidance of truth-in-lending requirements, since almost any situation may involve several reasonable courses of action. I do not myself feel that these terms would excuse any non-good-faith efforts because a judge is virtually always in a

position to assess whether the course taken by a creditor is bona fide or not, by reviewing the legal analysis relied upon by the creditor, by reviewing the state of refinement of the regulations and cases at the time the creditor's decision was made, by reviewing what the Fed staff may have advised the creditor on the matter, and so forth.

However, I recognize that, pragmatically, Members of the Senate will generally not want to override the expert opinion of the Fed on such a technical question as the proper language for assuring that good faith efforts are protected from liability, while at the same time not impairing the Fed's enforcement powers. The Fed feels that under the act as it would read after being amended by this bill, they would have adequate authority to deal with ambiguities and conflicts by using clarifying regulations and rulings and letters, and that, at most, some statutory language strengthening the preemptive status of Federal law over State law might be desirable.

I do not completely agree with the Fed on this matter, and I think that creditors will still face many ambiguous or conflicting requirements even if the Fed makes a maximum effort at ironing out such differences by regulations and rulings. I would prefer to clarify the status of these good faith efforts in the statute, in order to prevent needless litigation, the result of which will ultimately be increased costs to the borrowing public.

I will not press this amendment on the bill here today, but I hope that the House will have adequate time on this measure to review other alternatives with the Fed and to add language to the bill which will help establish the nonliability of creditors who attempt to comply in good faith with ambiguous or conflicting requirements. I have seen only today some alternative language suggested by creditors that would exempt from liability efforts in "substantial compliance" with disclosure requirements, or efforts in "substantial compliance" with all rules, regulations, and interpretations of the Board.

These alternatives may well accomplish the basic purpose of avoiding litigation that does not lead to supporting a public policy in this area, but, again, they may also be resisted by the Board because of their apparent dislike of a general "reasonable man" standard in the act. Certainly the courts should work out a "substantial compliance" defense as a matter of judicial doctrine, but as far as I know only one case has used that concept to date. Hence it may well be that some statutory action in this field will be required in order to resolve this troublesome problem.

I merely want to alert the Senate to the problem today and to the possibility of some language being reported back from an eventual conference on this bill which will hopefully resolve this problem.

Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. PROXMIRE. Mr. President, I call up my amendment, No. 388, and ask that it be stated. As long as there are enough Senators on the floor at this time, I ask for the yeas and nays.

The PRESIDING OFFICER. The clerk will read the amendment first.

The legislative clerk read the amendment, as follows:

Add the following new title at the end thereof:

TITLE IV—CLOSING COSTS

§ 401. Closing costs

(a) Section 701 of the Emergency Home Finance Act of 1970 is amended to read as follows:

"ALLOWABLE CLOSING COSTS IN THE FINANCING OF CERTAIN HOUSING; PROHIBITION OF CERTAIN FEES

"SEC. 701. (a) The Secretary of Housing and Urban Development shall, after consultation with the Administrator of Veterans' Affairs, publish standards governing the amounts of closing costs allowable to be paid by buyers and sellers in connection with the financing of housing designed principally for the occupancy of from one to four families and—

"(1) which is built, rehabilitated, or purchased with assistance provided under the Revised National Housing Act, the National Housing Act, or chapter 37 of title 38, United States Code; or

"(2) which is covered by a mortgage purchased by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

"(b) Unless the closing costs charged in connection with the financing of such housing are allowable under standards published under subsection (a) of this section at the time of such financing—

"(1) no mortgage covering such housing shall be insured or guaranteed under any such Act or chapter unless the Secretary or the Administrator, as the case may be, determines that any excess or nonallowable charge has been repaid; and

"(2) no mortgage covering such housing shall be purchased by such Association or Corporation.

"(c) Standards published under subsection (a) of this section shall—

"(1) be consistent in any area for housing described in subsection (a) of this section; and

"(2) be based on the Secretary's estimates of the reasonable charges for necessary services involved in closings for particular classes of mortgages and loans.

"(d) The Secretary shall from time to time make such recommendations to the Congress as he deems appropriate for legislation to reduce closing costs and to standardize such costs for all geographic areas.

"(e) Any person who accepts or furnishes anything of value pursuant to any agreement, oral or otherwise, that business incident to or a part of any real estate settlement shall be referred to any person shall be fined not more than $10,000 or imprisoned for not more than one year, or both, except that this subsection shall apply only in the case of a real estate settlement in connection with housing referred to in subsection (a).".

(b) The standards referred to in the amendment made by subsection (a) of this section shall be published not later than one hundred and eighty days after the date of enactment of this title.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second?

The yeas and nays were ordered.

Mr. PROXMIRE. Mr. President, this amendment limits closing costs on real estate transactions. The amendment is identical to a provision in the 1972 housing bill which was passed by the Senate on March 2, 1972. Congress took action last year to control escalating closing costs following an exhaustive study by the Department of Housing and Urban Development which showed that closing costs were unreasonably high on real estate transactions.

The principal problem with closing costs is that there is such a tremendous difference, as I am going to point out, 40 to 1, for almost precisely the same services.

Unfortunately, no final action was taken on the 1972 housing bill and the entire subject died in the 92d Congress.

I believe it is necessary to take prompt action on the closing cost problem at this time. The Senate Banking Committee has just begun hearings on a 1973 housing bill; however it may take several months for this legislation to reach the floor and several more months to pass the entire Congress. In fact, considering the amount of controversy surrounding our housing programs, there is a good chance there may be no housing bill at all in the 93d Congress. Therefore, we must look to another bill to deal with the problem of closing costs if we want to provide some near term relief for the hard pressed home buyer.

The Truth in Lending Act amendments already deal with the subject of closing costs. Section 209 of the legislation strengthens the requirements for disclosing closing costs on real estate transactions. I therefore believe it is appropriate to go one step beyond disclosure and to consider an amendment to regulate closing costs. If we do not act at this time on this bill, it is likely that any meaningful reform will be delayed several months or even years. Every day we delay will cost consumers at least a million dollars.

Mr. President, Congress took action nearly 3 years ago to limit excessive closing costs on FHA–VA mortgage transactions. Section 701 of the Emergency Home Finance Act of 1970 authorizes and directs the Secretary of HUD and the Administrator of the VA to "prescribe standards governing the amount of settlement costs allowable in connection with the financing of such housing in any such area." Such housing refers to housing assisted by the FHA or the VA. The cost standards established by HUD and the VA are to be based on their estimates of the reasonable charge for necessary services involved in real estate settlements. Thus, HUD and the VA have the authority to prohibit unreasonable charges or charges for unnecessary services.

It should be noted that HUD and the VA are directed to issue regulations to limit settlement charges. The authority is mandatory and not discretionary.

Despite the firm stand taken by Congress in 1970 against excessive closing costs, HUD and the VA have been drag-

ging their feet. They have produced an excellent report which fully documents the excessive closing costs being charged. But so far, they have not issued regulations to control these excessive charges. Regulations were proposed last July to limit closing costs in several metropolitan areas, but they have apparently been shelved in response to intensive pressure from real estate lawyers, title insurance companies and others who benefit from high closing costs.

Mr. President, my amendment would do four things:

First, it consolidates the existing authority to control settlement charges which is presently divided between HUD and the VA. My amendment gives the authority to HUD which must act in consultation with the VA.

Second, my amendment expands the scope of the existing law to cover certain conventional mortgage loans purchased by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation;

Third, my amendment requires that regulations limiting closing costs be issued within 6 months, so we will get action.

Fourth, my amendment prohibits kickbacks on real estate transactions. This antikickback provision would cover situations where a builder might refer settlement business to a lawyer in return for a fee or other benefit, or where a lender might refer title insurance business to a title insurance company under similar arrangements. These, of course, are not the only type of kickback arrangements prohibited by my amendment.

Mr. President, the need to control closing costs was clearly documented in the HUD–VA report on settlement costs issued on February 17, 1972.

Secretary of HUD George Romney testified before the Housing Subcommittee on this report on March 1 of last year.

So we have had hearings on it. In fact, we have had three days of hearings, and the hearings have been published and are available.

In his statement to the committee, Secretary Romney acknowledged that "serious abuses have arisen in this field, and that—these abuses—have resulted in adding significantly to the cost of acquiring a home." In later testimony he estimated home buyers were paying hundreds of millions of dollars a year in excessive closing charges.

In reviewing the findings of the HUD–VA study, Secretary Romney also presented these conclusions to the subcommittee:

First. High settlement costs as well as other problems of settlement stem in no small part from basic inefficiencies in the existing system of conveying, recording, and assuring validity of title to parcels of real estate.

Second. Settlement costs and practices vary widely even within the same geographic area.

Third. Costs are unreasonably high in many areas, but not in all.

Fourth. Whenever many specialists become involved in the conveyancing process and services are fragmented among them, costs are significantly higher.

Fifth. State regulation of title insurance and other title related costs are largely ineffective.

Sixth. In most cases, competition in the conveyancing industry is directed toward other participants in the industry and not toward the home buying public.

Lenders compete to get business from real estate brokers or escrow companies.

Title companies compete to get business from attorneys, brokers, and lenders.

Frequently this competition takes the form of an elaborate system of referral fees, kickbacks, or commissions as inducements to firms and individuals who direct the placement of business.

No one appears much interested in competing by cutting costs to the homebuyer since he is not likely to be in the market for another home in the near future, and will ordinarily accept the services—and charges—of whomever he is referred to.

Seventh. Charges for services relating to settlement often are not based on factors related to the cost of providing the services.

Frequently they are based on the sales price of the property.

We found that the overall level of charges tends to be lower when the charge for a service is not directly related to the sales price of the property.

Eighth. The minimum or recommended fee schedules of local bar associations and local real estate groups often do not reflect the actual work done. The use of such schedules to determine fees tends to increase settlement costs.

Ninth. Most public systems of keeping land records need to be improved in order to facilitate title search. If title search were simplified, this would tend to reduce title-related and other settlement costs.

Tenth. It is evident from these findings that serious problems exist in the conveyancing industry and that such problems demand immediate attention in order to assure that the public is not charged more for settlement costs than is reasonable.

Mr. President, the wide variance in closing charges was clearly demonstrated in the HUD–VA study. As Secretary Romney testified, these variances could not be explained solely on the basis of variances in the cost of doing business. To put the matter more bluntly, in many areas the public is being gouged.

For example, the HUD–VA study showed that closing costs on home prices between $20,000 and $24,000 varied across the country from a low of $50 to a high of nearly $2,000. This is a price variance of 40 to 1 for essentially the same service.

The average amount of total closing costs also varied widely between States. For example, in Maryland average closing costs came to $1,060 whereas in South Dakota these same charges averaged only $303.

There is no reason why closing costs should be more than 3 times as much in Maryland as in South Dakota, or why Maryland should be the most expensive State in the Union for that cost.

There was also considerable variance between metropolitan areas. Closing costs in the Newark, N.J., area on a $20,000 to $24,000 FHA home averaged $834, whereas closing costs for similar housing averaged only $369 in the Minneapolis area.

There is also considerable variance within the same metropolitan areas. In Los Angeles County, closing costs ranged from a low of $200 to a high of $1,000 for homes in the $20,000 to $24,000 range. In Chicago, they ranged from a low of $102 to a high of $723 for the same priced housing.

Mr. President, there may be some legitimate reason for explaining some of these differences. Recordkeeping procedures vary from State to State and from community to community. But even when these cost differences are taken into account, the HUD study still found widespread variances. As Assistant Secretary Gulledge put it during the hearings, in some areas it is almost a matter of charging what the traffic will bear.

I might say that right now—today—in view of the very high interest rates on home mortgages, in view of the fact that those interest rates are going up, one way Congress can help home buyers is to provide action, within a reasonable period of time, on holding down these closing costs. For many home buyers, those costs simply make it impossible for them to buy homes, because the downpayment, the initial cost, is what keeps many home buyers out of the market.

The average home buyer has virtually no bargaining power to protect himself against excessive closing charges. For most people, the entire settlement process is a deep mystery. The average person only buys a home once or twice in his lifetime. When he shells out $30,000 or $40,000 for a home he tends to disregard the additional fees and expenses which each participant in the settlement process has been able to extract. The home buyer is a virtual captive in the hands of the lender, the attorney, the real estate broker and others. We must therefore act to protect the home buyer from being overcharged on home closing costs. My amendment does that.

I want to stress that this amendment is identical to a provision in the 1972 Housing bill which was passed by the Senate on March 2, 1972. So Congress has taken action. The Senate has taken action. I am simply asking that we do it in a way that it can become the law.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SPARKMAN. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SPARKMAN. Mr. President, I do not believe this amendment should be agreed to. The Senator from Wisconsin

stated that last year—the year before last, I believe, in fact, was the first time—we instructed the Secretary of the Housing and Urban Affairs Department to prepare suggestions on closing costs.

This was done. It was agreed to in the bill that we sent over to the House last year. However, the House did not complete the legislation. In other words, HUD has this instruction from the Senate already. As I understand it, HUD, working with VA, is considering these things right now. Furthermore, we are having House hearings now in the committee. And on July 30 that subject is scheduled to be discussed in the hearings.

Why should we interfere with something that is in process and is scheduled for a complete airing on July 30? I do not believe that this is the place that this legislation ought to be taken up. I hope that the amendment will be rejected.

The PRESIDING OFFICER. Who yields time?

Mr. SPARKMAN. Mr. President, I yield such time as it may require to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. BROCK. Mr. President, I do not know if this is the time or the place to debate the merits of the rent regulations or the closing regulations. I think that the Senate has demonstrated its intent to do something about the problem. We expect to follow through with this.

Mr. President, I want to add one thing to what the Senator from Alabama has said. I have seen Congress act a lot of times to circumvent committees and the hearings process because people have felt that the problem has to be dealt with. This may be the time to do it. It is not always wrong. However, sometimes we make a mistake by so doing.

If we are going to take this route, we have to have an awfully compelling case for taking it up. We have scheduled further hearings on this matter. We have already taken some action and have delegated authority to the Secretary of Housing and Urban Development. We have had extensive witnesses scheduled to come before the committee. The witnesses include people from the American Bar Association, the American Land Title Association, the Florida Mortgage Bankers Association, the New Jersey Mortgage Bankers Association, the Montgomery County Bar Association, the Bar of Georgia, and many others.

That is a pretty intelligent group. They should be able to offer a good deal of thought to the debate and the quality of it and the substantive results that come from it.

I am willing to wait a little time to take an additional look at the total problem rather than to deal with it piecemeal.

I would like to bring to the attention of the Senator from Wisconsin that one of the figures he cited, as I recall, compared the closing costs of $1,000 in the State of Maryland and $300 in the State of South Dakota.

If I can be so bold, I would like to point out that in Maryland the transfer taxes and registration fees are the highest in the Nation. They amount to, if I remember the figures correctly, about 70 percent of the cost of closing a house in Montgomery County. What we have is a differential stated by the Senator that very largely constitutes the difference between the $300 and the $1,000. All communities look at the component parts of those figures. The 70 percent of the $1,000 is in the form of State taxes. It is a mechanism by which the State of Maryland generates revenue and would be under no circumstances subject to jurisdiction and control by this or by any other legislation we could submit.

Mr. President, I think that is illustrative of the complexity of the issues and the difficulty we have in dealing with something that is important. We are dealing with it in an ad hoc fashion without adequate consideration by the full committee. In fact, as I view the matter now, the Secretary of Housing and Urban Development has full authority to deal with the problem of closing costs. I would like to read the relevant section, section under 12 United States Code 1709(a).

Mr. PROXMIRE. Mr. President, would the Senator yield on his last point?

Mr. BROCK. I yield.

Mr. PROXMIRE. Mr. President, I am glad the Senator has raised the point. He reinforces my statement strongly. If we take the taxes out entirely and leave in the other services, title-related costs, the difference is not 3 to 1. It is 10 to 1. In other words, New York charges 10 times as much as North Dakota. So, the argument I am making is that we can argue on these figures all afternoon. The point is that HUD already has knowledge of this. There is not any question that one could not justify the differences based on services. After months of study HUD found you could not.

Mr. BROCK. Mr. President, the Senator can argue his figures. However, perhaps it would be well to put in the RECORD the figures we have on the typical group of counties as to the amount of total settlement costs in these counties that were studied, as I recall, by HUD last year. The amount was $1,900, and the average closing costs that would be regulated by the Senator's amendment is $282, or 14 percent.

So that we do not overstate the problem, it is important to note the magnitude of what we are trying to deal with and the complexities of it.

I do not think that we have the time nor the endurance to debate the case at this point. In fact, I could agree with the Senator from Wisconsin. However, the question is, How do we get there?

Mr. President, I started to read the law that has been already passed. It reads:

"(a) The Secretary is authorized, upon application by the mortgagee, to insure as hereinafter provided any mortgage offered to him which is eligible for insurance as hereinafter provided, and, *upon such terms as the Secretary may prescribe*, to make commitments for the insuring of such mortgages prior to the date of their execution or disbursement thereon. [Emphasis added.]

Pursuant to that, the Secretary of Housing and Urban Development has promulgated regulations on the settlement costs. The regulations are rather specific. I grant the need for more study of the matter. However, I do not think that we should study the matter on the floor of the Senate. I do not think that we achieve a true resolution of a fundamental, extensive, and highly complex problem by a floor amendment which has not been considered by the committee this year. The matter is subject to consideration not a month from now or 6 months from now, but next week.

We have a lot of outstanding witnesses coming before the committee to present this matter. And it seems to me that for the legislative quality, it would be well for us to wait until they have appeared before the committee and that we allow the committee to act in its wisdom in considering the matter.

Mr. PROXMIRE. Mr. President, if ever a subject has been studied to death, this is it. We have 241 pages here, and we have a HUD report of 148 pages that comes to the clear conclusion that closing costs should be regulated. We have the unanimous position taken by the committee last year. The Senate has already acted on this matter as a body.

To say that we need further delay for another week is ridiculous. It means that we would consider this on a housing bill. That housing bill has to take into consideration many things. We have to be real optimists to assume that it would be passed by the Senate this fall. It would not pass Congress until next year.

Every day we delay on this matter it means that it costs home buyers in this country $1 million a day.

We have had adequate consideration. We know about this; we have studied it. HUD has studied it; they have made their recommendation. All we want is action.

Of course, the lawyers are against this, and of course the title firms are against it. They have come up and lobbied against it. They want to delay it. They would be delighted to delay it another 4 or 5 years. But we have the information before us; it is not a matter of not having had enough information, or not having had time.

Mr. COOK and Mr. HATHAWAY addressed the Chair.

Mr. PROXMIRE. Mr. President, I yield whatever time he may require to the Senator from Maine.

Mr. HATHAWAY. I thank the Senator from Wisconsin. I just want to make clear that under the amendment, as I understand it, there would be an opportunity for more hearings under the Administrative Procedure Act.

Mr. PROXMIRE. The Senator is absolutely correct. Despite all the study and hearings, we do not say it has to go into effect tomorrow. We say within 6 months. Otherwise, it would drag on year after year after year.

Mr. HATHAWAY. So that the same interested parties who would appear at the hearings next week, if they were held,

can come in and have the opportunity to appear before the Secretary of Commerce and make whatever arguments they would make before the committee?

Mr. PROXMIRE. The Senator is correct.

Mr. HATHAWAY. I thank the Senator.

Mr. COOK. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. COOK. I listened to the Senator's arguments on the introduction of his amendment. He talked in terms of "kickbacks."

Would the Senator give me an example of what he means? For instance, in our State we have lawyers in small localities who are authorized to write title insurance. They are authorized agents. That is the way the system works. It works with Lawyers Title Co. and all the major title companies in the United States. An individual says, "I think I would like to have title insurance." We are not an abstract State. He writes that insurance, or writes the application for that insurance. At the time someone in his office, or he, that individual, runs that title on in and makes a title report.

Does the Senator include him within the terms of subsection (e) on page 3, that when he is paid a percentage of the premium, that constitutes and amounts to a kickback?

Mr. PROXMIRE. Mr. President, in the first place, HUD would spell this out in regulations. The kind of kickback I am talking about is the referral fee system, where a lawyer simply refers the matter to a title company and will get a fee paid to him, not for doing legitimate work, but for the referral.

Mr. COOK. The Senator is talking about an abstract company, not a title company?

Mr. PROXMIRE. The amendment covers any referral, whether to an abstract company, or otherwise.

Mr. COOK. I must say I am very much in favor of what the Senator is saying, but when I read the language it does not really say that to me, and the only way, in the rural parts of the United States that I am talking about—not only in my State, but all 50 States—the only way that an individual can get title insurance on his home is through a local attorney who is authorized to write insurance through major insurance companies which, first of all, are authorized by every State insurance commissioner of the respective States.

I find I would like to be for the Senator's amendment, but I am not satisfied with the answer of the Senator from Wisconsin. I think in essence what he is saying is that every authorized attorney in rural America who is authorized to make application for title insurance for and on behalf of a client in the purchase of a home, a building, or a tract of ground is going to be placed in a position that if he receives a percentage of the fee as the result of writing that insurance, it constitutes a kickback under the amendment and is thereby illegal.

We would not be helping the homeowner in the United States. We would be penalizing the lawyer, obviously. But more than that, we would be penalizing the homeowner or purchaser of the ground, in the fact that they could not under any circumstances obtain title insurance. I am very much concerned about that, and hope that the Senator can explain it.

Mr. PROXMIRE. I certainly understand the Senator's concern. As I say, we are acting, No. 1, to require HUD to make regulations in this area. HUD is authorized to recognize the problems in different geographic areas. Certainly, in rural areas they have different problems than they have in the big cities.

Generally, as long as a lawyer performs a legitimate service, he is entitled to make a charge for such service. If it is simply a referral, under those circumstances the charge would not be permitted. In other words, if he is acting as an agent, he is compensated as an agent.

Mr. COOK. There is nothing about the agency that is referred to in the amendment. It merely says:

> Any person who accepts or furnishes anything of value pursuant to any agreement, or otherwise, that business incident to or a part of any real estate settlement shall be referred,

And so forth.

I suggest that that does not apply to the field of agency. It does not apply to a qualified agent for the purpose of rendering service to a prospective purchaser of land or property. I cannot even see that it is within the framework of renewals, because we know obviously that many referrals are made, and that they are not illegal referrals.

I agree with the Senator that if a person does not do the work but refers it to a lawyer who does the work, that may constitute an illegal action. I am not convinced in my own mind that that is illegal, because we have provided in the canon that it is not illegal.

I am for what the Senator is seeking.

Mr. PROXMIRE. We all know that the Senator is an able lawyer and has had distinguished experience as a judge. I simply say to the Senator that this is the precise language, this is the precise amendment that was unanimously approved by the Senate, last year. It was passed by the Senate. It has been considered in detail. The Senator can raise objection to almost any law or any provision, but this language has been given very careful consideration. It seems to me, under the circumstances, that we should act now in view of the savings that would be made all over the country.

Mr. BROCK. Let me summarize by saying that the Senator from Kentucky has made my case far more eloquently than I could. He is one of his State's most distinguished attorneys, and he has a particular focus regarding the pending amendment.

I do not feel that the amendment adequately deals with the problem. I recognize the existence of the problem, but if we are going to go after kickbacks, let us do it in a way that spells out exactly what it will mean for the protection of the home buyer, the title company, and all the rest of those who are concerned. This amendment does not do that.

If I may point out, even the HUD report itself, although it is not as strong as HUD would state it is, makes that point, as does one by Arthur D. Little, which is of recent vintage. I just do not think we can act so precipitously as this on a matter that is of such consequence. I simply do not believe we need to eliminate the committee process by this kind of amendment, which has not been considered this year, without having a better reason than we seem to have had presented to us at this time.

Mr. PROXMIRE. The Senator from Tennessee knows how much I admire and respect him; but I wonder if he really means "act precipitously." After all, how can we act precipitously when we have had 3 solid days of hearings; when the committee has acted before; when we have the same amendment that was adopted by the Senate before; when we have had consideration by HUD and 130 pages of hearings by HUD?

If that is acting impulsively, I think we have acted more impulsively on many other occasions.

Mr. BROCK. Mr. President, the Senator from Nebraska has asked me to yield him 5 minutes on a subject not directly related to the amendment. I should like to yield to the Senator from Nebraska.

Mr. CRANSTON. Mr. President, I wholeheartedly support the distinguished Senator from Wisconsin (Mr. PROXMIRE) for proposing in section 209 of S. 2101 that in real estate transactions a creditor would be required to make a full disclosure of closing costs at the time of the loan commitment. This is an extremely worthwhile and necessary provision. For too long, home buyers have gone into closing without any idea of what they would have to pay in settlement charges. At closing, it is too late for the home buyer to challenge realistically costs which seem to him unnecessary or excessive. I commend the Senator from Wisconsin for sponsoring this valuable provision.

I agree with Senator PROXMIRE on the need for legislation that would protect the home buyer from inflated and unwarranted charges. However, I do not believe that the Truth in Lending Act is the appropriate legislative vehicle. Senator PROXMIRE's proposal that requires HUD to set maximum closing cost charges was part of last year's Senate-passed 1972 Housing and Urban Development Act. A different version of closing cost legislation was developed in the House Banking and Currency Committee's bill. I do not believe that closing cost legislation should be divorced from housing legislation regardless of the merits of a particular proposal.

This week and continuing into next week, the Senate Housing Subcommittee will hold hearings on housing and community development legislation. These hearings will include an examination of the closing cost issue. Approving Senator PROXMIRE's amendment now would make these hearings on closing costs a futile exercise insofar as closing costs are concerned. It is true that the Senate approved the Proxmire proposal in last year's Senate housing bill, but the Senate also approved in this housing bill a variety of proposals which are being reviewed again by the Senate Housing Subcommittee—proposals which are conceptually and administratively complex.

Clearly, legislation that requires governmentally set prices for services provided by lawyers, title insurance companies, mortgages, escrow and settlement companies, and others raises many questions: Are equitable prices possible? can you account for different regional and local practices? how considered will Federal regulation be with State laws? will price regulation eliminate marginal businesses? can HUD handle the task of setting prices for each SMSA and monitor what prices are being charged? All these questions deserve a second hearing by the Senate Housing Subcommittee and by the Senate. They were by no means all answered adequately in the preliminary hearings.

The HUD–VA joint report on mortgage settlement charges was delivered to the Senate Banking, Housing, and Urban Affairs Committee in March 1972—too late to be of use in formulating the 1972 Housing and Urban Development Act. The Senate passed this Act on March 2, 1972.

In July 1972, the Department of Housing and Urban Development published maximum closing costs for six SMSA's in the Federal Register. To date, the committee has not studied HUD's analysis of the 826 comments the Department received.

I believe that both the HUD–VA joint report and the comments on the HUD proposed charges should be examined by the Members of the Senate Housing Subcommittee before closing cost legislation is approved. The upcoming hearings by the subcommittee provide that opportunity.

There is a large difference between price disclosure, as required by S. 2101, and price regulation, as proposed in the Proxmire amendment. I do not think this difference should be bridged in the Truth in Lending bill but should be taken up separately by the Senate Housing Subcommittee as part of this year's housing legislation.

Mr. SPARKMAN. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 2 minutes.

Mr. SPARKMAN. Mr. President, on this amendment proposed by the Senator from Wisconsin, I have said something to the effect that hearings are scheduled on this very subject for July 30. The matter is moving. We have given them the authority and, in fact, the direction long ago, to issue regulations. They came out with proposed regulations. Then, sometime back—not long ago—we had a letter from the Secretary of Housing and Urban Development saying that they were having an audit made of the study on which they reported. Just Saturday, I received from the Secretary of Housing and Urban Development copies sufficient for every member of the Housing Subcommittee to have one, giving that audit.

Now I must say, frankly, that I do not know just what the audit amounts to or what effect it may have. It shows at least that HUD is still working on the suggestion we gave to the Secretary of Housing and Urban Development to come out with proposed regulations.

Mr. PROXMIRE. Mr. President, will the Senator from Alabama yield?

Mr SPARKMAN. I yield.

Mr. PROXMIRE. It is not true that HUD has had 3 years on this?

Mr. SPARKMAN. They have had a good bit of time. I am not sure it is 3 years, but whatever it is—yes, they have had a good long time. But the point I am making is that they did come out last year with proposed regulations. The bill we passed failed to get through the House, so work has been going on all the time and HUD is actually working on it now. Our committee is working on it now, and hearings have been scheduled, and witnesses are appearing on July 30. That is not very long off.

Mr. PROXMIRE. Mr. President, let me conclude by saying once again that this will cost the home buyers of this country $1 million a day. The Senate has already acted once on this. There is no reason why we could not save consumers this amount of money. If we do not act at this time, it is clear there will not be any relief for home buyers for many months to come—maybe more than a year.

Mr. President, I yield back the remainder of my time.

Mr. SPARKMAN. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. MCCLURE). All time on this amendment has been yielded back.

The question is on agreeing to the amendment No. 388 of the Senator from Wisconsin (Mr. PROXMIRE).

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Nevada (Mr. CANNON), the Senator from Alaska (Mr. GRAVEL), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

I further announce that the Senator from South Dakota (Mr. ABOUREZK) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from South Dakota (Mr. ABOUREZK) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from New Hampshire (Mr. COTTON) is absent because of illness.

The Senator from Colorado (Mr. DOMINICK), and the Senator from Ohio (Mr. TAFT) are necessarily absent.

The result was announced—yeas 38, nays 53, as follows:

[No. 318 Leg.]

YEAS—38

Allen	Hart	Mondale
Bayh	Hartke	Montoya
Bible	Hathaway	Moss
Brooke	Hughes	Muskie
Burdick	Humphrey	Nelson
Byrd, Robert C.	Inouye	Pastore
Case	Jackson	Pell
Church	Javits	Proxmire
Clark	Kennedy	Ribicoff
Dole	Magnuson	Schweiker
Eagleton	Mansfield	Symington
Ervin	McGee	Tunney
Fulbright	Metcalf	

NAYS—53

Aiken	Fong	Packwood
Baker	Goldwater	Pearson
Bartlett	Griffin	Percy
Beall	Gurney	Randolph
Bellmon	Hansen	Roth
Bennett	Haskell	Saxbe
Biden	Hatfield	Scott, Pa.
Brock	Helms	Scott, Va.
Buckley	Hollings	Sparkman
Byrd, Harry F., Jr.	Hruska	Stafford
	Huddleston	Stevens
Chiles	Johnston	Stevenson
Cook	Long	Talmadge
Cranston	Mathias	Thurmond
Curtis	McClellan	Tower
Domenici	McClure	Weicker
Eastland	McIntyre	Williams
Fannin	Nunn	Young

NOT VOTING—9

Abourezk	Cotton	McGovern
Bentsen	Dominick	Stennis
Cannon	Gravel	Taft

So Mr. PROXMIRE's amendment (No. 388) was rejected.

Mr. SPARKMAN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BROCK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 343

Mr. MOSS. Mr. President, I call up my amendment No. 343 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read as follows:

On page 21, line 1, strike out "lesser of $100,000" and insert in lieu thereof "greater of $50,000".

Mr. MOSS. Mr. President, this is a very simple amendment but one which has a great impact. I will describe it quickly.

Mr. SPARKMAN. Mr. President, will the Senator yield to me briefly?

Mr. MOSS. I yield.

Mr. SPARKMAN. Mr. President, I yield my time on the bill to the Senator from Tennessee (Mr. BROCK). I thank the Senator for yielding.

The PRESIDING OFFICER. The Senator from Utah may proceed.

Mr. MOSS. Mr. President, I ask unanimous consent that the names of the Senator from Michigan (Mr. HART) and the Senator from Wisconsin (Mr. PROXMIRE) may be added as cosponsors of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOSS. Mr. President, the amendment which I offer today is designed to reverse the topsy-tervy class action arrangements in the present bill. Instead of placing a ceiling of $100,000 or 1 percent of the net worth of the creditor in a class action, my amendment would make a creditor who fails to comply with the truth-in-lending law liable to a class of consumers for the amount of damage which the court determines appropriate but not to exceed the greater of $50,000 or 1 percent of net worth. In other words, the decision as to the appropriate level of damage is left to the court as is the case in most legal disputes.

In order to insulate creditors from class actions that could destroy them financially, the court may not assess damages against the liability of any particular creditor in the amount in excess of 1 percent of the net worth of the creditor as of the end of the creditor's fiscal year immediately preceding the fiscal year in which the violation of the truth-and-lending law occurred. In order to deter thinly financed entrepreneurs from violating the truth-and-lending law with impunity fee at $50,000 ceiling would hold.

The Federal Reserve Board has recommended in its 1972 report on truth and lending that this limitation, the greater of $50,000 or 1 percent of net worth, be the class action liability limit. The Federal Reserve Board in making this recommendation is attempting to strike a balance between excessive costs and a reasonable deterrent. I firmly believe that the Federal Reserve Board's recommendation is reasonable and would serve as a deterrent and in the case of a violation of the truth-and-lending law would efficiently be served as an appropriately damaged level. Under the bill as it now exists, the ceiling is $100,000 or 1 percent of net worth whichever is the lessor. In a case where it is a widespread violation by a large corporation, the total amount of $100,000 would not serve at all as a deterrent. It would be a minimal injury, perhaps equivalent to the petty cash of a large corporation which may have otherwise been contributed to a political campaign. That too in violation of the law.

By turning around the provision as reported by the committee my amendment would enable the judgment—if the court renders the judgment for a violation—to be of sufficient amount. If there are many people in the same class action, and it is a large institution, it would be a large enough deterrent and it would be an effective penalty provision. Thus, in order to give meaning to the civil liability provision, it is necessary to place some ceiling on it but the ceiling recommended by the committee does not in any way serve as a deterrent or penalty.

I might note that last year when we considered the same legislation I based my support for this amendment on a letter that had been sent by the Vice Chairman of the Federal Reserve System. This year it is not the word of one man, it is the report of the entire Federal Reserve Board. The provisions recommended by the Federal Reserve Board which are printed on pages 36 and 37 of the committee report are most illuminating and, I ask unanimous consent that they be printed in the RECORD at this point.

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

CLASS ACTIONS AND CIVIL LIABILITY; CLASS ACTION LIABILITY LIMIT

The trend of the cases is away from allowing class actions for the enforcement of Truth in Lending. Very likely, this trend is an outgrowth of judicial concern over the possible magnitude of recovery by a large class, given the statutory minimum of $100 per person. While the Board shares this concern about possible liability, which might in some cases run into millions of dollars and may be disproportionate to any conceivable injury sustained by consumers, it also believes that potential class action liability is an important encouragement to the voluntary compliance which is so necessary to insure nationwide adherence to uniform disclosure. Consequently, it believes that any inquiry into the justification for class actions should not be restricted to whether the possible liability in such suits exceeds the actual damages incurred by the class members. Equally important, in the Board's view, is the prophylactic effect of the threat of class action exposure. That threat elevates a possible Truth in Lending law suit from the ineffective "nuisance" category to the type of suit which has enough sting in it to insure that management will strive with diligence to achieve compliance.

While the Board believes that this class action vehicle in some form should be preserved for appropriate Truth in Lending suits, it is conscious of the difficulty of formulating an equitable rule which will preserve its effectiveness without, at the same time, exposing legitimate business to unwarranted claims in frivolous law suits. In the Board's view, the best way to meet this problem is to set an upper limit on the aggregate amount of possible class action recovery (the greater of $50,000 or 1 percent of net worth is suggested in the Board's recommended amendment), while, at the same time, giving the courts the authority to set the amount of actual recovery within this limit in light of the circumstances of the particular case—for example, the severity of the violation and the size of the offender.

Mr. MOSS. Mr. President, I reserve the remainder of my time.

Mr. TOWER. Mr. President, on behalf of the Senator from Tennessee I yield such time as he may require to the distinguished Senator from Utah (Mr. BENNETT).

Mr. BENNETT. Mr. President, I am sorry to find myself in a position of opposition to my junior colleague, but I think he has the situation backwards.

He is concerned about a violation on the part of big companies whose lawyers would be able to keep them out of trouble.

The Senator would impose a penalty of $50,000 or 1 percent of net worth, whichever is greater, which would put out of business any company whose net assets were $50,000 or less.

I am concerned with protecting the little businessman who does not have a stable of important, skillful lawyers, who runs his credit department with people who do not understand all the intricacies of the law, whose clerks might make a mistake which would put him in violation; and if he were in violation, the minimum that could be imposed on him is $50,000.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. BENNETT. I yield.

Mr. PROXMIRE. Did the Senator say minimum fine?

Mr. BENNETT. $50,000 or 1 percent, whichever is greater.

Mr. PROXMIRE. Those were maximums, I understand.

Mr. MOSS. Yes, they are maximum limits. The court, of course, would fix the penalty.

Mr. BENNETT. But it is 1 percent or $50,000. If the court decides 1 percent is $1,000, it has to impose a $50,000 fine. It would have no choice.

Mr. MOSS. No, it would be the other way. If the net worth of the company is below 1 percent, 1 percent is below the $50,000 and that becomes the ceiling. If the net worth is greater than $50,000, it can go up to wherever 1 percent takes it.

Mr. BENNETT. Of course, it could be $50,000 or 1 percent, whichever is greater. The court would have to impose $50,000 or 1 percent, whichever is greater. If 1 percent is $1,000, and $50,000 is more, he has to impose the greater. It seems to me the language is very clear on its face. I am not a lawyer but I do not understand it to be otherwise. It seems to me the words mean what they say.

Mr. MOSS. There is no mandatory imposition of the penalty. The court has to assess the penalty, but in making the assessment certain limits cannot be exceeded. Under my amendment it could not exceed 1 percent of the net worth and it cannot exceed $50,000.

Mr. HASKELL. Mr. President, will the Senator from Utah yield for a question?

Mr. BENNETT. I believe I have the floor, and I would like to finish my statement.

Mr. President, the approach which the committee took was a reasonable one. It would provide for a penalty of $100,000 or 1 percent of the creditor's net worth, whichever is less, for each violation of the Truth in Lending Act. This would provide ample liability in preventing any creditor, regardless of size, from continuing to violate that act.

It must be remembered that this amount would be exclusive of the sums which could be collected in suits where actual damages are incurred through violations of this same act.

This is not a penalty for damages; this is a punitive penalty on top of the damages. It does not affect the $100 minimum which can be recovered by an individual for any violation of the law. It would allow, however, for a class action recovery in the case of any violation whether or not the consumer has actually incurred any damages. In light of this, the liability imposed for violations would be substantial enough to insure compliance, yet reasonable enough to avoid being punitive.

In spite of this, the amendment sought by Senator Moss would broaden enormously the scope of creditors' liability under class action suits. It would increase unconscionably the liability which cred-

itors would be subject to under the Truth in Lending Act.

The amendment which is being offered would allow for a maximum liability of $50,000 or 1 percent of a creditor's net worth, whichever is greater, for each violation of that act. As you can well imagine, this has the potential for raising the liability of creditors to an amount that is clearly out of line with the severity of any possible violation, particularly in light of the fact that in the case of such violations no actual damages may be incurred.

Under the present law a minimum recovery of $100 is allowed even if no actual damages have been incurred. The purpose of this was to make it worthwhile for an indivdual to bring an enforcement action even if actual damages amounted to only a few dollars. However, if this minimum were to be applied in class action suits where the class involves a large number of individuals, the amount for which the creditor could be liable would be astronomical. Indeed, the courts have clearly preceived this as a possibility and have questioned the appropriateness of the class action suit under such circumstances. For example, in the case of Ratner against Chemical Bank of New York, Judge Frankel pointed out:

> That the allowance of thousands of minimum recoveries like plaintiff's would carry to an absurd and stultifying extreme the specific and essentially inconsistent remedy Congress prescribed as the means of private enforcement. (54 F.R.D. 412, 414 (S.D.N.Y. 1972).)

As a result, nearly all of the 20 Truth in Lending class action suits decided since then have held that the class action form under such circumstances was not appropriate.

The amendment providing for a penalty of $50,000 or 1 percent of creditor's net worth, whichever is greater, is not a sound approach to the problem. It holds the same potential for punitive and extraordinarily large punishments for violations which have made the courts hesitant to apply present provisions to class action suits. It would result in millions of dollars being required in payment for violating the act, whether or not damages had actually been incurred.

The amounts for which creditors would be potentially liable is staggering. For example, it could result in liabilities for major oil companies in the following amounts: Exxon, $123 million; Texaco, $72 million; and Mobil, $52 million. The potential liability for other major creditors would also be enormous: General Motors Acceptance Corp., $9.5 million; Ford Motor Credit Corp., $4.8 million; and Household Finance Corp., $7.9 million. In the case of some of the Nation's largest commercial banks, the results could be the following: Chase Manhattan Bank, $17.4 million; First National City Bank of New York, $17.2 million; and Bank of America, $15.3 million. For approximately 90 percent of the Nation's commercial banks, $50,000 would be more than 1 percent of their net worth.

All of these sums could be for a violation that may be strictly technical in nature, and in cases for which actual damages may not be incurred by any consumer. Of course, the sums are not confined to only the largest creditors. Even the smallest creditors would be affected by this amendment, and the sums for which they are potentially liable could work a severe hardship on their ability to continue to provide credit and service their customers.

For example, it is obvious that the $50,000 minimum liability for any creditor being sought by this amendment could exceed the net worth of those firms whose net worth is less than $50,000. This would be disastrous and would completely destroy the ability of such firms to stay in business. Indeed, for any firm with a net worth of less than a quarter million dollars this amendment would destroy their means for staying in operation. These firms do not have the liquidity to handle the sums which would be imposed as penalties under this amendment. The committee bill, however, would assure that the penalty could not exceed any firm's net worth, avoiding the possibility that small creditors will be put out of business by the imposition of any penalty.

It must also be remembered that this liability does not include the costs of such action to the creditor or the payment of "reasonable" attorney fees in a successful enforcement of the law, which could also be quite substantial. To identify a class and send notices alone could amount to millions of dollars if the class were large enough.

The Moss amendment would encourage class action suits against the largest creditors, who generally have the best compliance records and who, as I said, have the best legal staffs and would best be able to protect themselves.

They would be open to charges of violations which may be technical in nature and in the legal interpretation of which might be some minor disagreement. In view of this, and the fact that a violation may not be for actual damage incurred, it is not in the public interest to encourage such litigation.

In conclusion, it seems to me to be highly illogical to place into statutory form a civil penalty which does not apply to all violators equally. The amendment would vary the penalty according to the size of the creditor. It means that while any two creditors may have the same violation, they may be subject to different penalties, depending strictly on their size. The committee bill minimizes this by placing a maximum penalty for all violators.

I strongly urge adoption of the bill as reported out by the committee. This will encourage creditors to seek compliance and permit suits to be brought in cases where real abuse has occurred.

Mr. President, I ask unanimous consent that a series of tables on this subject be printed in the RECORD at this point.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

TABLE 1.—NET WORTH[1] OF MAJOR CREDIT CORPORATIONS

	Net worth[1]	1 percent of net worth
Montgomery Ward Credit Corp. (Feb. 2, 1972)	$158,747,618	$1,587,476
Penneys (J. C.) Financial Corp. (Jan. 29, 1972)	145,832,089	1,458,321
Sears, Roebuck Acceptance Corp. (Jan. 31, 1972)	369,163,663	3,691,637
General Motors Acceptance Corp. (Dec. 31, 1972)	948,002,595	9,480,026
Ford Motor Credit Corp. (Dec. 31, 1972)	481,200,000	4,812,000
Chrysler Finance Corp. (Dec. 31, 1972)	345,856,288	3,458,563
Household Finance Corp. (Dec. 31, 1972)	792,072,000	7,920,720

[1] Includes capital stock, surplus and retained earnings; excludes long-term notes and debentures.

Source: Moody's.

TABLE 2.—NET WORTH OF THE 100 LARGEST BANKS IN THE UNITED STATES BY DEPOSITS[1] (DEC. 31, 1972)

Bank	Net worth[2]	Percent of net worth
1. Bank of America National Trust and Savings Association, San Francisco	1,530,779,000	15,307,790
2. First National City Bank, New York	1,720,824,000	17,208,240
3. Chase Manhattan Bank National Association, New York	1,744,478,978	17,444,790
4. Manufacturers Hanover Trust Co., New York	813,885,465	8,138,855
5. Morgan Guaranty Trust Co., New York	1,060,100,008	10,601,000
6. Chemical Bank, New York	867,925,000	8,679,250
7. Bankers Trust Co., New York	580,580,000	5,805,800
8. Security Pacific National Bank, Los Angeles	543,495,251	5,434,953
9. Continental Illinois National Bank and Trust Co., Chicago	705,420,000	7,054,200
10. First National Bank, Chicago	620,263,000	6,202,630
11. Wells Fargo Bank National Association, San Francisco	486,437,405	4,864,374
12. Crocker National Bank, San Francisco	366,098,853	3,660,989
13. United California Bank, Los Angeles	402,639,446	4,026,394
14. Mellon Bank National Association, Pittsburgh	461,782,000	4,617,820
15. Irving Trust Co., New York	323,439,538	3,234,395
16. National Bank of Detroit	437,961,893	4,379,619
17. Marine Midland Bank, New York	207,958,098	2,079,581
18. First National Bank, Boston	379,981,500	3,799,815
19. Union Bank, Los Angeles	208,000,000	2,080,000
20. Franklin National Bank, New York	225,706,474	2,257,065
21. First Pennsylvania Bank & Trust Co., Philadelphia	246,455,000	2,464,550
22. Republic National Bank, Dallas	149,457,000	1,494,570
23. Cleveland Trust Co	270,280,422	2,702,804
24. South-First National Bank	178,519,643	1,785,196
25. Girard Trust Bank, Philadelphia	204,166,197	2,041,662
26. First National Bank, Dallas	139,704,240	1,397,042
27. Philadelphia National Bank	207,240,588	2,072,406
28. Harris Trust and Savings Bank, Chicago	194,649,667	1,946,497
29. National Bank of North America, New York	201,403,000	2,014,030
30. Detroit Bank and Trust Co	171,887,103	1,718,871
31. Wachov a Bank & Trust Co. National Association, Winston-Salem, N.C.	175,937,913	1,759,379
32. Bank of California, National Association, San Francisco	118,677,000	1,186,770
33. Manufacturers National Bank, Detroit	154,872,000	1,548,720
34. Valley National Bank, Phoenix, Ariz	164,202,366	1,642,024
35. North Carolina National Bank, Charlotte	148,748,308	1,487,483
36. Northern Trust Co., Chicago	172,275,595	1,722,756

Footnotes at end of table.

TABLE 2.—NET WORTH OF THE 100 LARGEST BANKS IN THE UNITED STATES BY DEPOSITS[1] (DEC. 31, 1972)—Continued

Bank	Net worth [2]	Percent of net worth
37. First National Bank of Oregon, Portland	180,512,163	1,805,122
38. United States National Bank of Oregon, Portland	166,310,280	1,663,103
39. Bank of New York	150,407,632	1,504,076
40. Fidelity Bank, Philadelphia	155,520,882	1,555,209
41. Citizens & Southern National Bank, Atlanta, Ga	170,291,604	1,702,916
42. Pittsburgh National Bank	172,114,285	1,721,113
43. National City Bank, Cleveland	164,322,000	1,643,220
44. Security National Bank, Hempstead, N.Y	126,865,000	1,268,650
45. Marine Midland Bank-Weston, Buffalo, N.Y	132,281,430	1,322,814
46. National Bank of Commerce, Seattle	90,257,523	902,575
47. First City National Bank, Houston	107,850,031	1,078,500
48. First Wisconsin National Bank, Milwaukee	105,135,965	1,051,360
49. Texas Commerce Bank National Association, Houston	106,521,859	1,065,219
50. Connecticut Bank & Trust Co., Hartford	95,017,737	950,177
51. First National Bank of Arizona, Phoenix	102,170,177	1,021,702
52. Hartford National Bank & Trust Co., Connecticut	91,147,143	911,471
53. Central National Bank, Cleveland	115,493,689	1,154,937
54. First Union National Bank of North Carolina, Charlotte	109,840,597	1,098,406
55. Michigan National Bank, Lansing	80,992,227	809,922
56. American Fletcher National Bank & Trust Co., Indianapolis, Ind	70,434,174	704,342
57. Industrial National Bank of Rhode Island, Providence	80,107,000	801,070
58. National Shawmut Bank, Boston	84,339,676	843,397
59. Maryland National Bank, Baltimore	105,096,000	1,050,960
60. Indiana National Bank, Indianapolis	89,093,651	890,937
61. Northwestern National Bank, Minneapolis, Minn	95,833,579	958,336
62. Western Pennsylvania National Bank, Pittsburgh	83,511,849	835,118
63. Provident National Bank, Philadelphia	99,204,000	992,040
64. Virginia National Bank, Norfolk	97,200,169	972,002
65. State Street Bank & Trust Co., Boston	102,534,613	1,025,346
66. First Western Bank & Trust Co., Los Angeles	77,076,210	770,762
67. First National Bank, Minneapolis, Minn	110,780,319	1,107,803
68. American National Bank & Trust Co., Chicago	63,518,662	635,187
69. First National Bank, Memphis, Tenn	82,997,438	829,974
70. Mercantile Trust Co. National Association St. Louis, Mo	130,685,864	1,306,859
71. Trust Co. of Georgia, Atlanta	80,826,000	808,260
72. First National Bank, Atlanta	106,645,763	1,066,458
73. Manufacturers & Traders Trust Co., Buffalo, N.Y	94,943,286	949,433
74. First National State Bank of New Jersey, Newark	82,139,428	821,394
75. New England Merchants National Bank, Boston	74,087,347	740,873
76. First National Bank, Miami	75,056,892	750,569
77. Riggs National Bank, Washington, D.C	93,895,463	938,955
78. Union Planters National Bank, Memphis	76,921,281	769,213
79. Union Commerce Bank, Cleveland	91,092,422	910,924
80. County Trust Co., White Plains, N.Y	86,043,057	860,431
81. Peoples Trust of New Jersey, Hackensack, N.J	76,940,000	769,400
82. Ohio National Bank, Columbus	80,949,459	809,495
83. National Commercial Bank and Trust Co., Albany, N.Y	68,564,200	685,642
84. Banco Popular de Puerto Rico, San Juan	62,597,857	625,979
85. Lincoln First Bank of Rochester, Rochester, N.Y	71,899,474	718,995
86. First National Bank, St. Paul, Minn	96,712,098	967,121
87. United States National Bank, San Diego	61,027,645	610,276
88. Bank of the Commonwealth, Detroit	64,535,029	645,350
89. Bank of the Southwest National Association, Houston	81,606,989	816,070
90. American Security and Trust Co., Washington, D.C	80,873,181	808,732
91. First National Bank, St. Louis, Mo	86,146,336	861,463
92. First & Merchants National Bank, Richmond, Va	69,681,007	696,810
93. Society National Bank, Cleveland	60,896,669	608,967
94. Bank of Hawaii, Honolulu	62,192,789	621,928
95. Michigan Bank National Association, Detroit	62,210,145	622,101
96. National Newark and Essex Bank, Newark, N.J	69,696,844	696,968
97. First-Citizens Bank and Trust Co., Smithfield, N.C	71,133,794	711,338
98. First National Bank, Birmingham, Ala	70,749,254	707,493
99. Equitable Trust Co., Baltimore, Md	58,155,909	581,559
100. Bank of Tokyo Trust Co., New York	52,807,045	528,070

[1] Data from the American Banker, Feb. 13, 1973.

[2] Net worth comprised of capital, surplus and undivided profits.

TABLE 3.—AVERAGE NET WORTH OF INSURED COMMERCIAL BANKS BY AMOUNT OF DEPOSITS, DEC. 31, 1972

[In thousands of dollars]

	All banks	Banks with deposits of—								
		Less than 1 million	1 million to 2 million	2 million to 5 million	5 million to 10 million	10 million to 25 million	25 million to 50 million	50 million to 100 million	100 million to 500 million	500 million to 1 billion	1 billion or more
Total net worth [1]	48,022,582	7,700	95,948	881,687	2,086,148	5,130,414	4,359,466	3,851,711	8,182,583	5,152,857	18,274,068
Number of banks [2]	13,500	66	471	2,567	3,262	4,088	1,608	738	532	96	72
Average net worth of commercial banks	3,557	117	204	343	640	1,255	2,711	5,219	15,381	53,676	253,807

[1] Net worth is comprised of capital stock, surplus, undivided profits, and reserves for contingencies, and other capital resources.

[2] Insured commercial banks operating throughout 1972.

Source: Federal Deposit Insurance Corporation.

Mr. BENNETT. Mr. President, I strongly urge the adoption of the bill as reported by the committee, and the rejection of the amendment. I fear that the people who have put this amendment together have had their eyes on the big companies and thought what a wonderful idea it would be if we could get 1 percent of the net worth of some of the giant oil companies and banks; but in doing so, they require the court to assess no less than $50,000 as a penalty on every little merchant who is found in violation, because the bill does not say "maximum." It says "the greater of $50,000 or 1 per centum of the net worth of the creditor."

I hope the Senate will not impose that kind of burden on the little merchants in the United States. If it does, I am sure the courts will never enforce it.

Mr. MOSS. Mr. President, the Senator feels that, for some reason, those who are proposing this amendment want to drive out of business, perhaps, some of the big corporations. As a matter of fact, this proposal is recommended by the Federal Reserve Board unanimously. I have never heard anyone before say the Federal Reserve Board is out to wreck the banking business or drive any of our big corporations out of business.

I am afraid that the whole matter has been distorted. What we are talking about here, if Senators will refer to page 20 of the bill, is the actual damage sustained as a result of this failure.

In the case of a class action, where it is not a single individual it will be such amount—and I am on line 22 of page 20—"such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in such action shall not be more than the lesser of $100,000 or 1 percent above the net worth of the creditor;"

That is the actual damage suffered. If it does not come near these ceilings, we do not have to worry about it. However, in this bill where it says "not more than the lesser" that is the villain. It says "shall not be more than the lesser of $100,000 or 1 per centum of the net worth of the creditor;"

That means that if we have a big corporation—and the Senator was citing Exxon—and they had a violation of the provision with respect to a whole class of people, the greatest amount the court could assess for that whole class of people would be $100,000. Maybe each would get $5 apiece of $1 apiece.

This turns it around and says that the court when it assesses the penalty shall assess it within certain limits and cannot exceed $50,000 under any circumstances except where the net worth of that corporation is a big one. Then the court can shift to 1 percent of the net worth.

No corporation can suffer a penalty of more than 1 percent of their net worth, no matter how much the corporation is in violation.

Mr. BROCK. Mr. President, will the Senator yield?

Mr. MOSS. I will yield in a moment.

On page 21 when we talk about how a court shall determine the amount of award in any class action, we say "the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional."

This is all within the power of the court, the judge, to decide. He has to find that there is a violation and that there have been damages. He has to decided what the damages are, and he has certain limits that he cannot exceed.

Mr. BROCK. Mr. President, will the Senator yield?

Mr. MOSS. I yield to the Senator from Tennessee.

Mr. BROCK. Mr. President, I think that the Senator inadvertently misstated himself or I misunderstood him. He said that in no case under his amendment could the court award damages in excess of 1 percent of the networth.

Mr. MOSS. The Senator is correct.

Mr. BROCK. That is not the way the Senator's amendment reads. The Senator's amendment says "and the total recovery in such action shall not be more than the greater of $50,000 or 1 per centum of the net worth of the creditor;"

So, if I have a little company that is worth $100,000, it would mean a fine of $50,000.

The Senator should not have a dollar figure in there if the amendment is to mean what he says. That would be the only way to achieve the results stated by the Senator.

A small company would be wiped out and bankrupt. There is no way in which they could survive that kind of judgment.

Mr. MOSS. It says "the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's compliance was intentional."

So, if the Senator had a $100,000 corporation and the matter was presented to the judge, he would not put him out of business in the first instance. Perhaps we have judges who are that unobserving. However, that is the reason that we have appellate courts. However, basically we believe in the court system, and we believe that a court will find a fair judgment against a creditor to compensate the plaintiff.

The only thing we are trying to talk about here is that if we put on a ceiling, it can never exceed $100,000.

Mr. BROCK. Mr. President, if we have total faith in the courts, we would not have any ceiling there at all. We would say, "Fine them anything you want." However, I do not have total faith in the courts. I think that it is up to Congress to fix this penalty.

We tried to compromise this matter within reasonable limits. However, I think that the Senator could get us into a situation in which we would be in trouble. We have a lot of good judges. There may be some that do not have the wisdom they should have.

Mr. HASKELL. Mr. President, if the Senator from Utah would yield, are we talking about the limiting of actual damages or are we talking about penalties?

Mr. MOSS. The Senator is correct. We are talking about the limit of actual damages. And the total recovery cannot be more than 1 percent of the net worth of the creditor.

Mr. HASKELL. Mr. President, for a point of clarification, if we are talking about the limit of actual damages, in my mind, it is one thing. If we are talking about a penalty, it is something entirely different.

I am merely seeking clarification.

Mr. PROXMIRE. Mr. President, if the Senator will yield, the Senator does have a good point. While there is no limit on actual damages, under the Truth in Lending Act, there are almost never any actual damages. The only effective penalty is the penalty to which the junior Senator from Utah addressed his amendment.

How do we show damages on a disclosure violation? It is virtually impossible.

Mr. HASKELL. As a practical matter, we are talking about a penalty.

Mr. PROXMIRE. The Senator is correct.

Mr. MOSS. Mr. President, the court would consider the actual damages and other things, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

Mr. President, I would be willing to yield back my time very shortly. I simply want to say that if my amendment is rejected and if we go back to the language in the bill now, it would mean that under no circumstances could any corporation be assessed a penalty greater than $100,000. If we visualize a violation by a company such as Exxon, and that violation had spread all over the United States to anyone that had an Exxon card of one kind or another, and if it were proved that this was intentional, still the total assessment against that big corporation would be $100,000. That is not an adequate deterrent.

However, if we turn it around the other way and say that it can be up to 1 percent of the net worth of that corporation, then there is a real deterrent on that corporation to prevent a violation of the truth-in-lending law.

Mr. President, I turn back, as I did before, in citing the Federal Reserve Board, and point out that I had always thought the Federal Reserve Board were among the most careful and conservative people who served in the Government service. And when the Federal Reserve Board unanimously recommended the language of my amendment, it was quite persuasive to me that it will not wreck our whole economic system.

I think that we very well could follow that recommendation, and I urge the adoption of the amendment.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. MOSS. I yield to the Senator from Wisconsin.

Mr. PROXMIRE. I commend the Senator from Utah enthusiastically on his amendment. It is an excellent amendment. It is an absolutely vital amendment, if we are to have any effective class action litigation under the Truth in Lending Act.

The Senator makes two points that I think should be underlined. No. 1, this is what the Federal Reserve Board recommends. The Federal Reserve Board has authority to enforce this act under the truth in lending law. They have had experience with it. They have worked with it for 4 years, and know what is needed to make it effective. They say there is need for the kind of provision the Senator proposes in his amendment.

The second point which the Senator has made so well at the conclusion of his statement is, How silly can you get? A $100,000 penalty; what good would it do to assert a $100,000 penalty against Sears, Roebuck? Sears, Roebuck sells $11 billion a year. The Bank of America has a net worth of $1.7 billion. One hundred thousand dollars is really chicken feed. To file suit in the case of these big giants, would be a complete waste of time; you would provide a penny or two to each injured party.

Mr. President, I congratulate the Senator from Utah on his amendment. I suggest that without it, we would have a toothless truth in lending law.

Mr. BROCK. I yield myself 4 minutes.

Mr. President, I believe the debate has reached its zenith. I am sure it is not the intent of the Senator from Wisconsin or the Senator from Utah, but this amendment to me represents the lawyers' gravy train of 1973. What fun they are going to have with this, taking on the fat cats and all the rest. If we put a 1 percent figure out there, that is great bait for the attorneys to look at the 1 percent that will get them the highest fee and allow the greatest opportunity for public recognition.

Sure, they are going after the big guys. Of course they are. That is where the money is. But is it where the problem is? No. No one has suggested that. As a matter of fact, the record of this legislation is that we have superlative compliance records on the part of most of the large creditors. The problem is with the people who are not able to comply because of limited staff and capacity.

This amendment will clobber the little guy and not achieve anything other than to make an awful lot of lawyers very rich who go after the big ones and ignore the problem that does exist in some areas with respect to small firms. It will be ignored, because there is too much to be made on the other side of the coin.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. BROCK. I yield.

Mr. PROXMIRE. Is it not true that under the present law, the limit is $100 from each person who is suing as a minimum, to a maximum of $1,000? That means the total could go from $1 billion to $10 billion, under the present law.

So what the Senator from Utah does and what the Federal Reserve Board would do would be to provide a limitation on present liability that is very substantial. But what the committee has done in the bill is to provide an utterly ridiculous limitation of $100,000 on a giant, which is peanuts and an insult to our intelligence, and makes it ineffective to file a class-action suit. If you want to kill class action by subterfuge, vote no on Moss, that is what the committee bill does. If you want a responsible limit recommended by the Federal Reserve Board vote for this amendment.

Mr. BROCK. In other words, what we are going to do is motivate the attorneys to go after the guys with the big reputation and the big cash, regardless of whether that is where the problem exists.

In response to the Senator's question let me read again from the language of Judge Frankel in the Ratner case, which

was referred to by the senior Senator from Utah (Mr. BENNETT). Judge Frankel said:

> The allowance of thousands of minimum recoveries like plaintiff's would carry to an absurd and stultifying extreme the specific and essentially inconsistent remedy Congress prescribed as the means of private enforcement.

That has been accepted by virtually every court since that decision as being logical and right. I think it is. I think it makes sense. The Senator would go back and build all over again all of the problems in the original bill, except that in this case we specifically authorize class action suits, and say, "Katie, bar the door, no more than 1 percent of the assets."

So all they have to do is go after these guys that have all the money, and ignore the problem that exists with the smaller business.

Frankly, I think the amendment is counterproductive.

Mr. HART. Mr. President, today I wish to add my support to Senator Moss' amendment to the truth-in-lending bill, S. 2101. His amendment would change the limitations on maximum class action damages resulting from abuses in disclosure, billing practices, and discrimination.

The bill suggests a maximum limit of $100,000 or 1 percent of the net worth, whichever is less. Senator Moss' amendment would change the maximum limit to $50,000 or 1 percent of the net worth, whichever is greater.

Thus the maximum, suggested by Senator Moss, would provide an economic incentive for compliance with the law. In short, it would give the consumer the necessary clout for dealing with a large corporation.

The actual damages resulting from abuses of disclosure, billing practices, and discrimination are usually negligible or extremely difficult to prove. For that reason, we set up a minimum award of $100 for an individual action in our original act. But lawyers' fees and the costs of suits are such that the only truly effective means of enforcing the sound provisions of this act is by class suits. Since the courts have refused to certify class suits under the Truth in Lending Act as it now stands, it is necessary to enact some limitation. But the limitation has to be realistic.

A maximum of $100,000 is not realistic. To a small firm, or an individual, $100,000 seems like an enormous sum. But to a large multimillion dollar bank, credit card company or chain store, this is chickenfeed. Their legal fees alone would cost more than that. The object in this type of class suit is not so much to compensate the injured party, but to give an economic incentive to companies for compliance with the law.

The Federal Reserve Board, intimately familiar with the structure of the credit industry, recommended that the maximum be set at the greater of $50,000 or 1 percent of net worth. They emphasized "the prophylactic effect of the threat of class action exposure. That threat elevates a possible truth-in-lending lawsuit from the ineffective nuisance category to the type of suit which has enough sting in it to insure that management will strive with diligence to achieve the compliance."

This limit does have teeth in it. It is obvious that few judges would actually award a sum totaling 1 percent of the net worth of American Express, Bank of America, Montgomery Ward's, or Sears Roebuck. But he will have the discretion to award a sum which such institutions will feel and will have to justify to their stockholders.

All the other laudatory provisions of the Truth-in-Lending Act, and the amendments we are considering here today, will be lost without a sanction. This amendment may seem technical at first glance, but in my view it represents the very heart of our whole endeavor to correct credit abuses in this country.

The equal credit opportunity section forbidding discrimination because of sex and marital status in credit decisions, is another important step forward. Some banks and credit card companies seem to have the view that the worth of money depends on the sex of the person who earns it. I cosponsored Senator BROCK's bill dealing with sex discrimination in credit practices, and I am delighted that the full Banking Committee accepted it.

The changes made by the committee regarding the computation of finance charges and minimum finance charges are not in accord with my views. I am not convinced that small retailers need the protection of practices which I consider unfair.

The PRESIDING OFFICER. Who yields time?

Mr. MOSS. Mr. President, I am willing to yield back the remainder of my time. I just want to make one more comment, and then I will be prepared to vote.

First, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. MOSS. Mr. President, let me say one more thing about this $100,000 ceiling. Sears, Roebuck alone has 10 million customers. Suppose an action were brought against Sears, Roebuck, and it was found that they had violated the truth in lending law as against all those customers. They would recover a penny apiece. That points out the futility of having a ceiling of $100,000.

If you are dealing with a problem, and you have to acknowledge there is a problem, there is a violation, there is something the court can make a finding on, and then we are talking about where does the penalty go, well, for only a penny apiece for all of those people, Senators can see it is utterly ridiculous to retain the ceiling of $100,000.

Therefore, I am willing to yield back the remainder of my time and proceed with the vote.

Mr. BROCK. I yield back the remainder of my time.

The PRESIDING OFFICER. (Mr. MCCLURE). All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Utah (Mr. Moss). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Nevada (Mr. CANNON), the Senator from Alaska (Mr. GRAVEL), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Rhode Island (Mr. PELL) are necessarily absent.

I further announce that the Senator from South Dakota (Mr. ABOUREZK) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from New Hampshire (Mr. COTTON) is absent because of illness.

The Senator from Colorado (Mr. DOMINICK) is necessarily absent.

The Senator from Massachusetts (Mr. BROOKE) is detained on official business.

The result was announced—yeas 36, nays 53, as follows:

[No. 319 Leg.]

YEAS—36

Bible	Hathaway	Montoya
Biden	Hughes	Moss
Burdick	Humphrey	Muskie
Byrd, Robert C.	Jackson	Nelson
Case	Javits	Proxmire
Chiles	Kennedy	Randolph
Church	Magnuson	Ribicoff
Clark	Mansfield	Saxbe
Eagleton	McGee	Schweiker
Fulbright	McIntyre	Stevenson
Hart	Metcalf	Tunney
Haskell	Mondale	Williams

NAYS—53

Aiken	Ervin	McClure
Allen	Fannin	Nunn
Baker	Fong	Packwood
Bartlett	Goldwater	Pearson
Bayh	Griffin	Percy
Beall	Gurney	Roth
Bellmon	Hansen	Scott, Pa.
Bennett	Hartke	Scott, Va.
Brock	Hatfield	Sparkman
Buckley	Helms	Stafford
Byrd, Harry F., Jr.	Hollings	Stevens
Cook	Hruska	Symington
Cranston	Huddleston	Taft
Curtis	Inouye	Talmadge
Dole	Johnston	Thurmond
Domenici	Long	Tower
Eastland	Mathias	Weicker
	McClellan	Young

NOT VOTING—11

Abourezk	Cotton	Pastore
Bentsen	Dominick	Pell
Brooke	Gravel	Stennis
Cannon	McGovern	

So Mr. Moss' amendment (No. 343) was rejected.

Mr. SPARKMAN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BROCK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. BROCK. Mr. President, I have four technical amendments; and, for the information of the Senate, I do not believe there will be any request for a record vote on final passage.

Before I offer the amendments, to which there is general agreement, I

should like to pay my respects to the committee and to the chairman of the committee for his usual graciousness and courtesy to the members. The Senator from Alabama has demonstrated again his ability and his integrity and his commitment to full participation on the part of members.

I think we have an excellent bill. If I can point out one achievement of the bill that is significant above all others, it is that this bill, for the first time, really effectively deals specifically with the problem of credit discrimination against women and deals with it in a manner that is cogent and to the point, and I think it will resolve the basic problem in many ways. I express my thanks to my colleagues for supporting that particular title III, which Senator WILLIAMS and I cosponsored.

Mr. President, I have four technical amendments at the desk which I ask unanimous consent to have considered en bloc.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The amendments will be stated.

The legislative clerk read the amendments, as follows:

On page 3, delete the last sentence on lines 1–4 and substitute the following sentence:

"With respect to each of 2 billing cycles per year, at semiannual intervals, the creditor shall transmit such statement to each obligor to whom the creditor is required to transmit a statement pursuant to section 127(b) for such billing cycle."

On page 17, line 10, insert the following:

Delete the phrase "is stated in the advertisement" and substitute therefor the phrase "is imposed".

On page 23, strike out lines 10 and 11, and insert in lieu thereof the following:

"The exemption provided by section 104 (1) does not apply to the provisions of sections 132, 133, and 134, except that a card issuer and a business or other organization which provides credit cards issued by the same card issuer to ten or more of its employees may by contract agree as to liability of the business or other organization with respect to unauthorized use of such credit cards without regard to the provisions of section 133, but in no case may such business or other organization or card issuer impose liability upon any employee with respect to unauthorized use of such a credit card except in accordance with and subject to the limitations of section 133."

On page 27, after line 12, insert the following new section:

SEC. 216. Disclosure by card issuers.

Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding the following new subsection:

"(d) Card issuers who also engage in other than open-end credit transactions shall not be required to make disclosures required by this section with respect to such transactions."

Renumber succeeding sections in title II.

The PRESIDING OFFICER. Do Senators yield back their time on the amendments?

Mr. BROCK. I yield back my time.

Mr. SPARKMAN. I yield back my time.

The PRESIDING OFFICER. All time on the amendments has been yielded back.

The question is on agreeing to the amendments en bloc.

The amendments were agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. DOMINICK. Mr. President, on a previous occasion I voiced my strong support and intentions to vote for S. 2101—amending the Truth in Lending Act—and urged that my colleagues do the same. I commend them on the passage of this worthy piece of legislation.

The passage of this bill will prohibit unfair credit billing practices, improve the administration of the Truth in Lending Act, and prohibit discrimination in consumer credit transactions because of sex or marital status. The provisions to eliminate discrimination on the basis of sex or marital status in credit transactions stem from legislation introduced earlier in the year by the distinguished Senator from Tennessee (Senator BROCK). I was honored to have been a cosponsor of that bill and I am pleased that its main features were included in S. 2101 so as to insure a timely enactment into law.

Mr. MATHIAS. Mr. President, I rise today to express my strong support for title III of the Truth in Lending Act amendments, prohibiting discrimination in credit transactions on the basis of sex or marital status. Guaranteeing the economic rights of women is an area of legislation that has too long been ignored. I am very pleased that the Committee on Banking, Housing and Urban Affairs has addressed this area and commend the members of the committee for their efforts.

The Banking Committee has substantiated the findings of the National Commission on Consumer Finance which held hearings last summer on the question of unfair credit practices for women. Hearings before both groups established that women experience substantial discrimination in applying for credit. Among the findings are:

Single women have more trouble obtaining credit than single men;

Creditors are often unwilling to extend credit to a married woman in her own name;

Creditors usually required a single woman who has been extended credit to reapply for credit, usually in her husband's name, when she marries—men generally do not have to reapply;

Women who are divorced or widowed encounter difficulties reestablishing credit.

Mr. President, there are startling facts. The inequities are glaring, and the hardships faced by women are entirely unjustified. We are living in a credit society. The vast majority of our population must secure a loan to finance a new car, a new home, and most other major purchases—11.5 percent of the heads of families in this country are women. To discriminate against women in applications for retail credit, mortgages, bank loans, is not only unfair, but harmful to our economy and our family life.

There has been, however, some progress in this field in recent months. Next year, for example, Manhattan will note the opening of the First Women's Bank and Trust Co., designed to serve the special needs of women. In a June 1 article in the Christian Science Monitor, the bank's acting coordinator, Ellen Preiss stated its purposes:

> The bank is going to focus on women's special financial needs, which other banks have not done. We're going to make sure that women get equal treatment in terms of credit, which other banks have neglected because of their attitudes and myths about women—specifically that they're not serious about business and that they're poor credit risks.

In addition, the National Bank Americard this year dropped its requirement that member banks request all applicants to submit financial information about their spouses and to permit single women to retain their accounts after they marry.

The First National City Bank of New York has named a woman to its credit division and will now accept alimony and welfare income as proof of ability to repay a loan. But we have a long way to go. Only legislative action at the Federal level will start to correct today's credit inequities.

The Commission and the committee determined that many of the bases for discrimination against women by creditors are totally unfounded. Today women are no less likely than men to remain employed over extended periods of time, and there is virtually no sound reason why women should be underrated as credit risks. The economic status of women has changed considerably over the past two decades—40 percent of all wage earners in the country are women—a one-third increase from their numbers in 1951. It follows, then, that women should be entitled to the same credit benefits as men when they meet the same standard criteria.

Mr. President, the provisions of title III of the Truth in Lending Act amendments seek to end discrimination based on sex or marital status in connection with credit transactions. This measure does not dictate to lending institutions the terms upon which credit may be granted. Rather, the bill is designed to ensure that credit applications are treated individually on the basis of the merits of the applicant. Creditors are free to determine standards by which to judge such applicants.

I encourage my colleagues to be responsive to the needs of 53 percent of our population by extending equal credit opportunity to women.

Mr. BELLMON. Mr. President, in an economy which is increasingly dependent on credit, it is unfair and unjust to deny any segment of the population equal treatment under the law. The necessity of legislation to correct this problem has been clearly documented in the findings of the Natioanl Commission on Consumer Finance and is increasingly a matter of public concern. Because of this need, I introduced S. 2084, a bill to prohibit discrimination against individuals seeking credit on account of sex or marital status. While the committee bill differs

from S. 2084 in several technical respects, it reaches the same problem, that is to protect the rights of women and single people in obtaining credit.

I would urge the Senate to adopt this provision and extend the same rights to credit worthy women and credit worthy single people so as to give them the same benefits and rights currently enjoyed by other segments of our society. The committee is to be congratulated for acting to solve this problem in such an astute manner. It is now the time for the Senate to act accordingly.

USE OF CASH DISCOUNTS

Mr. CRANSTON. Mr. President, section 167 will prevent action by card issuers to prevent merchants from imposing a differential between a merchant's "cash" price and his card price. It is not at all clear that such differentials should be allowed; card transactions allow a merchant to increase his volume at reduced per-unit costs, producing savings for all customers. Similarly, there are cost elements to the merchant attributable only to cash customers, such as cash registers, counting cash, safeguarding cash, risk of theft.

The committee has decided nonetheless that differentials should be permitted, therefore card issuers are faced with two problems arising from the fact that the sales slips they receive from the merchants will contain only the charge card price, and there is no way to require accurate disclosure by the merchant to the card issuer of the "cash" price in effect at the time of the card sale. The first problem arises under truth in lending; the differential itself seems to be a finance charge that the card issuer would be unable to disclose, not knowing what it was, and the unknown cash price would appear to be the base to which the card issuer's periodic rate or annual rate should be applied to compute the finance charge. Section 167 at present deals with only part of the former aspect of this problem, by making discounts up to 5 percent not a part of the finance charge. It provides no comfort where a greater differential exists, and provides no help at all to card issuers who wish to know what the actual base is against which their finance charge rates should be applied.

The second problem, a similar one, arises under State usury laws. The cash/charge card differential may well be interest in many States, and the unknown cash price may be the base against which interest rates should be applied. If a creditor is using the maximum interest rate but is applying it against a charge-card price that is higher than the cash price, the interest charge will exceed the maximum interest allowable against the lower cash price. Usury law violations are different from State to State and are thus a very real problem.

The card issuer faces related problems of being unable to comply with the disclosure requirements of truth in lending.

I hope that the House will work on alternatives with respect to the difficulties that have arisen under section 167 with respect to the problems faced by the cardholder when the differential is more than 5 percent and as to the disclosure requirements under the truth in lending law.

EQUAL FINANCIAL OPPORTUNITIES FOR WOMEN

Mr. STEVENS. Mr. President, I am very pleased to cosponsor with the distinguished Senator from Tennessee (Mr. BROCK) S. 1604 and S. 1605. S. 1604 amends the Fair Housing Amendments to prohibit discrimination on the basis of sex against individuals applying for housing. S. 1605 amends the Truth in Lending Act to prohibit discrimination on the basis of sex or marital status against individuals seeking credit.

Many women, single and married, depend on their income for the livelihood of themselves and their families. While credit is not a right and may be refused for cause, the equality of access to credit and housing should not be denied on the basis of sex and should be guaranteed by the Federal Government.

I note from the Senator from Tennessee's introductory statement that 40 percent of the labor force are women who are the sole support of their famiiles. In many cases the credit standing of a working wife is taken into account in granting credit to the entire family. If the wife is the victim of discrimination, so is the family.

These bills will benefit not only these families themselves, but also, ultimately, the entire business community. Additional income will be generated. Construction will increase. More consumer goods will be produced as a result of this legislation. I do not believe I am overly optimistic when I say that these bills will permeate throughout the economy. These bills remove traditional shackles of discrimination and require that credit be granted—or denied—only on the basis of individual financial stability. Credit granting institutions will be required to evaluate each applicant individually and not on the basis of sex or marital status.

Most importantly, by enacting this legislation, the United States will take an important step forward as a leader in this area of civil rights. This legislation will serve as an example for other nations. Women everywhere will be able to turn to this legislation as an example in their fight for equal rights.

This legislation will not impose any additional disability upon women. It will not require that they become cosigners of any notes or mortgages. It does, however, assume that if they do become legally liable, they will come under the same legal obligation as men to repay the loan under the contractual terms of the instrument.

S. 1604 and S. 1605 will cast women into a central role in the American economy. Both bills reaffirm Congress trust and confidence in the ladies of this country. I hope that the Senate Banking Committee acts upon S. 1604 speedily. Both bills are in the very finest tradition of America.

I am pleased to note that S. 1605 was incorporated into S. 2101. I urge my colleagues to support this provision of S. 2101.

I request unanimous consent to place in the RECORD at this point an article that appeared in the Washington Post last February 24 describing the plight of one Arlington, Va., couple. S. 1604 will, hopefully, avoid the repetition of incidents of this type.

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

WIFE SAYS LOAN TIED TO NO-CHILD VOW

(By Jay Mathews)

An Arlington woman has complained to federal officials that a Falls Church mortgage company made her promise to remain childless by means of birth control, abortion or a vasectomy on her husband before approving her home loan application.

The mortgage company officer involved denied yesterday he required the promise of an abortion or vasectomy but said he asked for evidence she was practicing birth control to assure she would not lose her $11,000-a-year job as magazine editor.

The Veterans' Administration is now investigating Carol K. Lewicke's charge that the Floyd E. Davis Mortgage Corp. officer required the signed statement from her because her husband's income as a Navy enlisted man wasn't enough to cover the loan.

Loan application statements on childbearing plans required of married female applicants by mortgage companies are common enough for VA officials to have dubbed them "pill letters" or "baby letters."

"We would just as soon they not submit these damned statements to us," one VA loan official said.

Mortgage lenders in the area say the practice is not uncommon—particularly with young women who have recently married—but they say it is an improvement over days when many lenders refused to base loans on the incomes of any married women under 30.

National women's groups, also investigating Mrs. Lewicke's complaint, have charged in recent years that mortgage lenders often refuse to take a working wife's income into account or make it more difficult to obtain a mortgage based on her income rather than her husband's.

In a December statement submitted to the Federal Deposit Insurance Corporation, three large women's rights groups said, "A most specious byproduct of the creditor's morbid fear of uncontrolled pregnancy (is) the solicitation and use by lenders of statements concerning the birth control practices of a married woman applicant."

"The whole thing was just unreal," said Mrs. Lewicke, 26, an assistant editor for Environmental Science and Technology Magazine, in an interview yesterday, "I didn't believe that something like this could happen in this country."

"I've just about had it with Mrs. Lewicke and her emotional problems," said Leon A. Graybill, vice president of Davis Mortgage and the man who granted the VA-approved loan. He said he only sought simple assurances that Mrs. Lewicke's income would be a "normal and continuing part of the family income."

Instead, he said, she wanted to promise she would get an abortion if she became pregnant or her husband would get a vasectomy if she stopped taking birth control pills.

Graybill said he filed away the Lewicke's notarized statement concerning abortion and vasectomy with the notation "do not use" written on them. He said he sent the loan application to the VA with a letter from Mrs. Lewicke's gynecologist that she was practicing birth control and was unlikely to become pregnant because she only ovulated three times a year.

Graybill and other mortgage lenders said an applicant's statement that she is practicing birth control is not legally binding and is only a guide for a lender in making his decision to lend. Even if Mrs. Lewicke has a

child, no action can be taken against her as long as she and her husband keep up the $213 a month mortgage payments, Graybill said.

The Lewickes have been living in their $27,000, brick, two-bedroom house at 1833 George Mason Dr. since last summer. They said yesterday that once the loan was approved and Mrs. Lewicke told Graybill she planned to complain to federal officials, Graybill began to deny he had insisted on the statements regarding abortion and vasectomy.

"It was a pretty raw deal," said Martin A. Lewicke, a petty officer 2d class in the Navy. "But wanting the house as badly as we did, we had to go along with what the man said."

Graybill said it is common practice for mortgage lenders to ask for assurances from a young, married woman applicant that she is practicing birth control or intends to continue working even if she has children.

"We are in business to lend money at a profit," Graybill said. If a baby comes, he said, "the husband does not go home and take care of the children . . . If her income stopped, they would not be able to make payments," because her husband makes only about $6,000 a year.

If a woman has held a job steadily for several years, and has been married about as long, she will often qualify for a mortgage loan without special statements, no matter if she has children or not, Garybill said.

He said he considered the loan to the Lewickes "marginal" because they had only been married four months. He said mortgage lenders found young couples often separated after a short period of marriage and then could not meet mortgage payments.

EQUAL CREDIT OPPORTUNITY PROVISIONS OF FAIR CREDIT BILLING ACT

Mr. WILLIAMS. Mr. President, the Committee on Banking, Housing and Urban Affairs has reported out S. 2101, the Fair Credit Billing Act which contains a provision to prohibit discrimination based on sex or marital status by creditors and credit card companies. I am particularly pleased that this provision was included when the committee adopted an amendment sponsored by Senators BROCK, PROXMIRE, and myself. This amendment was very similar to S. 867, the "Equal Credit Opportunities Act," which I introduced earlier this year.

There is no doubt that discrimination against women occurs in all types of credit transactions. This fact was well documented by witnesses who appeared before the National Commission on Consumer Finance, which held hearings on the problem last year. It is time the Congress takes a legislative initiative with the goal of ending this serious problem.

Discrimination against women limits their access to credit cards, their capacity to purchase homes or improve those homes and their ability to buy a business or purchase an automobile. There are 6 million families in America whose head of household, a woman, is the object of discrimination. And in a Nation where consumer credit is a way of life, it is untenable that these families should not have an equal opportunity to use the credit principle, which can enable them, with intelligent use, to meet emergency situations, to manage money better, and provide a higher standard of living. Because of sex discrimination in employment, many of these women make little money, and the ability, for example, to purchase school clothing for their children during sales or at the beginning of the school year, and then to spread the payments for these necessities over a long period of time, is not only useful but can be essential.

A number of cases have been cited in which a young wife has been asked by a mortgage lender to provide an affidavit of sterility, or a letter from her doctor attesting to the fact that she uses birth control, before the lender will count her salary as well as her husband's in his decision on whether or not to grant them a mortgage. Divorced and widowed women have a most difficult time arranging credit in their own names, as the credit of a man and wife are often considered to his credit, not hers, and a woman who has handled the family finances and paid the bills for many years may find, upon divorce, that she is treated as though she has no credit worthiness whatsoever.

All too often, the reason why creditors differentiate in their treatment of men and women applying for credit is based on traditional, stereotyped notions of woman's role and lifestyle. Although the National Commission on Consumer Finance held hearings last May, and the Joint Economic Committee has just heard testimony on the problem, there seems to be no evidence of studies which indicate that women are poorer credit risks than men. On the contrary, studies done on the issue in the past 20 years, and there have been only a few, conclude that women are, in fact, better credit risks than men or that sex is not a valid determinant of creditworthiness. A recent study, cited Thursday in the Joint Economic Committee hearngs, is the 1970 study of the National Bureau of Economic Research, entitled "Home Mortgage Delinquency and Forclosure." It found no demonstrable relationship between marital status and mortgage loan risk.

Witnesses representing the Center for Women Policy Studies, which has been given a $40,000 Ford Foundation grant to study the credt problems of women, testified Thursday:

> While our investigation of the economic justification for sex discrimination in credit practices is not yet complete, preliminary results lead us to believe that there is no justification for dealing with men and women differently in credit matters.

If there is no economic justification for this discrimination, and it is clear that credit discrimination works hardship on millions of American women, then we have the obligation to take the necessary legislative steps to eliminate discrimination based on sex or marital status in credit transactions. I ask my colleagues in the Senate to join the 42 cosponsors of bills to eliminate credit discrimination based on sex and marital status. We must end the absurd system which subjects women to these demeaning standards.

Mr. HUDDLESTON. Mr. President, I am pleased to support S. 2101, which amends the existing Truth-in-Lending Act. The original truth-in-lending legislation represented a landmark in providing information on credit terms to consumers. For the first time, it required that customers be fully advised of the annual interest rate they would be paying on credit purchases.

Today's legislation seeks to move toward additional protection of the consumer in utilization of credit. There is perhaps no more frustrating experience than for a consumer to be incorrectly billed only to discover that his main recourse is continuing and unsatisfactory correspondence with a computer. No one likes to correspond with a machine. And, the situation is particularly disturbing when the machine fails to reflect correspondence or respond to it. We have heard case after case of consumers being billed for the shoes they did not buy; for the washer which arrived with a leak; or for the dress which was returned. All too often the only thing the consumer can do is undertake a persistent, patient, and lengthy campaign of letter writing, telephone calls, taping over the computer holes in the bill or cutting additional ones; pay the bill even though he does not owe it; or take the chance of having a bad reference filed with a credit bureau. Obviously, none of these alternatives are very attractive—or very fair to the consumer.

Title I of this legislation seeks to eliminate such possibilities and replace them with a workable system not overly burdensome on business, but responsive to consumer needs. Under it, companies would have to respond within 30 days to a consumer billing complaint and the matter would have to be resolved within 90 days, either through correction of the bill or an explanation of why the original bill is correct. During the period of resolution, companies could not send dunning letters, threaten the consumer with a bad credit report or take other action to collect the disputed bill. If after the 90-day period the bill is still in dispute, the creditor may not report the matter to a credit agency unless he advises the consumer and unless he notifies the agency that the amount is in dispute. Creditors must notify the agency of any subsequent resolution of the bill. Failure to do so would result in the company's forfeiture of the amount in dispute up to $50.

This is, in my opinion, a straightforward and realistic approach to perhaps the most aggravating consumer problem today. It will assure customers of attention to their billing complaints. It will not place undue requirements upon creditors. It will eliminate consumer harassment by computers and mail. It will limit the threat and use of adverse credit reports as a means of intimidating customers.

My commitment to consumer protection is a longstanding one, going back to my days in the Kentucky General Assembly. In my view, the pending legislation represents those expanding types of measures which the experiences of our people have, in recent months and years, continuously proved necessary. As such, I support this legislation and hope that it will find its way to prompt enactment.

Mr. JACKSON. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

The PRESIDING OFFICER. Do Senators yield back the remainder of their time?

Mr. SPARKMAN. I yield back the remainder of my time.

Mr. BROCK. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Nevada (Mr. CANNON), the Senator from Alaska (Mr. GRAVEL), and the Senator from South Dakota (Mr. McGOVERN) are necessarily absent.

I further announce that the Senator from South Dakota (Mr. ABOUREZK) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from South Dakota (Mr. ABOUREZK) and the Senator from Alaska (Mr. GRAVEL) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from New Hampshire (Mr. COTTON) is absent because of illness.

The Senator from Colorado (Mr. DOMINICK) and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The Senator from Massachusetts (Mr. BROOKE) is detained on official business.

The result was announced—yeas 90, nays 0, as follows:

[No. 320 Leg.]

YEAS—90

Aiken	Goldwater	Moss
Allen	Griffin	Muskie
Baker	Gurney	Nelson
Bartlett	Hansen	Nunn
Bayh	Hart	Packwood
Beall	Hartke	Pastore
Bellmon	Haskell	Pearson
Bennett	Hatfield	Pell
Bible	Hathaway	Percy
Biden	Helms	Proxmire
Brock	Hollings	Randolph
Buckley	Hruska	Ribicoff
Burdick	Huddleston	Roth
Byrd, Harry F., Jr.	Hughes	Saxbe
	Humphrey	Schweiker
Byrd, Robert C.	Inouye	Scott, Pa.
Case	Jackson	Scott, Va.
Chiles	Javits	Sparkman
Church	Johnston	Stafford
Clark	Kennedy	Stevenson
Cook	Long	Symington
Cranston	Magnuson	Taft
Curtis	Mansfield	Talmadge
Dole	Mathias	Thurmond
Domenici	McClellan	Tower
Eagleton	McClure	Tunney
Eastland	McGee	Weicker
Ervin	McIntyre	Williams
Fannin	Metcalf	Young
Fong	Mondale	
Fulbright	Montoya	

NAYS—0

NOT VOTING—10

Abourezk	Cotton	Stennis
Bentsen	Dominick	Stevens
Brooke	Gravel	
Cannon	McGovern	

So the bill (S. 2101) was passed, as follows:

S. 2101

An act to amend the Truth in Lending Act to protect consumers against inaccurate and unfair billing practices, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Truth in Lending Act Amendments of 1973".

TITLE I—FAIR CREDIT BILLING

§ 101. Short title

This title may be cited as the "Fair Credit Billing Act".

§ 102. Declaration of purpose

The last sentence of section 102 of the Truth in Lending Act (15 U.S.C. 1601) is amended by striking out the period and inserting in lieu thereof a comma and the following: "and to protect the consumer against inaccurate and unfair credit billing and credit card practices."

§ 103. Definitions of creditor and open end credit plan

(a) The first sentence of section 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f)) is amended to read as follows: "The term 'creditor' refers only to creditors who are card issuers, or who regularly extend, or arrange for the extension of, credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, whether in connection with loans, sales of property or services, or otherwise."

(b) Section 103(i) of such Act (15 U.S.C. 1602(i)) is amended to read as follows:

"(i) The term 'open end credit plan' refers to a plan prescribing the terms of credit transactions which may be made thereunder from time to time and under the terms of which either a finance charge may be computed on the outstanding unpaid balance from time to time thereunder, or a credit card is issued."

§ 104. Disclosure of fair credit billing rights

(a) Section 127(a) of the Truth in Lending Act (15 U.S.C. 1637(a)) is amended by adding at the end thereof a new paragraph as follows:

"(8) A statement, in a form prescribed by regulations of the Board, of the protection provided by sections 161 and 170 to an obligor and the creditor's responsibilities under sections 162 and 170. With respect to each of two billing cycles per year, at semiannual intervals, the creditor shall transmit such statement to each obliger to whom the creditor is required to transmit a statement pursuant to section 127(b) for such billing cycle."

(b) Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended to read:

"(c) In the case of any existing account under an open end consumer credit plan having an outstanding balance of more than $1 at or after the close of the creditor's first full billing cycle under the plan after the effective date of subsection (a) or any amendments thereto, the items described in subsection (a), to the extent applicable and not previously disclosed, shall be disclosed in a notice mailed or delivered to the obligor not later than the time of mailing the next statement required by subsection (b)."

§ 105. Disclosure of billing contact

Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end thereof a new paragraph as follows:

"(11) The address to be used by the creditor for the purpose of receiving billing inquiries from the obligor."

§ 106. Billing practices

The Truth in Lending Act (15 U.S.C. 1601–1665) is amended by adding at the end thereof a new chapter as follows:

"Chapter 4—CREDIT BILLING

"Sec.
"161. Correction of billing errors.
"162. Regulation of credit reports.
"163. Length of billing period.
"164. Prompt crediting of payments.
"165. Crediting excess payments.
"166. Prompt notification of returns.
"167. Use of cash discounts.
"168. Prohibition of tie-in services.
"169. Prohibition of offsets.
"170. Rights of credit card customers.
"171. Relation to State laws.

"§ 161. Correction of billing errors

"(a) If a creditor, within sixty days after having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, receives at the address disclosed under section 127(b)(11) a written notice (other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 127(a)(8)) from the obligor in which the obligor—

"(1) sets forth or otherwise enables the creditor to identify the name and account number (if any) of the obligor,

"(2) indicates the obligor's belief that the statement contains a billing error and the amount of such billing error, and

"(3) sets forth reasons for the obligor's belief (to the extent applicable) that the statement contains a billing error,

the creditor shall, unless the obligor has, after giving such written notice and before the expiration of the time limits herein specified, agreed that the statement was correct—

"(A) not later than thirty days after receipt of the notice, send a written acknowledgement thereof to the obligor, unless the action required in subparagraph (B) is taken within such thirty-day period, and

"(B) not later than two complete billing cycles of the creditor (in no event later than ninety days) after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the obligor under paragraph (2) either—

"(i) make appropriate corrections in the account of the obligor, including the crediting of any finance charges on amounts erroneously billed, and transmit to the obligor a notification of such corrections and the creditor's explanation of any change in the amount indicated by the obligor under paragraph (2) and, if any such change is made and the obligor so requests, copies of documentary evidence of the obligor's indebtedness; or

"(ii) send a written explanation or clarification to the obligor, after having conducted an investigation, setting forth to the extent applicable the reasons why the creditor believes the account of the obligor was correctly shown in the statement and, upon request of the obligor, provide copies of documentary evidence of the obligor's indebtedness. In the case of a billing error where the obligor alleges that the creditor's billing statement reflects goods not delivered to the obligor or his designee in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless he determines that such goods were actually delivered, mailed, or otherwise sent to the obligor and provides the obligor with a statement of such determination. After complying with the provisions of this subsection with respect to an alleged billing error, a creditor has no further responsibility

under this section if the obligor continues to make substantially the same allegation with respect to such error.

"(b) For the purpose of this section, a 'billing error' consists of any of the following:

"(1) A reflection on a statement of an extension of credit which was not made to the obligor or, if made, was not in the amount reflected on such statement.

"(2) A reflection on a statement of an extension of credit for which the obligor requests additional clarification including documentary evidence thereof.

"(3) A reflection on a statement of goods or services not accepted by the obligor or his designee or not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction.

"(4) The creditor's failure to reflect properly on a statement a payment made by the obligor or a credit issued to the obligor.

"(5) A computation error or similar error of an accounting nature of the creditor on a statement.

"(6) Any other error described in regulations of the Board.

"(c) For the purposes of this section, 'action to collect the amount, or any part thereof, indicated by an obligor under paragraph (2)' does not include the sending of statements of account to the obligor following written notice from the obligor as specified under subsection (a), if—

"(1) the obligor's account is not restricted or closed because of the failure of the obligor to pay the amount indicated under paragraph (2) of subsection (a), and

"(2) the creditor indicates the payment of such amount is not required pending the creditor's compliance with this section.

Nothing in this section shall be construed to prohibit any action by a creditor to collect any amount which has not been indicated by the obligor to contain a billing error.

"(d) Pursuant to regulations of the Board, a creditor operating an open end consumer credit plan may not, prior to the sending of the written explanation or clarification required under paragraph (B)(ii), restrict or close an account with respect to which the obligor has indicated pursuant to subsection (a) that he believes such account to contain a billing error solely because of the obligor's failure to pay the amount indicated to be in error. Nothing in this subsection shall be deemed to prohibit a creditor from applying against the credit limit on the obligor's account the amount indicated to be in error.

"(e) Any creditor who fails to comply with the requirements of this section or section 162 forfeits any right to collect from the obligor the amount indicated by the obligor under paragraph (2) of subsection (a) of this section, and any finance charges thereon, except that the amount required to be forfeited under this subsection may not exceed $50.

"§ 162. Regulation of credit reports

"(a) After receiving a notice from an obligor as provided in sector 161(a), a creditor or his agent may not directly or indirectly threaten to report to any person adversely on the obligor's credit rating or credit standing because of the obligor's failure to pay the amount indicated by the obligor under section 161(a)(2), and such amount may not be reported as delinquent to any third party until the creditor has met the requirements of section 161 and has allowed the obligor the same number of days (not less than ten) thereafter to make payment as is provided under the credit agreement with the obligor for the payment of undisputed amounts.

"(b) If a creditor receives a further written notice from an obligor that an amount is still in dispute within the time allowed for payment under subsection (a) of this section, a creditor may not report to any third party that the amount of the obligor is delinquent because the obligor has failed to pay an amount which he has indicated under section 161 (a)(2), unless the creditor also reports that the amount is in dispute and, at the same time, notifies the obligor of the name and address of each party to whom the creditor is reporting information concerning the delinquency.

"(c) A creditor shall report any subsequent resolution of any delinquencies reported pursuant to subsection (b) to the parties to whom such delinquencies were initially reported.

"§ 163. Length of billing period

"(a) If an open end consumer credit plan provides a time period within which an obligor may repay any portion of the credit extended without incurring an additional finance charge, such additional finance charge may not be imposed with respect to such portion of the credit extended for the billing cycle of which such period is a part unless a statement which includes the amount upon which the finance charge for that period is based was mailed at least fourteen days prior to the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge.

"(b) Subsection (a) does not apply in any case where a creditor has been prevented, delayed, or hindered in making timely mailing or delivery of such periodic statement within the time period specified in such subsection because of an act of God, war, natural disaster, strike, or other excusable or justifiable cause, as determined under regulations of the Board.

"§ 164. Prompt crediting of payments

"Payments received from an obligor under an open end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Board. Such regulations shall prevent a finance charge from being imposed on any obligor if the creditor has received the obligor's payment in readily identifiable form in the amount, manner, location, and time indicated by the creditor to avoid the imposition thereof.

"§ 165. Crediting excess payments

"Whenever an obligor transmits funds to a creditor in excess of the total balance due on an open end consumer credit account, the creditor shall promptly (1) upon request of the obligor refund the amount of the overpayment, or (2) credit such amount to the obligor's account.

"§ 166. Prompt notification of returns

"With respect to any sales transaction where a credit card has been used to obtain credit, where the seller is a person other than the card issuer, and where the seller accepts or allows a return of the goods or forgiveness of a debit for services which were the subject of such sale, the seller shall promptly transmit to the credit card issuer a credit statement with respect thereto and the credit card issuer shall credit the account of the obligor for the amount of the transaction.

"§ 167. Use of cash discounts

"(a) With respect to a credit card which may be used for extensions of credit in sales transactions in which the seller is a person other than the card issuer, the card issuer may not, by contract or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check, or similar means rather than use a credit card.

"(b) With respect to any sales transaction, any discount not in excess of 5 per centum offered by the seller for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card shall not constitute a finance charge as determined under section 106, if such discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with regulations of the Board.

"§ 168. Prohibition of tie-in services

"Notwithstanding any agreement to the contrary, a card issuer may not require a seller, as a condition to participating in a credit card plan, to open an account with or procure any other service from the card issuer or its subsidiary or agent.

"§ 169. Prohibition of offsets

"(a) A card issuer may not take any action to offset a cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer unless—

"(1) such action was previously authorized in writing by the cardholder in accordance with a credit plan whereby the cardholder agrees periodically to pay debts incurred in his open end credit account by permitting the card issuer periodically to deduct all or a portion of such debt from the cardholder's deposit account, and

"(2) such action with respect to any outstanding disputed amount not be taken by the card issuer upon request of the cardholder.

In the case of any credit card account in existence on the effective date of this section, the previous written authorization referred to in clause (1) shall not be required until the date (after such effective date) when such account is renewed, but in no case later than one year after such effective date. Such written authorization shall be deemed to exist if the card issuer has previously notified the cardholder that the use of his credit card account will subject any funds which the card issuer holds in deposit accounts of such cardholder to offset against any amounts due and payable on his credit card account which have not been paid in accordance with the terms of the agreement between the card issuer and the cardholder.

"(b) This section does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally.

"§ 170. Rights of credit card customers

"(a) Subject to the limitation contained in subsection (b), a card issuer who has issued a credit card to a cardholder pursuant to an open end consumer credit plan shall be subject to all claims (other than tort claims) and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if (1) the obligor has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card; (2) the amount of the initial transaction exceeds $50; and (3) the place where the initial transaction occurred was in the same State as the mailing address previously provided by the cardholder or was within 100 miles from such address, except that the limitations set forth in clauses (2) and (3) with respect to an obligor's right to assert claims and defenses against a card issuer shall not be applicable to any transaction in which the person honoring the credit card (A) is the same person as the card issuer, (B) is controlled by the card issuer, (C) is under direct or indirect common control with the card issuer, (D) is a franchised dealer in the card issuer's products or services, or (E) has obtained the order for such transaction through a mail solicitation made by or participated in by the card issuer in which the cardholder is solicited to enter into such transaction by using the credit card issued by the card issuer.

"(b) The amount of claims or defenses asserted by the cardholder may not exceed the amount of credit outstanding with respect to such transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of such claim or defense. For the purpose of determining the amount of credit outstanding in the preceding sentence, payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of: (1) late charges in the order of their entry to the account; (2) finance charges in order of their entry to the account; and (3) debits to the account other than those set forth above, in the order in which each debit entry to the account was made.

"§ 171. Relation to State laws

"(a) This chapter does not annul, alter, or affect, or exempt any person subject to the provisions of this chapter from complying with, the laws of any State with respect to credit billing practices, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this chapter if the Board determines that such law gives greater protection to the consumer.

"(b) The Board shall by regulation exempt from the requirements of this chapter any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement."

§ 107. Conforming amendments

(a) The table of chapters of the Truth in Lending Act is amended by adding immediately under item 3 the following:

"4. CREDIT BILLING ---------- 161".

(b) Section 111(d) of such Act (15 U.S.C. 1610(d)) is amended by striking out "and 130" and inserting in lieu thereof a comma and the following: "130, and 166".

(c) Section 121(a) of such Act (15 U.S.C. 1631(a)) is amended—

(1) by striking out "and upon whom a finance charge is or may be imposed"; and

(2) by inserting "or chapter 4" immediately after "this chapter".

(d) Section 121(b) of such Act (15 U.S.C. 1631(b)) is amended by inserting "or chapter 4" immediately after "this chapter".

(e) Section 122(a) of such Act (15 U.S.C. 1632(a)) is amended by inserting "or chapter 4" immediately after "this chapter".

(f) Section 122(b) of such Act (15 U.S.C. 1632(b)) is amended by inserting "or chapter 4" immediately after "this chapter".

§ 108. Effective date

This title takes effect upon the expiration of one year after the date of its enactment.

TITLE II—AMENDMENTS TO THE TRUTH IN LENDING ACT

§ 201. Advertising; more-than-four-installment rule

(a) Chapter 3 of the Truth in Lending Act (15 U.S.C. 1661–1665) is amended by adding at the end thereof a new section as follows:

"§ 146. More-than-four-installment rule

"Any advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit repayable in more than four installments shall, unless a finance charge is imposed, clearly and conspicuously state, in accordance with the regulations of the Board:

"'THE COST OF CREDIT IS INCLUDED IN THE PRICE QUOTED FOR THE GOODS AND SERVICES.'"

(b) The table of sections of such chapter is amended by adding at the end thereof a new item as follows:

"146. More-than-four-installment rule.".

§ 202. Agricultural credit exemption

Section 104 of the Truth in Lending Act (15 U.S.C. 1603) is amended by adding at the end thereof a new paragraph as follows:

"(5) Credit transactions primarily for agricultural purposes in which the total amount to be financed exceeds $25,000."

§ 203. Administrative enforcement

(a) Section 108(a) of the Truth in Lending Act (15 U.S.C. 1607(a)) is amended by striking out paragraph (4) and by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(b) Section 108(a) of the Truth in Lending Act (15 U.S.C. 1607(a)) is amended by adding at the end thereof a new paragraph as follows:

"(6) the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association."

§ 204. Liens arising by operation of State law

Section 125 of the Truth in Lending Act (15 U.S.C. 1635) is amended—

(1) by striking out "is" the first time it appears in the first sentence of subsection (a) and inserting in lieu thereof ", including any such interest arising by operation of law, is or will be"; and

(2) by inserting after "obligor" the second time it appears in the first sentence of subsection (b) the following: ", including any such interest arising by operation of law,".

§ 205. Time limit for right of rescission

Section 125 of the Truth in Lending Act (15 U.S.C.1635) is amended by adding at the end thereof a new subsection as follows:

"(f) An obligor's right of rescission shall expire thee years after the date of consummation of the transaction or upon the sale of the property, whichever occurs earlier, notwithstanding the fact that the disclosures required under this section or any other material disclosures required under this chapter have not been delivered to the obligor."

§ 206. Good faith compliance

Section 130 of the Truth in Lending Act (15 U.S.C. 1640) is amended by adding at the end thereof a new subsection as follows:

"(f) No provision of this section or section 112 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason."

§ 207. Liability for multiple disclosures

Section 130 of the Truth in Lending Act (15 U.S.C. 1640) is amended by adding at the end thereof a new subsection as follows:

"(g) The multiple failure to disclose to any person any information required under this chapter to be disclosed in connection with a single account under an open end consumer credit plan, other single consumer credit sale, consumer loan, or other extension of consumer credit, shall entitle the person to a single recovery under this section but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries."

§ 208. Civil liability

(a) Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640 (a)) is amended to read as follows:

"(a) Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this chapter or chapter 4 of this title with respect to any person is liable to such person in an amount equal to the sum of—

"(1) any actual damage sustained by such person as a result of the failure;

"(2)(A) in the case of an individual action twice the amount of any finance charge in connection with the transaction, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000; or

"(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in such action shall not be more than the lesser of $100,000 or 1 per centum of the net worth of the creditor; and

"(4) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional."

(b) Section 130(b) of such Act (15 U.S.C. 1640(b)) is amended by inserting after "this section" the first place it appears the following: "for any failure to comply with any requirement imposed under this chapter,".

(c) Section 130(c) of such Act (15 U.S.C. 1640(c)) is amended by striking out "chapter" and inserting in lieu thereof "title".

(d) Section 130 of such Act (15 U.S.C. 1640) is amended by adding at the end thereof a new subsection as follows:

"(h) A person may not take any action to offset any amount for which a creditor is potentially liable to such person under subsection (a)(2) against any amount owing to such creditor by such person, unless the amount of the creditor's liability to such person has been determined by judgment of a court of competent jurisdiction in an action to which such person was a party."

(e) The amendments made by sections 206, 207, and 208 shall apply in determining the liability of any person under chapter 2 or 4 of the Truth in Lending Act, unless prior to the date of enactment of this Act such liability has been determined by final judgment of a court of competent jurisdiction and no further review of such judgment may be had by appeal or otherwise.

§ 209. Full statement of closing costs

Section 121 of the Truth in Lending Act (15 U.S.C. 1631) is amended by adding at the end thereof a new subsection as follows:

"(c) For the purpose of subsection (a), the information required under this chapter shall include a full statement of closing costs to be incurred by the consumer, which shall be presented, in accordance with the regulations of the Board—

"(1) prior to the time when any downpayment is made, or

"(2) in the case of a consumer credit transaction involving real property, at the time the creditor makes a commitment with respect to the transaction.

The Board may provide by regulation that any portion of the information required to be disclosed by this section may be given in the form of estimates where the provider of such information is not in a position to know exact information."

§ 210. Business use of credit cards

(a) Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631–1644) is amended by adding the following new section at the end thereof:

"§ 135. Business credit cards

"The exemption provided by section 104 (1) does not apply to the provisions of sections 132, 133, and 134, except that a card issuer and a business or other organization which provides credit cards issued by the same card issuer to ten or more of its employees may by contract agree as to liability of the business or other organization with respect to unauthorized use of such credit cards without regard to the provisions of section 133, but in no case may such business or other organization or card issuer impose liability upon any employee with respect to unauthorized use of such a credit card except in accordance with and subject to the limitations of section 133."

(b) The table of sections of such chapter is amended by adding at the end thereof a new item as follows:

"135. Business credit cards.".

§ 211. Identification of transaction

Section 127(b)(2) of the Truth in Lending Act (15 U.S.C. 1637(b)(2)) is amended to read as follows:

"(2) The amount and date of each extension of credit during the period and a brief identification on or accompanying the statement of each extension of credit in a form prescribed by regulations of the Board sufficient to enable the obligor to identify the transaction, or relate it to copies of sales vouchers or similar instruments previously furnished."

§ 212. Exemption for State lending agencies

Section 125(e) of the Truth in Lending Act (15 U.S.C. 1635(e)) is amend-d by striking the period at the end thereof and adding the following: "or to a consumer credit transaction in which an agency of a State is the creditor."

§ 213. Liability of assignees

(a) Chapter 1 of the Truth in Lending Act (15 U.S.C. 1601–1613) is amended by adding at the end thereof a new section as follows:

"§ 115. Liability of assignees

"Except as otherwise specifically provided in this title, any civil action for a violation of this title which may be brought against the original creditor in any credit transactions may be maintained against any subsequent assignee of the original creditor where the violation from which the alleged liability arose is apparent on the face of the instrument assigned unless the assignment is involuntary."

(b) The analysis of such chapter is amended by adding at the end thereof a new item as follows:

"115. Liability of assignees.".

§ 214. Credit card fraud

Section 134 of the Truth in Lending Act (15 U.S.C. 1644) is amended to read as follows:

"§ 134. Fraudulent use of credit card

"(a) Whoever knowingly in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating $1,000 or more; or

"(b) Whoever, with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counerfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

"(c) Whoever, with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

"(d) Whoever knowingly receives, conceals, uses, or transports, money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (1) within any one-year period has a value aggregating $1,000 or more, (2) has moved in or is part of, or which constitutes interstate or foreign commerce, and (3) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card; or

"(c) Whoever knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (1) within any one-year period have a value aggregating $500 or more, and (2) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit cards; or

"(f) Whoever in a transaction affecting interstate or foreign commerce furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating $1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

§ 215. Grace period for consumers

Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended—

(1) by amending subsection (a)(1) to read as follows:

(1) The conditions under which a finance charge may be imposed, including the time period (if any) within which any credit extended may be repaid without incurring a finance charge, except that the creditor may, at his election and without disclosure, impose no such finance charge if payment is received after the termination of such time period."; and

(2) by amending subsection (b)(10) to read as follows:

"(10) The date by which or the period (if any) within which, payment must be made to avoid additional finance charges, except that the creditor may, at his election and without disclosure, impose no such additional finance charge if payment is received after such date or the termination of such period."

§ 216. Disclosure by card issuers

Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding the following new subsection:

"(d) Card issuers who also engage in other than open-end credit transactions shall not be required to make disclosures required by this section with respect to such transactions."

§ 217. Effective date

This title takes effect upon the date of its enactment, except that sections 209 and 211 take effect upon the expiration of one year after the date of its enactment.

TITLE III—EQUAL CREDIT OPPORTUNITY

§ 301. Short title

This title may be cited as the "Equal Credit Opportunity Act".

§ 302. Discrimination

(a) Title I of the Truth in Lending Act (15 U.S.C. 1601–1665) is amended by adding at the end thereof a new chapter as follows:

"CHAPTER 5—PROHIBITION OF DISCRIMINATION BASED ON SEX OR MARITAL STATUS

"Sec.
"181. Prohibited dicrimination.
"182. Civil liability.

"§ 181. Prohibited discrimination

"It shall be unlawful for any creditor or card issuer to discriminate on account of sex or marital status against any individual with respect to the approval or denial of any extension of consumer credit or with respect to the terms thereof or with respect to the approval, denial, renewal, continuation, or revocation of any open end consumer credit account or with respect to the terms thereof. Section 104 of this title does not apply with respect to any transaction subject to this section.

"§ 182. Civil liability

"The provisions of section 130 of this title shall be applicable to any creditor or card issuer who violates section 181."

(b) The table of chapters of such title is amended by adding at the end thereof the following new item:

"5. Prohibition of discrimination based on sex or marital status---------- 181".

§ 303. Effective date

This title takes effect upon the expiration of sixty days after the date of its enactment.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GRIFFIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UNANIMOUS-CONSENT AGREEMENTS

Mr. ROBERT C. BYRD. Mr. President, I yield myself 1 minute on behalf of the Senator from Alabama (Mr. SPARKMAN), on the bill.

As in executive session, I ask unanimous consent that at such time as the nomination of Mr. Vincent R. Barabba to be Director of the Census is made the pending question before the Senate, there be a time limitation of 1 hour thereon, to be equally divided between the Senator from Wisconsin (Mr. PROXMIRE), and the Senator from Wyoming (Mr. MCGEE); and that time on any debatable motion or appeal be limited to 10 minutes, to be divided between the majority and minorty leaders or their designees.

The PRESIDING OFFICER (Mr. MCCLURE). Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that tomorrow, after routine morning business is closed, the Senate proceed to the consideration of S. 1983, the bill to provide for the protection of fish and wildlife species; that upon the disposition of that bill the Senate go into executive session to consider the nomination of Mr. Vincent R. Barabba; and that upon the disposition of the nomination, the Senate return to legislative session and proceed to the consideration of S. 1559, a bill to provide financial assistance to enable States and local governments to assume responsibilities for job training, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGE FROM THE HOUSE— ENROLLED BILL SIGNED

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the Speaker had affixed his signature to the

enrolled bill (H.R. 9172) to provide for emergency allotment lease and transfer of tobacco allotments or quotas for 1973 in certain disaster areas in Georgia and South Carolina.

REMOVAL OF INJUNCTION OF SECRECY FROM INTERNATIONAL COFFEE AGREEMENT, 1968, AS EXTENDED, AND THE CUSTOMS CONVENTION ON THE INTERNATIONAL TRANSIT OF GOODS

Mr. ROBERT C. BYRD. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the International Coffee Agreement, 1968, as Extended—Executive O, 93d Congress, 1st session—and the Customs Convention on the International Transit of Goods—ITI Convention—opened for signature at Vienna, June 7, 1971—Executive P, 93d Congress, 1st session—transmitted to the Senate today by the President of the United States, and that the agreement and convention with accompanying papers be referred to the Committee on Foreign Relations and ordered to be printed, and that the President's messages be printed in the RECORD.

The PRESIDING OFFICER. Without objection, the agreement and convention, with accompanying papers, will be referred to the Committee on Foreign Relations, and the President's messages will be printed in the RECORD, as requested.

The messages are as follows:

To the Senate of the United States:

I am transmitting herewith, for the advice and consent of the Senate to acceptance, the International Coffee Agreement 1968 as Extended. This modified and extended agreement, which was adopted by the International Coffee Council in its Resolution No. 264 of April 14, 1973, deletes all operative economic provisions but preserves the structure of the International Coffee Organization through September 30, 1975.

The International Coffee Agreement 1968 as modified and extended will continue the decade-long cooperation on world trade in the most important agricultural commodity export of the developing world. But, in view of the changed coffee market outlook from one of surplus to one of tight supply, the extended agreement no longer contains provisions for intervening in the market. It will keep the International Coffee Organization alive as a forum for studying and discussing the world coffee economy, for monitoring coffee developments and, when the members deem it appropriate, for negotiating a new coffee agreement to serve the interests of coffee producers and consumers.

I believe continuing United States participation in the extended agreement will advance our interests in two ways. First, by that participation we can demonstrate concretely our readiness to work together with developing nations on matters of vital economic interest to them. Secondly, we can ensure that we will have a voice in the negotiation of any new international trade arrangements on coffee—arrangements in which we as the importers of almost 40 percent of international traded coffee have a significant stake. I am confident that we can achieve both these objectives in a manner fully consistent with the interests of our consumers.

I am also transmitting, for the information of the Senate, the report submitted to me by the Department of State explaining the provisions of the International Coffee Agreement 1968 as modified and extended, and providing background on the operation of the Agreement and on the current state of the world coffee economy.

RICHARD NIXON.

THE WHITE HOUSE, *July 23, 1973.*

To the Senate of the United States:

I am transmitting herewith, for the advice and consent of the Senate to ratification, the Customs Convention on the International Transit of Goods (ITI Convention) opened for signature at Vienna June 7, 1971.

For the information of the Senate, I am also transmitting the report of the Department of State with respect to the Convention.

The Convention is designed to meet the present need to facilitate international transport while, at the same time, providing the customs control arrangements necessary for such transport. The Convention provides for new, uniform control and documentation procedures which carriers of Governments party to the Convention would be able to use at their option.

The Convention would help open the way for United States exporters and carriers to benefit in Western Europe and other markets of the world from the simplified and uniform procedures for which it provides.

I recommend that the Convention be given early and favorable consideration by the Senate.

RICHARD NIXON.

THE WHITE HOUSE, *July 23, 1973.*

RESOLUTION BY AMERICAN SOCIETY OF MAMMALOGISTS

Mr. MAGNUSON. Mr. President, I ask unanimous consent to have printed in the RECORD a resolution passed June 16, 1973, by the American Society of Mammalogists at their annual meeting in Asilomar, Calif. This resolution expresses the unanimous opinion of the society relative to the "Proper Management of Puget Sound Killer Whale Populations."

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

FOR THE PROPER MANAGEMENT OF PUGET SOUND KILLER WHALE POPULATIONS

Whereas, no organized study of the numbers, population dynamics, or movements of killer whales found in Puget Sound has been undertaken; and

Whereas, commercial utilization of killer whales in Puget Sound has been in progress since 1964, removing several young killer whales each year from Puget Sound waters; and

Whereas, it is unknown what fraction of the annual increment of this killer whale population is being removed from Puget Sound; and

Whereas, studies of other marine mammals including cetaceans have shown that individual pods, herds, or other subpopulation groups inhabit certain marine areas year after year (i.e., have home ranges similar to other mammals); and

Whereas, studies of other marine mammals have shown that frequent or repeated disturbance causes changes in distribution and abundance; and

Whereas, the annual removal of young killer whales from Puget Sound could, over a period of years, cause a population decline there;

Therefore be it resolved, that the American Society of Mammalogists supports the contention that young killer whales should not be removed annually from Puget Sound until adequate studies have demonstrated that such removal will not be detrimental to this population.

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees have been recognized tomorrow under the standing order, there be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements therein limited to 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ADJOURNMENT TO 11 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 11 o'clock tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 11 o'clock a.m. After the two leaders or their designees have been recognized under the standing order, there will be a period for the transaction of routine morning business of not to exceed 15 minutes, with the usual 3-minute limitation on statements therein. At the conclusion of routine morning business, the Senate will take up S. 1983, for the protection of fish and wildlife species under a time limitation. A yea-and-nay vote will likely occur thereon.

The Senate will then go into executive session to take up the nomination of Vincent R. Barabba to be Director of the Census, with a 1-hour limitation on the nomination, and a yea-and-nay vote will occur thereon.

On disposition of the nomination, the Senate will resume legislative business and will take up S. 1559, the job training bill. Yea-and-nay votes are expected.

ADJOURNMENT TO 11 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand adjourned to 11 a.m. tomorrow.

The motion was agreed to; and at 5:35 p.m. the Senate adjourned to tomorrow, Tuesday, July 24, 1973, at 11 a.m.

HOUSE OF REPRESENTATIVES—*Monday, July 23, 1973*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Only fear the Lord and serve Him faithfully with all your heart; for consider what great things He has done for you.—I Samuel 12: 24.

O Thou who art the Creator and the Sustainer of Life, who hast given us the gift of days and hours, help us to use our time in faithful devotion to Thee and to our country.

Save us from disillusionment of mind and discouragement of heart amid the trials and turmoils of this present time. Make us strong in faith, steadfast in courage, and stouthearted in spirit as we face the tasks of this week.

We commit our Nation unto Thee, praying that we, the people, may prove ourselves worthy of the sacrifices built into the foundations of our Republic. May vital religion, intelligent good will, private and public integrity become the mood of our age—and may it begin with me.

In the spirit of Christ we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment a bill and concurrent resolutions of the House of the following titles:

H.R. 9172. An act to provide for emergency allotment lease and transfer of tobacco allotments or quotas for 1973 in certain disaster areas in Georgia and South Carolina;

H. Con. Res. 185. Concurrent resolution to provide for the printing of inaugural addresses from President George Washington to President Richard M. Nixon;

H. Con. Res. 219. Concurrent resolution providing for additional copies of "The Federal Civilian Employee Loyalty Program," House Report 92–1637, 92d Congress, 2d session;

H. Con. Res. 233. Concurrent resolution providing for the printing of committee hearings establishing a National Institute of Education;

H. Con. Res. 256. Concurrent resolution to provide for the printing as a House document, a revised edition of the House document "Our American Government. What Is It? How Does It Work?";

H. Con. Res. 257. Concurrent resolution providing the printing of additional copies of the House report entitled "Street Crime: Reduction Through Positive Criminal Justice Responses"; and

H. Con. Res. 258. Concurrent resolution providing for the printing of additional copies of the House report entitled "Drugs in Our Schools."

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills and joint resolutions of the House of the following titles:

H.R. 6691. An act making appropriations for the legislative branch for the fiscal year ending June 30, 1974, and for other purposes;

H.R. 8658. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending June 30, 1974, and for other purposes;

H.J. Res. 512. Joint resolution to extend the authority of the Secretary of Housing and Urban Development with respect to the insurance of loans and mortgages, to extend authorizations under laws relating to housing and urban development, and for other purposes; and

H.J. Res. 542. Joint resolution concerning the war powers of Congress and the President.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 6691) entitled "An act making appropriations for the legislative branch for the fiscal year ending June 30, 1974, and for other purposes, reported with an amendment," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. HOLLINGS, Mr. MCCLELLAN, Mr. BAYH, Mr. EAGLETON, Mr. COTTON, Mr. SCHWEIKER, Mr. YOUNG, and Mr. CASE to be the conferees on the part of the Senate.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 8658) entitled "An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending June 30, 1974, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. BAYH, Mr. MCCLELLAN, Mr. INOUYE, Mr. CHILES, Mr. EAGLETON, Mr. MATHIAS, and Mr. BELLMON to be the conferees on the part of the Senate.

The message also announced that the Senate insists upon its amendments to the Joint Resolution (H.J. Res. 512) entitled "Joint resolution to extend the authority of the Secretary of Housing and Urban Development with respect to the insurance of loans and mortgages, to extend authorizations under laws relating to housing and urban development, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. SPARKMAN, Mr. PROXMIRE, Mr. WILLIAMS, Mr. STEVENSON, Mr. TOWER, Mr. BENNETT, and Mr. BROOKE to be the conferees on the part of the Senate.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 7935) entitled "An act to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rates under that act, to expand the coverage of that act, and for other purposes," disagreed to by the House; agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. WILLIAMS, Mr. RANDOLPH, Mr. PELL, Mr. NELSON, Mr. EAGLETON, Mr. HUGHES, Mr. HATHAWAY, Mr. JAVITS, Mr. SCHWEIKER, Mr. TAFT, and Mr. STAFFORD to be the conferees on the part of the Senate.

The message also announced that the Senate had passed bills and a joint resolution of the following titles, in which the concurrence of the House is requested:

S. 440. An act to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress;

S. 782. An act to reform consent decree procedures, to increase penalties for violation of the Sherman Act, and to revise the expediting act as it pertains to appellate review;

S. 1816. An act to amend the Wool Products Labeling Act of 1939 with respect to recycled wool; and

S.J. Res. 134. Joint resolution to prohibit any reduction in the number of employees of the Forest Service during the current fiscal year.

CONFERENCE REPORT ON S. 1636, AMENDING THE INTERNATIONAL ECONOMIC POLICY ACT OF 1972

Mr. PATMAN submitted the following conference report and statement on the bill (S. 1636) to amend the International Economic Policy Act of 1972:

CONFERENCE REPORT (H. REPT. NO. 93–389)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1636) to amend the International Economic Policy Act of 1972, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That section 205 of the International Economic Policy Act of 1972 is amended—

(1) by striking out "(1) The President,";

(2) by redesignating clauses (2) through (7) as clauses (1) through (6);

(3) by inserting after clause (6), as redesignated, the following:

"(7) The Secretary of Transportation."; and

(4) by striking out the last sentence and inserting in lieu thereof the following: "The President shall designate the Chairman of the Council from among the members of the Council."

SEC. 2. Section 209 of the International Economic Policy Act of 1972 is amended by striking out "1973" and inserting in lieu thereof "1977".

SEC. 3. Section 210 of the International Economic Policy Act of 1972 is amended by striking out "1973" and inserting in lieu thereof "1974".